

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2017

PRONOUNCED ON : 06.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.544 of 2011

and

M.P.No.1 of 2011

J.Seetharam Gupta ... Appellant/Defendant

Vs.

1. P.Selvaraj

2. P.Kathirvel

3. Padmini

... Respondents/Plaintiffs

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 24.08.2010 passed in A.S.No.87 of 2010 on the file of the learned Subordinate Judge, Tambaram, by confirming the judgment and decree dated 28.03.2008 made in O.S.No.110 of 2005 on the file of the Learned District Munsif, Tambaram.

For Appellant : Mr.K.Mani

For Respondents : Mr.G.Jeremiah

JUDGMENT

Challenge in this second appeal is made by the defendant against the judgment and decree dated 24.08.2010 passed in A.S.No.87 of 2010 on the file of the Sub Court, Tambaram, confirming the judgment and decree dated 28.03.2008 made in O.S.No.110 of 2005 on the file of the District Munsif Court, Tambaram.

2. The suit has been laid by the plaintiffs for permanent injunction.

3. The plaintiffs claim title to the suit property under the sale deed dated 06.02.1998 marked as Ex.A2, which had been executed in favour of their father Palanivel by Bangaru Rajamani. The plaintiffs have also produced the parent title deed marked as Ex.A1, from which, it is found that Bangaru

Rajamani had purchased the suit property from Ranganathan. Claiming title to the suit property under Exs.A2 & A1 and asserting that they are in possession and enjoyment of the suit property and further, pleading that inasmuch as the defendant had unlawfully interfered with their possession and enjoyment of the suit property, they had been necessitated to lay the suit for permanent injunction.

4. The defendant has taken a plea that the suit property is in his possession and enjoyment and it is also pleaded that the defendant had purchased the adjacent lands under the sale deeds and therefore, it is contended that the plaintiffs have no cause of action and the suit is liable to be dismissed.

5. As seen from the evidence adduced in the matter by the respective parties, the defendant's property is situated on the eastern side of the suit property. It is also found from Exs.B1 and 3, the defendant has also purchased certain extents from Ranganathan in the suit survey number and accordingly, enjoying the said properties. Under Ex.A1, the plaintiffs' vendor had purchased a particular extent i.e. the suit property in the suit survey number from Ranganathan. It is found that the entire extent in the suit survey number originally belonged to Chokkammal.

6. As regards the possession and enjoyment of the suit property, the plaintiffs have produced the patta in the name of the Palanivel and also, Kist receipt and further, during the first appeal proceedings, the plaintiffs have also marked Exs.A11 to 15 and from Exs.A14 and 15, it could be seen that the land tax receipt and Chitta in respect of the suit property stand only in the name of Palanivel. Therefore, it could be seen that acceptable and reliable documents have been produced on the part of the plaintiffs to show that they have legal title and also legal possession over the suit property and therefore, it could be seen that as rightly found by the Courts below, their possession should be protected.

7. Now, according to the defendant, he is the owner of the suit property and he claims to have purchased the suit property from Sundaramoorthy under Ex.B4 on 17.07.1996. Sundaramoorthy is stated to be the son of Ranganathan. Therefore, it could be seen that the plaintiffs title deeds are anterior to the defendant's title deed marked as Ex.B4. That apart, as rightly found by the courts below, the defendant in his written statement has not clearly spelt out as to how he is claiming title to the suit property, particularly, there is no reference about Ex.B4 sale deed in the written statement. As adverted to earlier, the defendant had purchased certain extents in the suit survey number from Ranganathan under Exs.B1 and 3. In such view of the matter, as rightly found by the courts below, when the

plaintiffs' vendor has purchased a particular extent in the suit survey number from Ranganathan and when the defendant had also purchased certain extents from Ranganathan in the suit survey number under Exs.B1 and 3, the contention of the defendant that the plaintiffs' vendor is not entitled to purchase the suit property under Ex.A1 as such cannot be countenanced. Equally, the contention of the defendant that his sale deed obtained from Sundaramoorthy, son of Ranganathan should be given preference over the sale deed marked as Exs.A1 and A2 as such cannot straightaway be accepted. Therefore, it could be seen that the defendant's claim of the purchase of the suit property from Sundaramoorthy as such after Exs.A1 & 2 cannot be readily accepted.

8. Be that as it may, the suit being laid for the relief of permanent injunction, it has to be found whether the plaintiffs have established their possession and enjoyment of the suit property. As adverted to earlier, the plaintiffs have produced Patta, Chitta and other documents to establish their case. Per contra, no acceptable and reliable material has been placed by the defendant to establish that he is in possession and enjoyment of the suit property. The documents marked on the side of the defendant such as Patta, Kist receipts etc., are not shown to be pointing to the suit property particularly when it is found that the defendant has purchased other extent in the suit survey number under Exs.B1 and 3 from Ranganathan. Therefore, it could be seen that the courts below have rightly not agreed to place reliance on the documents of the defendant to accept his claim of the possession and enjoyment of the suit property.

9. During the course of the second appeal, it is also contended by the defendant's counsel that recently, he has laid the suit against the plaintiffs in respect of the suit property seeking the relief of declaration and other incidental reliefs. Therefore, it could be seen that the defendant, if at all, has any legal right over the suit property, it is open to him, to workout his remedy as available under law.

10. In the light of the above discussions, it is found that the courts below have correctly appreciated the evidence on record and based upon proper reasonings and conclusions accepted the plaintiff's case and granted the relief sought for. No infirmity is ascribed or found in the judgment and decree of the courts below for upholding the plaintiffs' claim and rejecting the defendant's version.

11. The following decisions are relied upon by the defendant's counsel in support of his contention reported in (2012) 7 MLJ 459 (Appadurai and Another Vs. Selvan) and (2010) 3

MLJ 85 (Jothi Ramalingam Vs. M.N.Sivagnana Prakasam and others). The counsel for the plaintiffs, in support of his contention, placed reliance on the authorities reported in (2003) 1 M.L.J. 21 (Lakshmana Gounder Vs. The Special Deputy Collector (LA), Salem Steel Plant, Salem and others) and (2008) 4 Supreme Court Cases 594 (Anathula Sudhakar Vs. P.Buchi Reddy (Dead) By LRS. And others). The Principles of Law enunciated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

In conclusion, no substantial question of law is found to be involved in this second appeal. Accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

sd/
Assistant Registrar(CS II)

/true copy/

Sub Assistant Registrar

sms

To

1. The Sub Court, Tambaram.
- 2.The District Munsif, Tambaram.

+1cc to Mr.K.Mani, Advocate SR.No.7863

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and
M.P.No.1 of 2011

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