

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.994 of 2004
and
C.M.P.No.7321 of 2004

P.Subramaniam

...Appellant

Vs

1.Family Manager Palaniappan
2.Muthan
3.Velan

...Respondents

(Respondents 2 and 3 given up)

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 31.10.2003 made in A.S.No.31 of 2003 on the file of the Additional District Court, East Track Court No.II, Gobichettipalayam, reversing the judgment and decree passed in O.S.No.88 of 1999 dated 08.07.2002 by the District Munsif Court, Gobichettipalayam.

For Appellant ... Mr.M.Narayanaswamy

For Respondents ... Mr.R.T.Doraisamy for R.1
R.2 and R.3 - given up

JUDGMENT

The suit has been laid by the first respondent/plaintiff on the premise that the suit property belongs to him through his grandfather under Ex.A1. The dispute is with respect to the northern wall of the plaintiff's house. The trial Court dismissed the suit on the ground that though the suit property belongs to the grandfather of the plaintiff, the other co-owners have not been arrayed and the suit has been not laid for declaration. The lower appellate Court reversed the judgment and decree of the trial Court holding that the enjoyment of the house has not been disputed by the appellant/second defendant

and there is no necessity to add the other co-owners as parties to the suit. Challenging the same, the present second appeal has been filed.

2. At the time of admission, the following substantial questions of law have been framed:

(1) Whether the lower appellate Court is correct in reversing the judgment and decree of the trial Court when there was discrepancies in Ex.A1 sale deed dated 17.04.1959 and the plaint schedule measurements?

(2) Whether the lower appellate Court is correct in reversing the judgment and decree of the trial Court when the plaintiff failed to prove that the suit property belongs to him absolutely?

(3) Whether the lower appellate Court is correct in reversing the judgment and decree of the trial Court and decreeing the suit when the suit was not filed by all the legal heirs of Chinnaboyan who are entitled to the suit property?

(4) Whether the lower appellate Court is correct in reversing the judgment and decree of the trial Court when the plaintiff had filed the suit for bare injunction without praying for declaration?

3. Learned counsel appearing for the appellant submits that the lower appellate Court committed an error in decreeing the suit since the other necessary parties have not been added and the suit has been filed without the prayer for declaration.

4. This Court is unable to accept the said contention made. For the house, the appellant has got no objection. Therefore, the lower appellate Court has come to the conclusion that the wall goes along with the house. There is no necessity to implead the other co-owners. This is for the reason that there is no dispute with respect to the relief sought for between the plaintiff and the other co-owners. Law is settled that the co-owners can maintain a suit against a third party and therefore the inter se right between the co-owners, if any, would not debar the suit filed. In such view of the matter, the co-owners are not necessary parties though it may be a case of proper parties. To put it differently, for deciding the issue raised in the suit, a co-owner is not necessary. It is not in all cases that a declaration is required followed by injunction. As the appellant/second defendant did not dispute the title of the first respondent/plaintiff, the lower appellate Court has rightly decreed the suit as prayed for, over which, this Court does not find any substantial question of law involved, warranting interference. Accordingly, the second appeal is

dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Additional District Court,
Gobichettipalayam.

2. The District Munsif Court,
Gobichettipalayam.

+1cc to Mr.Narayanasamy, Advocate, S.R.No.9186

+1cc to Mr.Duraisamy, Advocate, S.R.No.9158

SVJ(CO)

RS(27/02/2017)

S.A.No.994 of 2004

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