

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

Coram

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

Second Appeal No.310 of 2016
and C.M.P.No.5832 of 2016

V.B.Sekar

...Appellant/Plaintiff

Vs

Murugan @ Gundu Murugan

...Respondent/1st Defendant

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 29.02.2016 passed in A.S.No.52 of 2013 on the file of the Sub Court, Cheyyar, reversing the judgment and decree dated 11.03.2013 made in O.S.No.139 of 2012 on the file of the Principal District Munsif, Cheyyar.

For Appellant .. Mr.P.Mani

For Respondent .. Mr.C.Munusamy

JUDGMENT

Plaintiff is the appellant herein and challenging the judgment and decree rendered by the Courts below, the present second appeal has been filed.

2.The suit has been laid for permanent injunction by the appellant, being the plaintiff, based upon Exs.A1 to A6. Exs.A1 to A3 are the sale deeds. Ex.A1 is the sale deed executed by one Krishnan and the defendant in favour of one Dhanalakshmi Ammal. Under Ex.A2, the said Dhanalakshmi Ammal executed a sale deed in favour of one Rajeswari, being the vendor of the plaintiff and under Ex.A3, the said Rajeswari executed the sale deed in favour of the plaintiff. Ex.A4 is the xerox copy of the proceedings issued by the Tahsildar, Cheyyar. Exs.A5 and A6 are the certified copies of the judgment and decree rendered in O.S.Nos.27 of 2008 and 22 of 2009 respectively.

3.Based upon those documents, the trial Court decreed the suit. The lower appellate Court reversed it by saying that Ex.A3 does not contain any recital as to how the vendor of the

plaintiff got title. Exs.A5 and A6 have also been rejected by the Court, being exparte decree. Without assigning any reason, the lower appellate Court has held that the documents filed by the defendant would show his possession. Challenging the same, the present appeal has been filed.

4.At the time of admission, the following substantial question of law has been framed:

Whether in law the plaintiff has prima facie title over the suit property when he traces his title over the suit property through Ex.A1, sale deed dated 04.01.1980 in favour of his predecessor in title executed by the first defendant and the other legal heirs of the original owner Perumal and the first defendant utterly failed to prove his defence that Ex.A1, sale deed is forged one and created by impersonation?

5. On 23.12.2016, this Court framed the following additional substantial question of law:

Has not the lower appellate Court committed an error in dismissing the suit on the premise that Ex.A1 xerox copy of the sale deed evidencing title of the plaintiff notwithstanding the fact that no such plea has been raised before the trial Court?

6.Pending the appeal, the appellant has filed the original copies of Exs.A1 to A3. After hearing the counsel, the following additional substantial question of law is framed:

Has not the lower appellate Court committed an error of law in not decreeing the suit as done by the trial Court without considering Exs.A1 to A3?

Thereafter, this Court has allowed the learned counsel for both sides to make their submissions on the additional substantial questions of law.

7.Learned counsel appearing for the appellant submits that the lower appellate Court got carried away by the xerox copies of the documents filed, which were not opposed at the time of marking. Exs.A1 and A2 have not been taken into consideration and so is the case of Ex.A4. Exs.A5 and A6 have not been considered in proper prospective. There is no discussion on the documents filed on behalf of the respondent/defendant.

8.Learned counsel appearing for the respondent submits that the lower appellate Court has taken into consideration the materials available on record and therefore, no interference is

required in a suit filed for bare injunction.

9.As repeatedly held by the Apex Court, the lower appellate Court, while exercising the power under Section 97 C.P.C., as the final Court of fact and law, is duty bound to give some reasons in support of reversal of the judgment and decree of the trial Court. Unfortunately, the lower appellate Court has not taken into consideration Exs.A1 and A2. Without looking into the said documents, a contrary finding has been given. Similarly, a casual observation has been made that the document filed by the respondent/defendant would show his possession without analysing it. Now the appellant has filed the original documents in Exs. A1 and A2, though not opposed at the time of marking.

10.In such view of the matter, this Court is inclined to set aside the judgment and decree of the lower appellate Court for the purpose of deciding the appeal on merits once again. Accordingly, the judgment and decree of the lower appellate Court is set aside and the matter is remanded back to the lower appellate Court with a direction to the lower appellate Court to decide the appeal on merits by taking into consideration Exs.A1, A2 and A4. All the findings rendered by the lower appellate Court are hereby set aside with liberty to decide it afresh without being influenced by the earlier findings. The additional documents sought to be filed are hereby taken on record. The lower appellate Court is directed to dispose of the appeal within a period of four months from the date of receipt of a copy of the judgment. The additional substantial question of law framed today is answered in favour of the appellant. The parties are at liberty to raise all the contentions including the admissibility relevancy and proof of the documents which have been taken on file pursuant to the petition filed before this Court. Registry is directed to send the documents which have been admitted before this Court to the lower appellate Court along with a copy of the judgment and decree. It is also made clear that the issue pertaining to permanent injunction qua the maintainability of the suit without declaration is also left open to be decided afresh.

11.In the result, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Subordinate Judge,
Cheyyar.
2. The Principal District Munsif,
Cheyyar.

Copy to

1. The Section Officer,
V.R.Section,
High Court, Madras.
(Send the documents which have been admitted before this
Court to the Lower appellate Court)
2. The Section Officer,
Judicial Section,
High Court, Madras-4.

+1cc to Mr.Munusamy, Advocate, S.R.No.7555
+1cc to Mr.Mani, Advocate, S.R.No.7604

PA(CO)
RS(02/03/2017)

S.A.No.310 of 2016



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