

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

Second Appeal No.695 of 2016
and
C.M.P.No.13110 of 2016

K.Radhakrishnan Appellant/1st Respondent/
1st Defendant

Vs

1.K.Selvaraj ... 1st Respondent/Appellant/Plaintiff

2.The Chairman,
Tamil Nadu Slum Clearance Board,
Rajaji Salai, Chennai - 5.
... 2nd Respondent/2nd Respondent
/2nd Defendant

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 28.08.2014 passed in A.S.No.189 of 2014 on the file of the XVIII Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 25.04.2013 in O.S.No.3553 of 2011 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.C.V.Subramanian

For Respondent : Mr.G.Ramachandran for R1
Mr.S.Prabhu for R2

JUDGMENT

Challenging the reversing judgment of the lower appellate Court, the first defendant, who is the appellant herein, has come forward to file this appeal by framing the following substantial questions of law:

(i)Whether the findings and conclusions of the lower appellate Court are contrary to evidences on record and perverse warranting interference under Section 100 C.P.C.?

(ii) Whether the lower appellate Court was right in granting the relief of permanent injunction alone in the absence of a declaratory relief based on any deed or document or adverse possession?

(iii) Whether the findings and conclusions of the lower appellate Court are contrary to the established principles of law laid down by this Honourable Court and the Honourable Supreme Court in the following decisions:

- 1.2015 (1) MWN (Civil) 291
- 2.2014 (11) SCC 664
- 3.2015 (1) MWN (Civil) 474
- 4.2014 (2) CTC 421

(iv) Whether the findings and conclusions of the lower appellate Court in allowing the appeal is sustainable in law more particularly when the first respondent/plaintiff has sought to withdraw the relief of mandatory injunction for transferring the allotment in his favour, which would in effect conceding the title of the appellant?

2. The appellant/first defendant and the first respondent/plaintiff are brothers. The suit has been laid for permanent injunction. The suit property, admittedly, stood originally in the name of the father of the parties and thereafter changed into the name of the appellant, of course, with the consent of the parties. This position is not in dispute. The first respondent filed the suit not only for permanent injunction but also for mandatory injunction claiming that the suit property has been given to him in view of his position being illiterate. The trial Court dismissed the suit on consideration of relevant materials. Before the lower appellate Court, the first respondent/plaintiff did not press the prayer for mandatory injunction. Therefore, the lower appellate Court restricted the issue with respect to the possession, which is admittedly with the first respondent. In view of the said admitted position, the lower appellate Court granted a decree for injunction. Challenging the same, the present appeal has been filed.

3. Learned counsel appearing for the appellant submits that the suit for declaration ought to have been filed by the first respondent. The lower appellate Court, without giving any finding on the well-merited judgment of the trial Court, merely granted a decree for injunction based upon the possession alone.

4.Learned counsel for the first respondent submits that as the possession of the plaintiff has been protected, no interference is required.

5.It is the settled position of law that the civil Court can lessen the relief than the one sought for. A perusal of the judgment of the lower appellate Court would show that it has not gone into the merits but merely protected the possession of the plaintiff, which is in fact admitted, though the status is not.

6.In such view of the matter, this Court is of the view that no interference is required. As the suit property has been transferred admittedly in favour of the appellant as of now, it is well open to him to file a suit for recovery of possession. As and when such a suit is filed, the jurisdictional Court will have to decide the same on its own merits without being influenced by any of the observations made in the present suit.

7.With the above said observation, the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mmi

To

The Registrar,
City Civil Court,
Chennai.

+1cc to Mr.C.V.Subramanian, Advocate, S.R.No.1042

+1cc to Mr.G.Ramachandran, Advocate, S.R.No.947

+1cc to Mr.S.Prabhu, Advocate, S.R.No.643

S.A.No.695 of 2016

GJ(CO)
CA(07/02/2017)