



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03.08.2017

Coram

WEB COPY

The HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A(MD)No.218 of 2014

1.Manickavasagam
2.Parameswaran
3.Lakshmi Sankar
4.Nellaikumar
5.Sankaralingam
6.Sivagamai Sundari
7.Balasubramanian
8.Nellaikumar

.. Appellants/Appellants/Plaintiffs

Vs.

R.Madavi

.. Respondent/Respondent/Defendant

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 29.10.2013 made in A.S.No.105 of 2012 on the file of the Principal Sub Court, Tirunelveli, confirming the Judgment and Decree, dated 06.06.2012 made in O.S.No.124 of 2009 on the file of the Second Additional District Munsif, Tirunelveli.

For Appellants : Mr.V.Kannan

For Respondent : Mr.M.P.Senthil

JUDGMENT

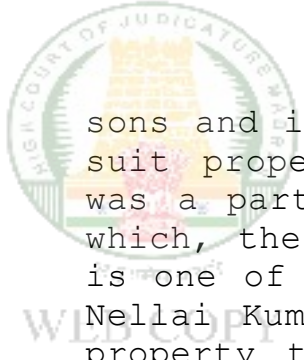
The above second appeal arises against the Judgment and Decree, dated 29.10.2013 passed in A.S.No.105 of 2012, on the file of the Principal Sub-Court, Tirunelveli, confirming the Judgment and Decree, dated 06.06.2012 passed in O.S.No.124 of 2009, on the file of the Second Additional District Munsif, Tirunelveli.

2.The plaintiffs are the appellants in a suit for permanent injunction.

3.The Courts below have concurrently held that the plaintiffs have not established their possession, which was the dispute in the suit property.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The case of the plaintiffs is that the suit property was a joint family property belonging to one Ponnappapillai and his



sons and in a partition deed, dated 12.01.1927 as per Ex.A.1, the suit property was allotted to Ponnappapillai. Thereafter, there was a partition as per Ex.A.2, on 09.02.1931, in which, the suit property was allotted to Nellai Kumar Pillai, who is one of the sons of Ponnappapillai. It is stated that the said Nellai Kumar Pillai was in possession and enjoyment of the suit property till his life time and thereafter, his sons and legal heirs are in possession of the property. The defendant, who is a stranger according to the plaintiffs, without having any right or title is trying to disturb the plaintiffs' possession. Hence, a suit has been filed for permanent injunction.

5. Resisting the suit, the defendant has contended that she had purchased the property from one Murugammal on 11.12.2008 and contended that the plaintiffs have suppressed the material facts with respect to the description of the suit property.

6. Before the trial Court, on the side of the plaintiffs, one Nellai Kumar has been examined as P.W.1 and Exs.A.1 to A.4 were marked and on the side of the defendant, she examined herself as D.W.1 and Exs.B.1 to B.3 were marked. Before the first Appellate Court, Exs.A.5 and A.6 were marked.

7. The suit schedule property as described in the plaint relates to Door No.68 and also the adjacent vacant site. The findings of both the Courts below is that there is no dispute with regard to Door No.68, which is belonging to the plaintiffs and they are in possession and enjoyment. It is only the vacant site that is lying in front of both the plaintiffs and defendant's house. The plaintiffs are residing in Door No.68 and the defendant is residing in Door number is 68A.

8. The trial Court has found that the plaintiffs are entitled to the Northern portion of Door No.68 to the extent given in Exs.A.1 and A.2, sale deeds. But the plaintiffs have to clearly state whether the vacant site is between the extent given in Ex.A.1 or it is a separate extent of land excluding Door No.68. No doubt, the plaintiffs have produced Exs.A.1 to A.3 and on perusal of which shows that Door No.68 belonged to them. Even in the said documents, the plaintiffs have not specifically given the extent of the vacant site lying to the plaintiffs' and defendant's house. It is only the said vacant land, which is only in dispute. The plaintiffs ought to have asked for the prayer for declaration also. The trial Court has stated that the plaintiffs have not taken any steps to appoint an Advocate Commissioner to inspect the plaint schedule property and give proper measurements. The Commissioner, who was appointed before the trial Court, has measured only the defendant's property. As the Courts below did not take any steps to appoint an Advocate Commissioner to inspect the plaint schedule property and give proper measurements, the relief of permanent injunction could not be granted. Being a suit for bare injunction, only the possession has



to be gone into. The defendant also has not disputed the fact that the plaintiffs have absolute right over Door No.68, which derived title under Exs.A.1 and A.2. Other than Door No.68, in the plaint schedule property, it also mentioned about the additional vacant site adjacent to Door No.68. It is not made clear by the plaintiffs that what is the extent that they are entitled to be in possession as per Exs.A.1 and A.2. Other than these two documents, they have not filed any other document to show that they are in possession of some more of the vacant site.

9.The learned counsel appearing for the appellants contended that the trial Court ought to have given the decree for atleast Door No.68.

10.When the title of the plaintiffs was challenged in respect to the vacant site adjacent to Door No.68, without amending the plaint for declaration of title, the plaintiffs have proceeded with only bare injunction. Hence, the Courts below had rightly dismissed the suit. However, it is made clear that the plaintiffs are entitled to bare injunction with respect to Door No.68, Tamil Sangam Theru, Tirunelveli Town, accepting Exs.A.1 and A.2. In fine, the plaintiffs will be entitled for the relief of permanent injunction with respect to Door No.68 alone.

11.With the above modification, this Second Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Sub Judge,Tirunelveli.

2.The Second Additional District Munsif, Tirunelveli.

+1cc to M/S.M.P.SENTHIL, Advocate SR.No.70359

+1cc to M/S.V.KANNAN, Advocate SR.No.70483

ps

MAS/kk/SAR2:29.08.2017:2P-5C

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