



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
SECOND APPEAL (MD) No.32 of 2014

WEB COPY

Jayaraman

... Appellant /
Appellant/ Plaintiff

Vs.

1.Krishnakumar

2.Matta Mohanram

3.Janarthanan

4.Kumararaja

... Respondents /
Respondents / Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 29.12.2005, made in A.S.No.86 of 2005 on the file of the Principal Subordinate Court, Kumbakonam, confirming the judgment and decree, dated 29.07.2004, made in O.S.No.40 of 2003 on the file of the Principal District Munsif Court, Valangaiman at Kumabakonam.

For appellant

... Mr.C.Sundaravadivel

For respondents

.... Mr.T.Sakthikumaran,
for Mr.A.Thirumurthy

JUDGMENT

The plaintiff, who has last before the Courts below, in the suit for permanent injunction is the appellant.

2. It is the case of the plaintiff that the suit property was originally belonged to one Ramamirdha Naidu, who had two sons viz., Rengarajan and Purusothaman. On 05.05.1998, the said Rengarajan and Purusothaman alleged to have executed a sale agreement as per Ex.A1 in favour of the plaintiff for a sale consideration of Rs.1,10,000/-, after getting an advance amount of Rs.10,000/-. The plaintiff claims that he has been in possession from the date of the said agreement. As the defendants tried to interfere with his possession, the suit has been filed.

3.Denying the facts leading to the cause of action in the plaint, the defendants have claimed that the said Rengarajan and Purusothaman did not have any right over the suit property for executing the sale agreement. An alleged power of attorney said to have been executed by them is also denied by the defendants. The defendants have further categorically denied that the said



Rengarajan and Purusothaman have got no iota of right in the suit property for entering into a sale agreement or executing a power of attorney. According to the defendants, the suit property was originally belonged to one Kaniboi Ammal, by virtue of the sale deed dated 09.04.1952, who had sold the same on 18.09.1954 to one Ragavelu Naidu. The said Ragavelu Naidu had conveyed the same to the third defendant by an unregistered sale deed and thereafter, the third defendant had executed a sale deed on 18.05.2001 in favour of the 4th defendant. Hence, the plaintiff has got no right over the suit property, much less claim of possession over the same.

4. Before the trial Court, on the side of the plaintiff, PWs.1 to 3 were examined and Exs.A1 to A22 were marked. On the side of the defendants, DWs.1 to 3 were examined and Exs.B1 to B10 were marked. Both the Courts below have concurrently held that the plaintiff has not established his possession entitling him for a decree of injunction.

5. At the time of admission, the following questions of law were framed for consideration:

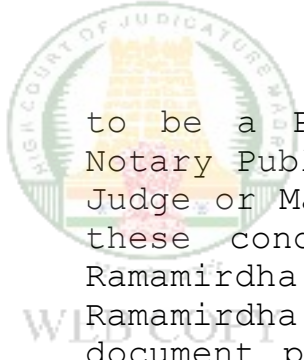
"a) Whether the lower appellate Court is right in holding that the fourth respondent herein is in possession of the property relying upon photographs (Ex.B9) in the absence of any documentary evidence?

b) Whether the Courts below erred in rejecting Exs.A1, A2 and A10 which admittedly proves that the appellant's vendors were in possession of the property?"

6. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the records carefully.

7. The plaintiff had filed documents in Exs.A1 to A22, in order to substantiate his possession and enjoyment of the suit property. The base of the claim of the plaintiff is on Ex.A1, dated 05.05.1998, which is a sale agreement executed by one Rengarajan and Purusothaman in favour of the plaintiff. As per the said sale agreement, the property was agreed to be sold for a sum of Rs.1,10,000/- and that a sum of Rs.10,000/- was paid as an advance. Other than the said terms, the agreement is silent about the delivery of possession or even the time frame within which the sale has to be executed. Therefore, the first ground raised by the plaintiff that his possession was based on the agreement fails.

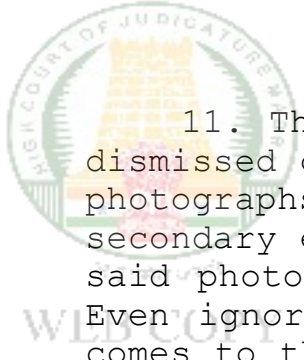
8. The next document filed by the plaintiff to show his possession is Ex.A3 - Power of Attorney, alleged to have been executed by his vendors. Though as per Section 85 of the Indian Evidence Act the Court shall presume that every document purported



to be a Power of Attorney and to have been executed before a Notary Public and authenticated by a Notary Public or any Court or Judge or Magistrate or Consul, a perusal of Ex.A3 does not specify these conditions. PW2, who is the son of the original owner Ramamirdha Naidu, has stated in his evidence that his father Ramamirdha Naidu was the owner of the property, but there is no document produced by the plaintiff to show that Ramamirdha Naidu had title to the property. Besides, it is also found that the said Ramamirdha Naidu had three sons of which only two of them have executed the sale agreement and the Patta has also been obtained only by the said Rengarajan and Purusothaman. There is no other evidence to show that Ramamirdha Naidu had title to the property and thereafter, the temporary Patta was issued in favour of his two sons. Therefore, the claim of the plaintiff to be in possession of the suit property based on the above said documents, is not believable.

9. Yet another aspect leading to the suspicion is that while the plaintiff has obtained the sale agreement from his vendors, there is no necessity for him to obtain a Power of Attorney. Even in the said Power of Attorney nothing has been stated about the handing over of possession of the suit property from the date of the agreement. The other documents filed by the plaintiff to establish his possession are the encumbrance certificate and the complaints given to the Police and other receipts. The Courts below have concurrently found that these documents do not prove the possession of the plaintiff.

10. So far as the defendants are concerned, they have produced documents from 1952. The only sale in favour of the third defendant is said to be unregistered one. However, later, this third defendant also sold the property in favour of the fourth defendant. The only person who could be aggrieved is the vendor of the third defendant viz., Ragavelu Naidu. But, there seems to be no objection from him. However, the plaintiff has to establish his case only on his own documents and cannot rely on the lacuna in the defendants' case. It is the bounden duty of the plaintiff to produce the title deed of his vendor viz., Ramamirdha Naidu. When it is not established that the said Ramamirdha Naidu had title over the suit property, the subsequent documents, viz., the sale agreement or the power of attorney in favour of the plaintiff, based on which the plaintiff claims title, cannot be accepted. When a cloud is cast over the plaintiff's title and his possession is also not established, the plaintiff will not be entitled to a decree for injunction. When the prayer for injunction itself is based on the decision that refer to the finding of possession, in the absence of any material to show the possession, it will not be possible to grant a decree in favour of the plaintiff. In the absence of necessary pleadings or documents regarding the title and evidence with respect to the possession, the plaintiff has been rightly non suited by the Courts below.



11. The plaintiff / appellant had contended that the suit was dismissed only based on Ex.B9 - series of photographs and that the photographs cannot be marked in evidence, as they are only secondary evidence. As stated earlier, even in the absence of the said photographs, it is for the plaintiff to establish his case. Even ignoring the said photographs filed under Ex.B9, this Court comes to the conclusion that the plaintiff has failed to establish his possession entitling for a decree of injunction. In the light of the above discussions, the questions of law framed are answered in the negative.

12. In the result, this second appeal fails and accordingly, the same is dismissed, confirming the judgment and decree passed by the Courts below. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Subordinate Court, Kumbakonam.

2.The Principal District Munsif Court,
Valangaiman at Kumabakonam.

3.VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.THIRUMURTHY Advocate in SR. NO.65487

GCG

JS/MR.KKR/SAR.4/7.8.2017/4P-5C

S.A. (MD) No.32 of 2014
14.07.2017