



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22 .08.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.354 of 2014

and

M.P.(MD).No.1 of 2014 and C.M.P.(MD).No.4029 of 2017

Revathi

...Appellant / Appellant/ Defendant

Vs.

Rajamanickam

... Respondent /Respondent / Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 20.07.2010, made in A.S.No.149 of 2009 on the file of the I-Additional Subordinate Court, Tiruchirapalli, confirming the judgment and decree, dated 26.02.2007, made in O.S.No.54 of 2005 on the file of the District Munsif Court, Manapparai.

For appellant

... Mr.An.Ramanathan

For respondents

.... Mr.G.Kandhavadivelan

JUDGMENT

The unsuccessful defendant in the suit has filed the above appeal challenging the decree for injunction granted in favour of the plaintiff.

2.The plaintiff is the husband and the defendant is the wife. The suit property originally belonged to one Srinivasaragavan, as per the assignment granted to him by Manapparai Thiyakesar Mills (Meenakshi Mills Limited). The said Srinivasaragavan had sold the property by an unregistered sale deed, dated 12.12.1998, in favour of the plaintiff and the possession was also given to the plaintiff on the same date. The plaintiff and the defendant had been living under the same roof of the said property from the date of purchase. Due to certain administrative reasons, Srinivasaragavan could not obtain title from the said Mill. Hence, he gave "No Objection Statement" to the Management for registering the suit property in favour of the plaintiff. The entire sale consideration also has been paid to the Mill. As there was a dispute between the plaintiff and the defendant, they have been living separately. The plaintiff had filed H.M.O.P.No.358 of 2004 under Section 9 of the Hindu Marriage Act of conjugal right and the defendant had filed H.M.O.P.No.361 of 2004 for divorce. The defendant, taking advantage of the separation of the plaintiff, had issued a notice



in a Tamil Daily stating that she is the owner of the property. Hence, the plaintiff has filed the suit.

3. Resisting the suit, the defendant had filed the written statement denying the allegations in the plaint. The relationship between the parties are admitted. It is her specific case that she was earning Rs.1000/- per month by working in a medical shop. With the said earnings and also with the money that was got from her parents, it is claimed by the defendant that she had purchased the property from Srinivasaragavan and prepared the documents for the execution of the sale. But, the plaintiff had taken away the papers. Hence, she gave an advertisement in the newspaper in this regard. Thus, she prayed for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiff, the plaintiff himself was examined as PW.1 and another witness was examined as PW2 and five documents were marked as Exs.A1 to A5. On the side of the defendant, the defendant herself was examined as DW1 and another witness was examined as DW2 and three documents were marked as Exs.B1 to B3. Both the Courts below have concurrently held that the plaintiff is entitled for the relief of permanent injunction and accordingly, decreed the suit. Aggrieved by the same, the defendant has filed this appeal.

5. At the time of admission, only notice was ordered.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent.

7. Admittedly, the property has been purchased by the plaintiff from one Srinivasaragavan, which was allotted to him by the Meenakshi Mills Limited. The said Srinivasaragavan has executed an unregistered sale deed on 12.12.1998 in favour of the plaintiff. Even on the date of execution of the sale deed, the plaintiff was put in possession of the suit property and the plaintiff has been residing there. There is also a declaration - Ex.A1, dated 22.04.2004, given by the said Srinivasaragavan in support of the sale in favour of the plaintiff. The patta still continues in the name of the Meenakshi Mills and the service connection is in the name of Srinivasaragavan and the property tax still assessed in the name of the Meenakshi Mills. The said Srinivasaragavan has also been examined by the plaintiff, who has stated that he has paid the sale consideration to the Mill and left the possession of the property with the plaintiff. He also admitted about Ex.A1 - Statement.

8. Per contra, the defendant had produced Ex.B2, which is a Service phone bill and one of the correspondences under Ex.B3. It is found by both the Courts that the said document do not even contain the door number and full address of the property. It is



now stated that Section 9 petition filed by the husband was dismissed and the divorce petition filed by the wife was decreed. Therefore, the marriage between the plaintiff and defendant is also dissolved by the Court of law and both the parties are living separately. It is also admitted that the defendant had entered into the suit property only in the capacity of wife of the plaintiff and she had no independent right to enter into the property. That being so, the wife / defendant has got no right over the suit property and the plaintiff has proved his possession, based on which the Courts below have decreed the suit. The defendant, who has no manner of right, title or possession over suit property cannot claim to be in possession, when she had occupied the property only in the capacity of wife of the plaintiff. Her possession being permissive, the plaintiff is in possession of the suit property as rightly found by the Courts below. Hence, there is no question of law arising for consideration in this second appeal to interfere with the concurrent findings in the judgment of the Courts below.

9. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The I-Additional Subordinate Judge, Tiruchirapalli.

2.The District Munsif , Manapparai.

+1cc to M/S.AN.RAMANATHAN, Advocate SR.No.74060

gcg

MAS/SV-MMS/SAR1:06.09.2017:3P-4C

S.A. (MD) No.354 of 2014
22.08.2017