

**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.563 of 2014****and****M.P(MD)No.1 of 2014**George .. Appellant/Appellant/2nd Defendant

Vs.

1.S.Laser .. 1st Respondent/1st Respondent/Plaintiff2.R.Ramachandran .. 2nd Respondent/2nd Respondent/1st Defendant

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 21.10.2013 made in A.S.No.37 of 2011 on the file of the Sub Court, Uthamapalayam, confirming the Judgment and Decree, dated 27.09.2011 made in O.S.No.38 of 2010 on the file of the District Munsif, Uthamapalayam.

For Appellant : Mr.K.Sekar

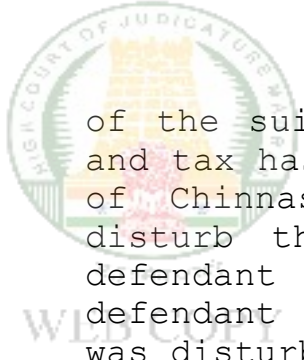
For R - 1 : Mr.R.A.Mohanram

JUDGMENT

The above second appeal arises against the Judgment and Decree, dated 21.10.2013 passed in A.S.No.37 of 2011, on the file of the Sub-Court, Uthamapalayam, confirming the Judgment and Decree, dated 27.09.2011 passed in O.S.No.38 of 2010, on the file of the District Munsif, Uthamapalayam.

2.The unsuccessful second defendant is the appellant in a suit for bare injunction.

3.The suit property originally belonged to one Innasi Udaiyar, who had four sons and two daughters. The plaintiff is the son of Siluvai Udaiyar. The plaintiff and his paternal uncle Chinnasamy Udaiyar @ Visuvasaudaiyar were in joint possession of the property, as the property was indivisible. Therefore, the said Chinnasamy Udaiyar @ Visuvasaudaiyar on 19.12.2005, executed a release deed in favour of the plaintiff by receiving certain amounts. From the said date, the plaintiff has been in possession



of the suit property and patta has been transferred in his name and tax has been paid by him. The second defendant, who is the son of Chinnasamy Udaiyar @ Visuvasaudaiyar, has been trying to disturb the possession of the plaintiff. In fact, the second defendant had created a mortgage deed in favour of the first defendant and received huge sums. As the plaintiff's possession was disturbed, a suit has been filed for bare injunction.

4. Denying the facts and supporting the cause of action raised in the plaint, the defendants have contended that after the death of the second defendant's grandfather, there was an oral partition and 48/45 feet and 33/45 feet were allotted to Chinnasamy Udaiyar @ Visuvasaudaiyar and he was in joint possession along with the second defendant. The release deed in favour of the plaintiff, dated 19.12.2005 was also denied by the defendants. It is the further case of the second defendant that he gave Rs.25,000/- to his father and in-turn, he had executed a release deed on 02.04.2008. Therefore, it is stated that the plaintiff is not entitled to the suit property and prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, he has been examined as P.W.1 and Exs.A.1 to A.21 were marked and on the side of the defendants, they have been examined as D.W.1 and D.W.2 and Exs.B.1 to B.7 were marked.

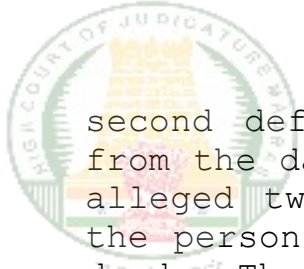
6. Both the Courts below have concurrently held that the plaintiff was already granted the relief of injunction.

7. At the time of admission, notice was ordered.

8. Heard both sides.

9. It is admitted by both the parties that the property originally belonged to Innasi Udaiyar and after his demise, it devolved on his sons. The second defendant, who is the son of Chinnasamy Udaiyar @ Visuvasaudaiyar, contended that his father had executed a release deed in his favour on 02.04.2008 by receiving a sum of Rs.25,000/-. The second defendant had denied the execution of release deed by his father on 19.12.2005, which is marked as Ex.A.1 in favour of the plaintiff.

10. The plaintiff had contended that as the suit property was in an irregular shape and was not divisible into two, the father of the second defendant had decided to execute a release deed in favour of the plaintiff, whereas, the second defendant has pleaded that on 02.04.2008, his father had executed another release deed in his favour. The second defendant has not marked the release deed before the trial court. It is also admitted that nothing has been mentioned in the second release deed about the execution of Ex.A.1 in favour of the plaintiff. The father of the



second defendant was alive till 10 years ie., after five years from the date of execution of Ex.A.1 and atleast two years for the alleged two release deeds in their favour were executed. He was the person to speak about the execution of the above said release deeds. That apart, a suit in O.S.No.63 of 1996 is also pending on the file of the Sub-Court, Periyakulam, which is marked as Ex.B.7 and that the suit was filed for partition on the members of the family. When the said suit is pending from the year 1996, if really Ex.A.1 was obtained by fraud, coercive and undue influence, the father of the second defendant would have mentioned the same in the said suit or taken some steps to cancel the same. The second defendant has also raised a plea that in the year 1962, the grandfather Innasi Udaiyar had executed a Will, but the original Will has not been produced by the second defendant.

11.The learned counsel appearing for the first respondent has contended that the second release deed in favour of the second defendant, dated 02.04.2008 was a basis for the claim of the second defendant. However, the second defendant has not assigned any reasons for non-production of those documents before the trial Court.

12.In the absence of production of subsequent release deed which would throw the light on the first release deed, the Courts below have concurrently held that the second defendant is not entitled for any injunction in the Court. On the other hand, to show the possession, the plaintiff has filed Ex.A.2, which is a patta standing in the name of the plaintiff and also the tax receipts, which relates to the period even prior to the release deed by his uncle in his favour. Based on the materials available on record, both the Courts below, as a fact finding Court, have held that the plaintiff is in possession of the suit property and granted a decree for injunction. There is no infirmity in the said order to interfere in the same and there is no substantial question of law arising for consideration in the Second Appeal. It is stated that the suit filed for partition in O.S.No.63 of 1996 is still pending. It is open to the parties to work out their remedies, if any, in the same. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(Co)

/True Copy/

Sub Assistant Registrar



2. The District Munsif,
Uthamapalayam.

Copy to:

The Record Keeper,
VR Section,

Madurai Bench of Madras High Court, Madurai.

Ps

AE/KK/SAR1/28.08.2017/4P/4C

S.A(MD) No.563 of 2014
03.08.2017