



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.08.2017

Coram

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A(MD)No.627 of 2014

and

M.P(MD).No.1 of 2014

Illavarasan

.. Appellant/Respondent/Defendant

Vs.

Manikandan

.. Respondent/Appellant/Plaintiff

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 24.03.2014, made in A.S.No.32 of 2013 by the learned Principal Subordinate Judge, Thanjavur, reversing the Judgment and Decree, dated 24.01.2013 made in O.S.No.1 of 2011 by the learned District Munsif, Thiruvaiyaru.

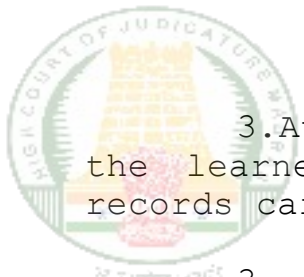
For appellant : Mr.V.Chandrasekar

For respondent : Mr.G.Karnan

JUDGMENT

The defendant in the suit for permanent injunction is the appellant. The plaintiff in the suit claims to be in continuous possession of the entire suit properties on his own right and by purchasing some of them under Exs.A.3 to Ex.A.6. As the defendant/appellant tried to disturb the peaceful possession and enjoyment of the suit property, the suit has been filed by the plaintiff for permanent injunction. The suit was resisted by the defendant on the ground that he has been in possession of four cents of land, though he has purchased only two cents of land as per Ex.B.1. He has stated that after purchasing the said two cents under Ex.B.1, he has been enjoying another two cents, which is a vacant land adjacent to the property purchased. Thus, he prayed for dismissal of the suit.

2. The Trial Court has mis-directed itself by placing reliance upon Ex.B.3, which is a photograph showing that the defendant had erected cattle shed in the suit property and
<https://hcmvsnr.org/india/india-services/> the suit. However, on appeal, the same was reversed and the suit was decreed.



3. At the time of admission, only notice was ordered. Heard the learned counsel appearing for both sides and perused the records carefully.

3. So far as the title of the plaintiff is concerned, it is seen that he is entitled to the same under Exs.A.3 to Ex.A.6. The properties described under the said sale deeds have been shown as the suit properties. The said properties are all vacant house sites. The plaintiff has also produced Ex.A1 and Ex.A2, which are patta and adangal extract respectively. Whereas, the defendant, as stated earlier, is enjoying only two cents in a capacity of owner under Ex.B1 and in addition, another two cents have been encroached by him and in the encroached portion, he has put up a cattle shed.

4. A perusal of Exs.A3 to A6 would go to show that the plaintiff has been in possession of the suit property. But, the defendant, in order to substantiate his claim that he has been in possession and enjoyment of the additional two cents of land other than what has been purchased by him under Ex.B.1, had produced only Ex.B.3- Photographs, which are the secondary evidence and inadmissible in nature and the same cannot be accepted for the purpose of proving long possession.

5. When the defendant has admitted the sale deed in favour of the plaintiff and his title has not been disputed, without having any manner of right or title over the suit property, the defendant cannot disturb the peaceful possession of the plaintiff. If at all, the defendant is having any right, it should be only with respect to the two cents purchased by him under Ex.B.1. When the extent under Exs.A.3 to Ex.A.6 purchased by the plaintiff is not in dispute, the defendant has got no right to disturb the peaceful possession of the plaintiff. The defendant has also not established as to what his right over the suit property, when the plaintiff has purchased the same by a valid documents. The plaintiff has proved his possession. The defendant has got no right to disturb the same. The first appellate Court has rightly granted the decree in favour of the plaintiff. This Court does not find any infirmity or illegality in the judgment and decree passed by the first appellate Court.

6. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the first appellate Court. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)



To

1.The Principal Subordinate Judge,
Thanjavur.

2.The District Munsif,
Thiruvaiyaru.

COPY TO:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.V.CHANDRASEKAR, Advocate SR.No.69502

+1cc to M/S.G.KARNAN, Advocate SR.No.69614

msa

MAS/JC/SAR2:23.08.2017:3P-6C

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