

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated: 08.08.2017

Coram

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA**S.A(MD)No.871 of 2014****and****M.P(MD).No.1 of 2014**

Murugan

.. Appellant/Appellant/Defendant

Vs.

Poovalaingam

.. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 03.07.2014, made in A.S.No.42 of 2013 on the file of the Sub Court, Uthamapalayam, confirming the Judgment and Decree, dated 30.08.2013 made in O.S.No.298 of 2012 on the file of the District Munsif, Uthamapalayam.

For appellant : Mr.P.Santhoshkumar

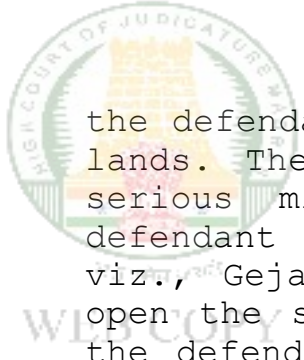
For respondent : Mr.P.Muthu Vijaya Pandian

JUDGMENT

The defendant, who had lost before the Courts below in a suit for bare injunction, has filed the above appeal.

2.The plaintiff and the defendant are brothers and they had one sister by name Tmt.Pasupathi, who is married even in the year 1980. It is stated by the plaintiff that after his marriage in 1982, he left the joint family and was living separately. He has started Gejalakshmi Traders in the year 1988 with his self earnings and also out of the jewels of his wife. Thereafter, the plaintiff started Selva Sathish Pumpset & Electrical Shop at Cumbum in partnership with one Jayaram. While so, on the request of the parents, the defendant, who was unemployed, was taken in employment by the plaintiff in his shop. The parents of the appellant and the respondent subsequently died.

3.It is stated that both the plaintiff and the defendant jointly obtained a loan from the Central Bank of India, Seelayampatti Branch by citing the 3rd item of the suit schedule property. The loan amount was divided between the plaintiff and



the defendant for the purpose of improvement of their agricultural lands. The plaintiff removed the defendant from service due to serious misunderstanding. Thereafter, it is stated that the defendant had been troubling the plaintiff by locking the shop viz., Gejalakshmi Trader. Therefore, the plaintiff had to break open the shop and he had also lodged a police complaint against the defendant in this regard. The defendant had also removed the fuse carrier in the 3rd item of the suit schedule property and quarrelled with the plaintiff. The defendant was also demanding the supply of water in his land for which the plaintiff refused. Since the defendant was trying to trespass into the suit properties and disturb the peaceful possession of the plaintiff, the suit has been filed.

4.The defendant denied all the facts arising in support of the cause of action of the suit. The defendant has also stated that the shops run by the plaintiff are established out of the joint family funds. The fact that the plaintiff was leading a separate life was also denied. The specific case of the defendant is that the business was established and suit properties were purchased in the name of the plaintiff being the elder member of the family and he is having the right over the same, as the address of the plaintiff given in all the sale deeds is that of the joint family house. The defendant has also stated that the plaintiff did not repay the loan obtained from the bank. Thus, the defendant prayed for dismissal of the suit.

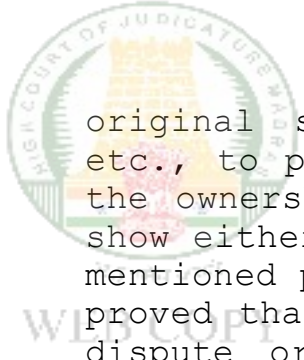
5.On consideration of the documents and evidences, the Courts below have concurrently held that the plaintiff is entitled for decree of permanent injunction. Aggrieved by the same, the above appeal has been filed by the defendant.

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

7.Heard the learned counsel for the appellant and the learned counsel appearing for the respondent.

8.The learned counsel for the respondent contended that Exs.A2, A3 and A4 are the sale deeds purchased by the plaintiff in respect of item Nos.1, 2 and 3 of the suit schedule properties. Ex.A.5 is a sale deed purchased by the plaintiff jointly with one Jeyaram in respect of 4th item of the suit property. Exs.A6 to A.9 are the sale deeds relating to item Nos.5 to 8 of the suit schedule properties. Thus, all the suit properties were purchased by the plaintiff in his name out of his own income.

9. Though the defendant claimed that the suit properties were all joint family properties and all the properties were purchased out of the income from the joint family properties, there is no iota of evidence produced by him to prove the same. The plaintiff has also produced other documents i.e the patta,



original sale deeds, kist receipt, electricity bill receipts, etc., to prove his possession. Though the defendant had disturbed the ownership of the plaintiff, he has not filed any document to show either title or possession. Admittedly, the title of the suit mentioned properties stands in the name of the plaintiff and it is proved that the plaintiff is the owner of the same. There is no dispute or cloud cast on the title of the plaintiff. It is unnecessary for the plaintiff to ask for relief of declaration whatsoever, as he has established the title and possession of the suit schedule properties. Both the Courts below, after analysing the oral and documentary evidence have rightly decreed the suit holding that the plaintiff has established his title and possession. There is no infirmity or irregularity in the judgment and decree passed by the Courts below warranting interference of this Court under Section 100 of the Code of Civil Procedure. There is also no question of law, much less substantial question of law arising from the second appeal.

10. 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 Petition is also dismissed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Uthamapalayam.
2. The District Munsif,
Uthamapalayam.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.P.Santhoshkumar, Advocate in SR.No.71847

+1cc to Mr.P.Muthu Vijaya Pandian, Advocate in SR.No.71189

msa

AE/KK/SAR3/31.08.2017/3P/6C

**S.A(MD)No.871 of 2014
and**

**M.P(MD) .No.1 of 2014
08.08.2017**