

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.256 of 2018
and C.M.P.No.6523 of 2018

Sankar

... Appellant/Defendant

Vs.

Narayanaswamy

... Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 21.09.2017 made in A.S.No.18 of 2017 on the file of the Additional Subordinate Judge, Mayiladuthurai, reversing the judgment and decree dated 25.01.2017 made in O.S.No.60 of 2014 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.A.Muthukumar

J U D G M E N T

This Second Appeal has been filed against the judgment and decree dated 21.09.2017 made in A.S.No.18 of 2017 on the file of the Additional Subordinate Court, Mayiladuthurai, reversing the judgment and decree dated 25.01.2017 made in O.S.No.60 of 2014 on the file of the Additional District Munsif, Mayiladuthurai.

2.The appellant is the defendant and respondent is the plaintiff in O.S.No.60 of 2014 on the file of the Additional District Munsif, Mayiladuthurai. The respondent filed the said suit for permanent injunction restraining the appellant from encroaching the B,C,D lane, not to demolish the stair case of the respondent or in any way interfering with the possession of the respondent; for mandatory injunction to remove the cement platform measuring 2½ x 5 feet and to restore the demolished stair case, failing which the same has to be done through Advocate Commissioner. According to the respondent, the land in which the suit property is situated belongs to Naganadha Swamy temple and the building belongs to one Sachidhanandham and others through a Will dated 25.10.1975. The respondent purchased the lease hold right and the building from Sachidhanandham and others by the deed of sale dated 19.10.2006 for a total sale consideration of Rs.8,05,000/-.

2(a).From the date of purchase, the respondent is in possession and enjoyment of the land and building. He is paying the property tax and electricity charges. The respondent has let out the property and is collecting the rent. The respondent has filed a plan, showing storied house, backyard and triangular lane shown as A,B,C,D,E,F. B,C,D, triangular lane is the suit property. In B,C,D lane, stair case of the respondent is situated. The appellant without any title to B,C,D lane, trespassed and demolished a portion of the stair case and has put up the cement platform, preventing the respondent from using the said lane. The appellant is threatening the respondent that he would demolish entire stair case. The appellant is influential person having both money and muscle power and hence the respondent filed the suit.

3.The appellant filed written statement and denied the averments that respondent is owner of the B,C,D lane. On the other hand, it is the respondent who encroached the property of the appellant in the portion referred to as B,D. The respondent has no right or possession in the portion B,C,D. The appellant has got his sunshade along with the portion C,D till the end of the building towards road. The appellant did not demolish the stair case. It is not correct to state that appellant put up the platform in the front portion of B,C lane. The said portion belongs to the appellant. It is only the respondent who is trying to encroach the portion of the property belonging to the appellant.

4.Based on the pleadings, the learned Trial Judge framed necessary issues. Before the learned Judge, the respondent examined himself as P.W.1, one Raja as P.W.2 and Lakshmipathi, Advocate Commissioner as P.W.3 and marked 13 documents as Exs.A1 to A13. The appellant examined himself as D.W.1 and marked two documents as Exs.B1 and B2. The report and plan of the Advocate Commissioner were marked as Exs.C1 and C2. The learned Trial Judge considering the oral and documentary evidence, dismissed the suit.

5.Against the said judgment and decree dated 25.01.2017 made in O.S.No.60 of 2014, the respondent filed A.S.No.18 of 2017. The learned First Appellate Judge framed necessary points for consideration and considering the pleadings, materials available on record, oral and documentary evidence and judgment of the Trial Court, allowed the appeal, reversing the judgment of the Trial Court. The learned First Appellate Court, considering the documents filed by the respondent and evidence of the respondent, held that respondent is owner of the suit property, he is in possession and he has substantiated his claim made in the plaint.

6. Against the said judgment and decree dated 21.09.2017 made in A.S.No.18 of 2017, the appellant has come out with the present Second Appeal.

7. The learned counsel for the appellant contended that the learned First Appellate Judge failed to consider that respondent is not in possession of B,C,D lane. The respondent has not let in evidence to show that B,C,D lane was leased out to him or his predecessor in title or had interest in the suit property. The respondent has not produced any document to show that suit property was leased out to him. The respondent failed to examine his lessors to substantiate his case. The learned First Appellate Judge failed to see that B,C,D lane is closed on four sides, the portion in which the appellant has constructed cement platform does not belong to the respondent and it belongs only to Highways Department and respondent has no right to seek demolition of the platform which is situated in the property belonging to the Highways Department.

8. Heard the learned counsel for the appellant and perused the materials available on record.

9. The respondent in order to substantiate his case that he is owner of the suit property i.e., B,C,D lane, examined himself as P.W.1 and marked 13 documents. Ex.A1 dated 19.10.2006 is lease hold right purchased from Sanchidhanandham and others. The respondent has also produced Ex.A2, the property tax receipts, Ex.A3 the series of receipts for payment of electricity charges. The appellant has produced Ex.B1 dated 02.11.2012 by which lease hold right was transferred to the appellant. In both the deeds, boundaries are given. As per these deeds, it is clear that property of the appellant is next to the suit property. The appellant admitted that respondent purchased the land and building from Sachidhanandham and others and land belongs to the Temple. The appellant has not produced any documents to show that B,C,D lane belongs to him and he purchased the same from his predecessor. The appellant also admitted that stair case of the respondent is in the B,C,D lane.

10. From the contention of the learned counsel for the appellant that he has put up sunshade in B,C,D lane shows that there is land between the property of the respondent and appellant. The respondent has produced photographs relating to the suit property and property of the appellant and respondent and marked the same as Exs.A4 to A11. In the suit, Advocate Commissioner was appointed and he inspected the suit property and filed report and sketch. The Advocate Commissioner was examined as P.W.3 and the report and sketch of the Advocate Commissioner were marked as Exs.C1 and C2. The learned First

Appellate Judge extracted portion of the evidence of the appellant as D.W.1 and held that appellant is admittedly using the suit land as well as extent of the stair case to reach the first floor of the respondent. A reading of the said portion of the said evidence as well as the entire evidence which is included in the typed set of papers shows that the contention of the appellant that he did not admit the claim of the respondent is not correct. The appellant in his written statement has stated that he has put up cement platform in the property belonging to him. While so, in the evidence, he has stated that 5 feet from the portion of B,C,D, where he has put up the cement platform belongs to the Highways Department and the respondent is not entitled to seek the demolition of said cement platform and the property in which cement platform is put up does not belong to the respondent. This contention of the learned counsel for the appellant is without merits.

11.The respondent has filed and marked the judgment dated 12.06.1996 made in O.S.No.757 of 1992 as Ex.A13, wherein the respondent's predecessor in title has obtained decree restraining the Highways Department as well as Police from interfering his possession and enjoyment of the said property. In view of the said decree, the respondent is entitled to a decree of mandatory injunction, directing the appellant to demolish the said cement platform. The learned Trial Judge failed to properly appreciate the oral and documentary evidence let in by the respondent, wherein the respondent has mentioned specific boundaries of the suit property in the schedule. He substantiated the correctness of the boundaries by marking Ex.A1. He proved his possession in the suit property by producing the property tax receipts as well as receipt for payment of electricity charges. The appellant in his evidence admitted that the respondent purchased the suit property and he is in possession and enjoyment of the property from the date of purchase. The appellant did not produce any document to show that he purchased the suit property and he is in possession of the same.

12.The learned Trial Judge without appreciating this fact and on erroneous consideration of the report of the Advocate Commissioner, dismissed the suit. The First Appellate Judge has considered the same in proper perspective and allowed the Appeal. The conclusion of the learned First Appellate Judge is finding of fact and there is no error of law warranting interference by this Court. In view of the above facts, there is no Substantial Questions of law, warranting interference by this Court with the judgment of the learned Additional Subordinate Judge, Mayiladuthurai dated 21.09.2017 made in A.S.No.18 of 2017.

13.In the result, this Second Appeal is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Subordinate Judge,
Mayiladuthurai.
 - 2.The Additional District Munsif,
Mayiladuthurai.
 - 3.The Section Officer,
VR Section, High Court, Madras.(2 Copies)
- +1cc to Mr.A.Muthukumar, Advocate Sr.30431

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