

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 13.09.2017

Judgment Pronounced on : 04.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.355 of 2007

Sridharan ... Appellant/Appellant/Defendant

Vs.

Bashirun ..Respondent/Respondent/Plaintiff

This second appeal has been filed under Section 100 of CPC, against the Judgment and Decree dated 23.07.2004 made in A.S.No.11 of 2004 passed by the learned Principal Subordinate Judge, Erode, confirming the Judgment and Decree dated 07.04.2003 in O.S.No.424 of 2001 passed by the learned I Additional District Munsiff, Erode.

For Appellant : Mr.C.Prakasam

For Respondent : Mr.S.Kaithamalaikumaran

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 23.07.2004 made in A.S.No.11 of 2004 passed by the learned Principal Subordinate Judge, Erode, confirming the Judgment and Decree dated 07.04.2003 in O.S.No.424 of 2001 passed by the learned I Additional District Munsiff, Erode.

2. Brief facts of the case is as follows:-

The plaintiff filed the suit for bare injunction. According to the plaintiff, the suit property originally belonged to the plaintiff's father in law, namely, Ibrahim Sahib. The said Ibrahim Sahib had four sons, namely, 1)Subankan Sahib, 2) Kabrukan Sahib, 3)Sugurkan Sahib and 4)Jakkariya. After the demise of the said Ibrahim Sahib, his four sons are entitled to each 1/4th share and succeeding to the property and enjoying the same as such. The 3rd and 4th sons namely, Sugurkan Sahib and Jakkariya had sold their share of 2-1/2 cents to third parties. Subsequently, the plaintiff's husband, namely, Kaburkan Sahib

had purchased 1/4th share from his elder brother namely, Subankan Sahib and hence the plaintiff's husband became entitled to 2-1/2 cents. The plaintiff's husband died on 18.10.1994. Even during the life time of the husband of the plaintiff, he had put up a tiled house in the suit property and was residing therein along with his family. After his demise, the plaintiff is enjoying the suit property. The defendant is quite stranger to the suit property and he orally demanded the plaintiff to pay Rs.17,000/- debt due to him contracted by the plaintiff's husband by way of mortgage of the suit property. The plaintiff further stated that her husband never received any money from the defendant. The defendant never produced any mortgage deed by way of recovering the money, the defendant attempted to dispossess the plaintiff from the suit property on 06.06.2001. Immediately, police complaint was lodged. Again on 09.06.2001, the defendant attempted to trespass into the suit property. Hence the plaintiff has come forward with the suit for bare injunction.

3. On the other hand, disputing the claim of the plaintiff, the defendant contended that the husband of the plaintiff wanted to sell the suit property and the defendant also wanted to purchase the same. Hence, both of them negotiated the same and the sale price was fixed at Rs.20,000/- on 12.10.1992 and on the same date said agreement was executed and the defendant paid a sum of Rs.10,000/- to the husband of the plaintiff as advance and on the same date possession was handed over to the defendant. From the date of sale agreement, the defendant is in possession and enjoyment of the suit property. In spite of repeated attempts, the plaintiff is evading execution of sale deed. Hence, the defendant sought for dismissal of the suit.

4. After contest, the trial Court decreed the suit as prayed for. Aggrieved upon that the defendant preferred the first appeal before the lower appellate Court and after contest, the lower appellate Court dismissed the appeal by confirming the decree and judgment of the trial Court. Now, aggrieved upon that the defendant has preferred this second appeal.

5. The following substantial question of law were framed by this Court for consideration.

1) Whether the Courts below ignored Exhibit B-1 without declare that Exhibit B-1 is forged one?

2)Whether the Courts below can decide who is possession in the suit property on the basis of Ex.A11?

6.The learned counsel appearing for the appellant/defendant would submit that the defendant entered into a sale agreement on 12.10.1992 with regard to the suit property with the plaintiff's husband and the sale price was fixed at Rs.20,000/- and a sum of Rs.10,000/- was paid by the defendant as advance on the same date itself. The same was reduced in writing on 12.10.1992 itself. On the date of agreement, the possession of the suit property was handed over to the defendant. From the date of agreement, the defendant is in possession and enjoyment of the suit property by paying the Tax payable to the local body and Electricity consumption charges and in proving the same the defendant has produced Ex.B2 to Ex.B10 receipts, but, the trial Court as well as the lower appellate Court failed to consider these documents properly. It is further contended that the suit property is having two doors for the house, one door being used by the defendant and another one door by the plaintiff. It is also pointed out that the complaint lodged by the plaintiff is produced as Ex.A10, but the police is not an authority to decide the possession of the property. However, it is contended by the appellant that the lower appellate Court without considering the valuable rights of the defendant and ignoring the documents relied on by the defendant, the lower appellate Court has wrongly concluded that Ex.B1 is forged one. The same is in appropriate. Likewise, the finding regarding possession of the suit property on the basis of Ex.A11 is not in accordance with law. Therefore, it is contended that the findings of the lower appellate Court is erroneous and unsustainable. Hence, the appellant contended that interference of this Court is warranted and seeks to entertain the appeal.

7.Per contra, the learned counsel appearing for the respondent/plaintiff would submit that both the Courts below, have considered the oral and documentary evidence properly and on the basis of available evidence of both sides, allowed the suit as prayed for. There is no infirmity on the part of the lower appellate Court. The substantial question of law raised by the appellant is not sustainable. Hence, the respondent contended that the appeal has no merits and the same has to be dismissed.

8.I have heard the rival contention and perused the materials available on record.

9. On perusal, it is pointed out that the plaintiff has claimed the relief for bare injunction. Admittedly, the husband of the plaintiff is the owner of the suit property. The same is not disputed by the defendant. According to the plaintiff, she is in possession and enjoyment of the suit property after the demise of her husband. According to the defendant, he is in possession and enjoyment of the suit property by paying the tax payable to the local body and electricity consumption charges, on the strength of Ex.B1 sale agreement entered into between himself and the husband of the plaintiff on 12.10.1992. But, the plaintiff stoutly denied Ex.B1. On the date of Ex.B1 agreement, it is stated by the defendant that a sum of Rs.10,000/- was paid as advance to the plaintiff's husband and the defendant is having possession of the property. These are the defence put forth by the defendant.

10. On the side of the plaintiff, to prove her case, she herself examined as P.W.1 and produced Ex.A1 to Ex.A14. Ex.A1 is the patta issued in the year, 1961. Ex.A2 and Ex.A3 are the demand notice for property tax in the name of the husband of the plaintiff. Ex.A4, Ex.A5 and Ex.A10 are the house tax receipts which stands in the name of the plaintiff's husband which is dated 05.08.1999. Ex.A6, Ex.A7 and Ex.A9 are the water charges receipt which stands in the name of the plaintiff's husband. Ex.A8 is the final notice issued in the name of the plaintiff. Ex.A11 is the copy of the complaint lodged by the plaintiff to the police. Ex.A12 is the Family Card of the plaintiff. Ex.A13 is the copy of legal notice issued on behalf of the Plaintiff to the defendant and Ex.A14 is the postal acknowledgement card. These are the documents relied on by the plaintiff to prove her possession. Ex.A12 Family Card is the ample proof for the residence. The suit was filed in the year, 2001. Relying on these documents, the plaintiff contends that she is in possession of the suit property.

11. Per contra, on the side of the defendant, the defendant produced Ex.B1 Sale agreement, Ex.B2 and Ex.B3 house tax receipts relating to the year 1994 - 1995 which stands in the name of the husband of the plaintiff and Ex.B5 house tax receipt which also stands in the name of the plaintiff's husband relating to the year 2001. The other documents Ex.B4 is the water tax receipt relating to the year, 1998. In such circumstances, to decide the suit for bare injunction on the basis of available documents and to find out the possession on the date of suit, the plaintiff side documents are more valuable than the defendant side document. Admittedly, the defendant entered in to the sale agreement with the husband of plaintiff in the year, 1992. The present suit was filed by the plaintiff in

the year,2001. Apparently, even then on the basis of Ex.B1 sale agreement, the defendant has not chosen to get the sale deed executed by the plaintiff's husband or after his demise from the plaintiff. In such circumstances, mere agreement of sale alone will not confer any title to the defendant. The only remedy available to the defendant is to seek through Court of law the relief of specific performance, but the defendant has miserably failed to do so. There is nothing on record to show any steps taken by the defendant to obtain sale deed from the plaintiff. The same create doubt as to whether really Ex.B1 sale was entered into as alleged by the defendant.

12.On the side of the defendant to substantiate his claim D.W.2 and D.W.3 were examined. When the document itself is not acceptable sufficient to prove the possession, the oral evidence were not be or any use to prove the claim of the defendant. Admittedly, the plaintiff is the true owner after the demise of her husband to whom the property originally belonged. In such situation, against the true owner, the defendant cannot seek any remedy. Hence, both the Courts below upheld the claim of the plaintiff and decreed the suit. Now, the defendant has come forwarded with the second appeal and raised two substantial question of law. The first one is whether the Court below is just in ignoring Ex.B1 without declaring Ex.B1 sale agreement is forged one is not valid. Then the second substantial question of law raised by the defendant is that the Courts below decided the possession of the suit property on the basis of Ex.A11 police complaint and the same is not in accordance with law. Now, let us discuss about the question of law raised by the appellant/defendant before this Court.

13.According to the defendant, he entered into a sale agreement with the husband of the plaintiff on 24.02.1992 by paying Rs.10,000/- as advance and on the sale price was fixed at Rs.20,000/-. As per is claim, the defendant entered into a sale agreement with the plaintiff's husband in the year,1992. Even after lapse of 9 years, but in the year,2001, when the plaintiff came forward with the suit for bare injunction against the defendant, no steps is taken by the defendant. If really, the sale agreement marked as Ex.B1 is true and executable, the defendant was at liberty to proceed against the plaintiff's husband to get the sale completed. However, the defendant has not taken any steps to complete the sale as per Ex.B1. Further more, when the plaintiff has come forward with the suit for the relief of bare injunction, the plaintiff has not come forward with any condition class on the suit for the relief of declaration with regard to Ex.B1 sale agreement. In such circumstances, there is no need or necessity for the Court to

declare Ex.B1 as forged one. The only issue raised by the Courts below in the injunction suit concerned is whether the plaintiff has proved the possession on the date of suit. According to the plaintiff, she is in possession and enjoyment of the suit property as the true owner after the demise of her husband. The defendant took the defence that he is in possession and enjoyment of the suit property and produced Ex.B1 to Ex.B10 in support of his claim. In continuation, on the side of the plaintiff, to prove her possession she has relied on Ex.A1 to Ex.A14. On the basis of the pleadings, the trial Court framed issues as to whether the plaintiff is entitled for the relief of injunction and to what relief the plaintiff is entitled. The first appellate Court has also framed the point for consideration as to whether the appeal deserves to be allowed. No other points for consideration was raised in both the Courts below. Apparently, there is no need or necessity to frame any other issue in the bare injunction suit. In such situation, there is no possibility for the Court below to declare Ex.B1 as forged one and there is no need or necessity to give a finding with regard to Ex.B1 sale agreement. Thus, the contention of the defendant that the Courts below ignored Ex.B1 without delay the same as for get one is not sustainable and there is no infirmity in the findings of the Courts below regarding the same.

14.The next substantial question of law raised by the appellant is with regard to Ex.A11 police complaint lodged by the plaintiff. The trial Court as well as the lower appellate Court came to the conclusion that the plaintiff proved her possession not only on the basis of Ex.A11, but also on the basis of Ex.A1 to Ex.A14. Ex.A11 is concerned proved the cause of action in the suit. The defendant, in the grounds of second appeal, has put forwarded a new theory as if two doors are available in the suit property, when one door was for the house used by the defendant and the other one door was for the house used by the plaintiff. This plea was not taken by the defendant in his written statement filed before the trial Court or even in his oral evidence. Therefore, without any pleadings and evidence before the Courts below, for the first time, a new plea is raised by the appellant in the second appeal as such the same is not sustainable. The Courts below have not based them a finding only on Ex.A11 but also considered the other documents also to determined possession. In such circumstances, the grounds put forth by the appellant is not sustainable and for the reasons stated above, the substantial question of law raised by the appellant are answered against him. In the light of the above said discussion, this Court comes to the conclusion that there is no merits in the appeal and there is no need or scope for interference with the findings of the Courts below, since the

conclusion of the Courts below are well reasoned and in accordance with law. Hence, the appeal fails and the same has to be dismissed.

15.In the result, the second appeal is dismissed. No costs. The Judgment and Decree dated 23.07.2004 made in A.S.No.11 of 2004 passed by the learned Principal Subordinate Judge, Erode confirming the Judgment and Decree dated 07.04.2003 in O.S.No.424 of 2001 passed by the learned I Additional District Munsiff, Erode is hereby confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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1.The Principal Subordinate Judge,
Erode.

2.The I Additional District Munsif,
Erode.

+1 cc to M/s.C.Prakasam, Advocate, SR No.68808.

S.A.No.355 of 2007

RSI (CO)
SSM(28/12/18)