

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Second Appeal No. 378 of 2012

Sekar ... Appellant/Appellant/Defendant

Vs.

Ram Kannan ... Respondent/Respondent/Plaintiff

Prayer : Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree of the learned Additional Subordinate Judge, Myladuthurai, in A.S.No.38 of 2011 dated 20.12.2011, confirming the judgment and Decree of the learned Principal District Munsif Judge, Myladuthurai in O.S.No.307 of 2009 dated 28.02.2011.

For Appellant : Mr. R. Rajesh
For Respondent : Mr. A. Muthukumar

JUDGMENT

1. This Second Appeal has been filed against the decree and judgment of the First Appellate Court confirming the decree and judgment of the trial court granting permanent injunction in favour of the Plaintiff.

2. The brief facts of the Plaintiff's case is as follows:

2(a) The Plaintiff is the owner of the suit property by virtue of his purchase on 07.08.2003. The Defendant is cultivating adjacent land tried to pressurize the Plaintiff to sell the land to him. As the same was declined by the Plaintiff, the Defendant tried to trespass in the suit property on 01.11.2009 and the same was prevented by the Plaintiff. Since the Defendant has created strong apprehension, the Plaintiff filed the suit.

3. It is the case of the Defendant that the suit property was originally belonged to one Mr.Balakrishnan. He died 20 years back without any issue. The Defendant was tenant under the said Mr.Balakrishnan and he continued to cultivate the suit property. Further, he denied the allegation that he made an attempt to trespass the suit property. He prayed for dismissal of the suit.

4. The trial Court framed the following issues:

i. Whether the Plaintiff's title to the suit property is valid or not?

ii. Whether the Plaintiff is entitled for Permanent Injunction as prayed for ?

iii. To what other relief?

5. On the side of the Plaintiff P.Ws.1 and 2 were examined and Exs.A1 to A4 were marked. On the side of the Defendant Exs.B1 to B3 marked and Exs.X1 and X2 were also marked.

6. Based on the evidence and materials, the trial Court decreed the suit in favour of the Plaintiff. The First Appellate Court also confirmed the findings of the trial Court. Aggrieved over the same, the present Second Appeal came to be filed.

7. Learned counsel for the Appellant would submit that the title to the property itself is in dispute and the Exs.B1 and B2 clearly show that the Defendant is in possession of the property. Hence, both courts are erred in decreeing the suit. Therefore, prayed for allowing the appeal.

8. Learned counsel appearing for the Respondent would submit that absolutely there is no material available on record to show that the defendant is cultivating tenant in the suit property. No documents were produced. Hence, prayed for dismissal of the appeal.

9. The Second appeal is heard in the admission stage itself. I perused the entire materials and documents.

10. The suit has been laid on the strength of the title deed to protect the possession of the Plaintiff. The Defendant though in the trial assailed the sale deed, the trial court and the First Appellate Court incidentally gone into the issue of the title and recorded factual findings that the suit property was purchased by the Plaintiff and such purchase is valid one. Therefore, the finding of the trial Court and the First Appellate Court based on the factual aspect cannot be erased at this stage. Further, in a suit for bare injunction only the possession alone is a prime criteria to decide the issue.

11. It is the main contention of the Plaintiff that ever since from the date of purchase, he is in possession of the property. Whereas it is the contention of the defendant that from 1974 onwards he is cultivating the property as cultivating

tenant and he was tenant under one Mr.Balakrishnan. But on perusal of the entire materials, absolutely there is no material to show that he is cultivating the property as tenant under one Mr.Balakrishnan. Except Ex.B.1 and B.2 no other documents have been filed. Even in Ex.B1 and Ex.B.2, Mr.Balakrishnan name only found. Nowhere the Defendant name found, even to infer that he is cultivating the property as tenant. If really the tenant is cultivating the property as tenant from 1974 onwards, nothing prevented him to register the same with the concerned authorities under Tenancy Laws. But no material was produced. In the absence of any materials even to infer that he is cultivating the suit property, he cannot resist the suit by questioning the title deed. Admittedly the Plaintiff has better title. The suit property is vacant agricultural land and the Plaintiff is established his title and possession. The trial Court has factually recorded the findings after analysing both oral and documentary evidence decreed the suit in favour of the Plaintiff. The First Appellate Court also confirmed the decree and judgment of the trial Court. This Court does not find any infirmity on the findings of the trial Court as well as the First Appellate Court. There is no substantial question of law involved in this appeal. Hence, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

ggs

To

1. The Additional Subordinate Judge, Myladuthurai.
2. The Principal District Munsif, Myladuthurai

Copy To : The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.A.Muthukumar, Advocate SR.No.86638

+1cc to Mr.S.Balasubramanian, Advocate SR.No.86975

S.A.No.378 of 2012

LN(CO)
GMY(08/05/2019)