

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.504 of 2018

and

C.M.P.No.13863 of 2018

Thiruvvasagam

... Appellant/Plaintiff

Vs.

Chandrakasan

... Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 17.11.2017 in A.S.No.20 of 2015 on the file of the learned Subordinate Judge, Chidambaram, reversing the Judgment and Decree dated 13.02.2015 in O.S.No.275 of 2009 on the file of the learned Principal District Munsif, Chidambaram.

For Appellant : Mr.P. Parthiban

JUDGMENT

The plaintiff is the appellant before this Court. This appeal is filed challenging the Judgment and Decree of the learned Subordinate Judge, Chidambaram, in A.S.No.20 of 2015 in and by which the learned Subordinate Judge has reversed the Judgment and Decree of the learned Principal District Munsif, Chidambaram in O.S.No.275 of 2009.

2.The appellant has filed a suit for permanent injunction restraining the respondent herein, his men, agents and persons claiming under him from in any manner interfering with the construction being putting up or super structure coming up in the suit property.

3.The suit schedule property comprised of various extent in R.S.No.82/2, 82/2A and 82/2C. It was his case that the suit property originally belonged to one Lakshmana Padayatchi and Lakshmana Padayatchi had three sons, namely, Kothandaraan, Vaithiyanathan and Govindarasu. Each one inherited 0.03 cents in the house site in R.S.No.82/2. The said Vaithiyanathan had two sons, namely, Gopal and Muthu. Gopal has two sons, namely, Jayaraman and Chandrakasan, the defendant herein and Muthu had no issue. He married Alamelu and Neelavathi. The share inherited by Vaithiyanathan devolved upon his wife Saroja, Gopal and Muthu to the extent of 0.01 cent each.

4.The appellant's father and the respondent herein are the sons of Gopal. It was his case that on 17.10.2008, he had purchased the share of his father's uncle Muthu from Muthu's wife Leelavathi. Likewise, he had contended that 1 ½ cents belonging to Ranganathan, son of Govindarasu also came into his hands. Apart from this, he had inherited ¾ cents in the ancestral property and he is entitled to 2 ¼ cents. On 26.03.2009, there was a Partition between the appellant's father Jayaraman and his brother, the respondent herein, under which 3 ½ cents in the "A" schedule went to Jayaraman, and Chandrakasan was allotted 7 cents. He also relied upon an Agreement dated 06.04.2009 between his father and the respondent herein, wherein the respondent had promised to remove the debris for which his father had given Rs.20,000/-. Thereafter, when the appellant had constructed a building in the suit schedule property, the respondent objected to the same. Therefore, constraining the appellant to file the suit for a bare injunction.

5.The respondent herein had resisted the suit inter alia contending that the possession of the property is only with him and that he was the one who was paying the Tax in respect of the suit schedule property. He would further contend that Agreement dated 06.04.2009 is a forgery one and that the appellant was not entitled to any relief since he has not sought for the relief of declaration.

6.During the trial, the appellant herein, had examined himself as P.W.1, apart from examining three other witnesses P.W.2 to P.W.4. He had also marked Ex.A.1 to Ex.A.9 in support of his contentions. On the side of the defendant, the respondent was examined as D.W.1 and Ex.B1 to Ex.B.5 were marked. Apart from that, the report of the Advocate Commissioner and Plan were also marked.

7.The trial Court had framed two issues and the trial Court had held that the defendant/respondent was in permissive possession of the suit property, he proceeded to grant the decree for injunction as prayed for.

8.Challenging the said Judgment and Decree, the respondent herein had filed A.S.No.20 of 2015 on the file of the learned Subordinate Judge, Chidambaram. The Appellate Court, taking into account the fact that the suit was one for a bare injunction and based on the possession, set aside the Judgment and Decree of the trial Court on the ground that the respondent herein has proved their possession and enjoyment of the suit property. Challenging this order, the appellant/plaintiff is before this Court.

9. When the matter came up for admission, heard Mr.P. Parthiban learned counsel appearing for the appellant. The learned counsel would argue that the trial Court has gone into a detail by examining the evidence on record and has ultimately come to the conclusion that the plaintiff was in possession of the property and had rights to the suit property. He would further argue that Ex.A.5 would clinch the fact that the plaintiff and his predecessors, who are in title, were in possession and enjoyment of the property. He would therefore contend that the learned Subordinate Judge, Chidambaram, has erred in dismissing the suit for injunction. He would further argue that once the defendant had admitted the Partition, then he cannot claim any right whatsoever to the suit property.

10. Heard the learned counsel for the appellant and perused the material on record.

11. The suit is one for bare injunction and the appellant/plaintiff has made the following statements in the Plaint:

"4. On 06.04.2009, an agreement was made between the plaintiff's father and the defendant to remove the debris on or before 30.05.2009 for which the defendant received Rs.20,000/- from the 2<sup>nd</sup> plaintiff in the presence of the Panchayatdars of their native village. When the plaintiff made arrangements to construct a building or superstructure in the suit property, the defendant attempted to interfere in the work of the petitioner on 05.12.2009. Such attempt of the respondent has been prevented by the plaintiff."

12. Therefore, it is clear that the appellant had come forward with the case that the respondent was not in possession of the suit property and that when the plaintiff started construction he has started interfering in the plaintiff's peaceful possession and enjoyment of the property.

13. The trial Court has observed that the defendant is in possession, but his possession should only be considered as a permissible possession as mere licensee and therefore, he cannot claim possession as a matter of right. In Paragraph 8 of the Judgment of the trial Court, the same has been stated as follows:

"8. The defendant, having executed Ex.A.4 - Partition Deed, has the legal obligation of handing over the actual possession of property to his brother Jayaraman. Even though the defendant has continued to reside in the suit property after the execution of Ex.A.4, he cannot be considered in

lawful possession over the same considering the relationship between himself and plaintiff's father. The defendant's possession shall only be considered as permissive possession as mere licensee and he cannot claim the same as a matter of right."

14.This leads to the irresistible conclusion that it is the defendant, who is in possession of the property and not the appellant. The Appellate Court has also relied upon the admissions made by the plaintiff in his cross examination as P.W.1 and returned its finding that it was the defendant who is in possession of the suit property. The Appellate Court has held that the suit filed is one for a bare injunction in which the only issue for consideration of the Court is as to who is in possession of the suit property. I find that there is no infirmity in the Judgment and Decree passed by the learned Subordinate Judge, Chidambaram. There is no question of law much less Substantial Questions of Law involved in the Second Appeal.

The Second Appeal therefore is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Subordinate Judge,  
Chidambaram.
- 2.The District Munsif,  
Chidambaram.
- 3.The Section Office, VR Section,  
High Court, Madras.

S.A.No.504 of 2018  
and

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LN (CO)  
RMP (20/06/2019)