

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 13-04-2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SECOND APPEAL No.603 OF 2008

1.Ranganathan
2.Jaganathan
3.Sampath

... Appellants/Appellants/Defendants

-vs-

Annamalai

... Respondent/Respondent/Plaintiff

Appeal against the judgment and decree, dated 21.02.2006, passed in A.S.No.123 of 2003 on the file of Sub-Court, Kallakurichi, confirming the judgment and decree, dated 25.08.2003, passed in O.S.No.672 of 2001 on the file of Principal District Munsif Court, Kallakurichi.

For appellants : Mrs.R.Meenal

For respondent : Mr.P.Valliappan & Ms.B.Shivani

JUDGMENT

In this appeal, Notice of Motion was ordered on 25.04.2008. Pursuant to the said notice, the respondent appeared through his counsel. Suit in O.S.No.672 of 2001 was filed by the respondent/plaintiff seeking permanent injunction restraining the defendants therein, namely, appellants herein, from interfering with his possession of the suit property.

2. According to the respondent/plaintiff, the suit property originally belonged to one Palani, s/o. Irusan, who sold the same to one Kullappudayar, s/o. Karuppudayar, on 19.05.1965. Thus, Kullappudayar has become the absolute owner of the property and he was in possession and enjoyment of the same. The said Kullappudayar sold the property to one Periyammal, w/o.Arumugam, under a registered sale deed, dated 04.01.1973. It is claimed that the property was in possession and enjoyment of the family of Irusan, who happened to be the father-in-law of Periyammal, purchaser under the sale deed, dated 04.01.1973. It is also contended that patta was issued in the name of Periyammal, her brother-in-law namely Kaliyan and others. The plaintiff would claim that he had purchased the property on 27.08.2001 from Periyammal, her husband, namely, Arumugam, and brother-in-law namely Kaliyan. Therefore,

according to the plaintiff, he is the absolute owner of the property and he is in possession and enjoyment of the same. On the above pleadings, the plaintiff sought for permanent injunction, restraining the defendants from interfering with his possession.

3. The defendants resisted the suit, contending that the sale deed, dated 27.08.2001, is not true and valid. The said sale deed came to be created by the plaintiff in collusion with Periyammal, her husband and her brother-in-law. The plaintiff has not paid any consideration for the sale and that the vendors of the plaintiff had no title to the property to convey. The defendants also chose to deny the validity of the sale deeds dated 19.05.1965 and 04.01.1973.

4. The learned trial Judge, who tried the suit, framed necessary issues and, on consideration of the evidence on record, concluded that the plaintiff has established his possession on the date of the suit and, as such, he is entitled to a decree for injunction. The claim of the defendants that the suit, without prayer for declaration of title, was not maintainable was rejected by the trial Court, on the ground that a mere denial of title would not cast a cloud on the title of the plaintiff.

5. Aggrieved over the said judgment and decree of the trial Court, the defendants preferred an appeal vide A.S.No.123 of 2003 on the file of Subordinate Court, Kallakurichi. The learned Subordinate Judge, on hearing the parties, concluded that the plaintiff has established his possession on the date of filing of the suit and, as such, he is entitled to injunction. The learned Subordinate Judge, in paragraph 7 of the judgment, observed as follows :

"7. The only question arises in this case is whether the respondent/plaintiff was in possession and enjoyment of suit property on the date of suit. The question of title of both the parties and their right and remedies on the strength of title are left open to the parties. Hence, both the parties have to work out their remedies by filing separate suit."

The learned Subordinate Judge has made it clear that he has not gone into the question of title and the question of title is left open.

6. In Anathula Sudhakar v. P. Buchi Reddy (Dead) By LRs. & Others, reported in 2008 (4) SCC 594, the Hon'ble Supreme Court has held that not every denial would force a person in settled possession to seek declaration of title.

7. I do not find any question of law, much less a substantial question of law, in this appeal. Therefore, this Second Appeal is dismissed, without being admitted, on the ground that no question of law arises for consideration. No costs. Consequently, the connected M.P.No.1 of 2008 is also dismissed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

dixit

To

1.Sub-Court,
Kallakurichi.

2.Principal District Munsif Court,
Kallakurichi.

+1cc to Mr.P.VALLIAPPAN, Advocate, S.R.No.27883

+1cc to Mr.R.MEENAL, Advocate, S.R.No. 27920

S.A.No.603 OF 2008

RJI (CO)
TR(07/05/2018)

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