

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2018

Coram

The Honourable Ms.Justice P.T.ASHA

S.A.No.841 of 2018

G.Senthil Murugan

...Appellant / Plaintiff

Versus

1.Mrs.G.Thangamani

2.Mr.M.Kumaravelu

3.Mrs.A.Sasikala

...Respondents/Defendants

This Second Appeal is filed under Section 100 of C.P.C praying to set aside the judgment and decree passed in A.S.No.25 of 2018 dated 25.07.2018 passed by the learned XVth Additional Judge, City Civil Court at Chennai confirming the judgment and decree passed in O.S.No.2615 of 2013 dated 20.04.2017 by the XIIth Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.R.Ramanlal

J U D G M E N T

The above Second Appeal arises against the judgment and decree passed by the learned XV Additional Judge, City Civil Court, Chennai, in and by which the learned Judge had confirmed the judgment and decree passed by the learned XII Assistant Judge, City Civil Court, Chennai in O.S.No.2615 of 2013 dated 20.04.2017.

Plaintiff's case:

2. The plaintiff in a suit for bare injunction is the appellant before this Court. The plaintiff had filed the suit O.S.No.2615 of 2013 on the file of the XII Assistant City Civil Court, Chennai for a permanent injunction restraining defendants, their men, agents and servants from interfering with the peaceful possession and enjoyment of the suit schedule property. It is the case of the plaintiff that the property was acquired in the year 1972 by his father Gopinath. The said Gopinath died on 09.05.2003 leaving behind him his wife and two sons viz., the plaintiff and his brothers. It is his case that

he is in possession of the suit property and that defendants are sisters and brother of his father Gopinath. It was his further case that on 01.05.2013, the defendants had attempted to trespass into the property and the plaintiff was constrained to lodge a Police complaint and the Police Authorities advised him to move the Civil Court and hence, the suit.

Defendants' case:

3. The second defendant has filed a written statement which is adopted by the defendants 1 & 3. It is the case of the defendants that the property was purchased by the defendants' mother Kannammal in the year 1973 and the plaintiff's father Gopinath and the defendants were jointly enjoying the property along with their mother. It was their further case that at the time of the purchase there was only a thatched hut in the property and it was the second defendant who has contributed for putting up a Pakka structure. Kannamal had executed a Will on 19.12.1996 bequeathing the properties to her children equally and in the year 2001, she passed away. However, the plaintiff who is in possession of the original Will is not parting with it. The defendants had further contended that the plaintiff was not residing in the suit property but was residing elsewhere and he snatched an interim order from the Court suppressing the fact that he is not in possession of the property.

Courts below:

4. The learned XII Assistant Judge after considering the evidence both oral and documentary dismissed the suit stating that the plaintiff has not established his absolute possession and enjoyment over the suit property and also that he had come to Court with unclean hands having suppressed material facts. Challenging the said judgment and decree, the plaintiff had filed A.S.No.25 of 2018 on the file of the XVI Additional City Civil Court, Chennai. The learned Judge had also concurred with the finding of the trial Court and dismissed the Appeal. Challenging this concurrent judgment and decree, the plaintiff/appellant is before this Court.

5. Mr.R.Ramanlal, learned counsel for appellant would draw the attention of this Court to the evidence of D.W.1. wherein D.W.1 would contend that she is in possession of the one portion of the suit schedule property and the other portion is not lived in and is in a dilapidated condition. He would therefore contend that this would only come to show that the defendants are in possession of only one portion of the suit schedule property. He would also contend that he has filed ration card, gas payment card etc., to show his possession of the property despite the Courts below have dismissed the suit.

6. Heard the arguments of the appellant's counsel and perused the papers.

7. The plaintiff has come forward with a suit for bare injunction on the basis that he is in possession of the suit property on the date of the suit and that the defendants had attempted to trespass into the property on 01.05.2013. However, a perusal of the documents produced on his side would show that all the documents are prior to the year 2003 whereas the defendants have produced documents of the year 2010, 2014 etc., to show that they are in possession and enjoyment of the property. The suit is one for a bare injunction. The plaintiff should succeed on the strength of his case. In the instant case, the plaintiff has not been able to prove that he has been in possession of the suit property and that his possession had been threatened by the defendants.

8. In view of the axiomatic principle of law that the plaintiff has to succeed on the strength of his case and not the weakness of the defense, the plaintiff has not made out any question of law much less a substantial question of law warranting the interference of this Court and therefore, this Second Appeal shall stand dismissed on the stage of admission. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The XV Additional Judge,
City Civil Court, Chennai
2. The XII Assistant Judge,
City Civil Court, Chennai.

+1 cc to M/s.R.Ramanlal, Advocate, S.R.No.88679

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CP(CO)
SSM(14/03/2019) .