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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2018

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

S.A.(MD)No.561 of 2017 and
C.M.P.(MD)No.12004 of 2017

1. Mala
2. Muthuvel
3. Murugavel

... Appellants/
Respondents/Defendants

Vs.

1. G.Mohandoss

... Respondent/
Appellant/Plaintiff

Prayer: Second Appeal is filed under Section 100 of C.P.C., to set aside the Judgment and Decree in A.S.No.2 of 2015, dated 22.02.2017 on the file of the learned Subordinate Judge, Pattukottai, modifying the Judgment and Decree in O.S.No.3 of 2013, dated 31.10.2014 on the file of the learned District Munsif cum Judicial Magistrate, Orathanadu in so far as the grant of relief of injunction, allow the Second Appeal and to dismiss the Suit with costs throughout.

For Appellants : Mr.R.Ghireedharan
For Respondent : Dr.D.Gnanasekaran

JUDGMENT

This Second Appeal is filed against the Judgment and Decree in A.S.No.2 of 2015, dated 22.02.2017 on the file of the learned Subordinate Judge, Pattukottai, modifying the Judgment and Decree in O.S.No.3 of 2013, dated 31.10.2014 on the file of the learned District Munsif cum Judicial Magistrate, Orathanadu.

2. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent.

3. The defendants are the appellants in this Second Appeal. The respondent herein filed a Suit in O.S.No.3 of 2013 before the learned District Munsif cum Judicial Magistrate, Orathanadu, for declaration of title and consequential permanent injunction in respect of the suit property. Though the plaintiff's possession was



admitted by the defendants, the defendants filed a detailed written statement claiming title over the property in dispute.

4. The trial Court held that the defendant's predecessors are the absolute owners of the property and that the plaintiff is not entitled to any relief. Aggrieved by the same, the plaintiff/respondent preferred an Appeal before the lower Appellate Court. The lower Appellate Court, based on the candid admission of the defendants that the plaintiff is in enjoyment of the suit property, has modified the Judgment of the trial Court and granted Decree for Injunction restraining the defendants from interfering with the enjoyment of the plaintiff/respondent otherwise than by due process of law. Aggrieved by the Judgment and Decree passed by the learned Subordinate Judge, Pattukottai, in A.S.No.2 of 2015, dated 22.02.2017, the above Second Appeal has been preferred by the defendants.

5. The Judgment of the lower Appellate Court with regard to possession and enjoyment of the suit property by the plaintiff is well founded, since the plaintiff is in settled possession. Though the lower Appellate Court has confirmed the finding of the trial Court with regard to the title of the plaintiff and accepted the title of the defendants, the finding with regard to the enjoyment of the property by the plaintiff is unassailable. The lower Appellate Court is therefore proper in granting a limited relief of injunction restraining the defendants from interfering with the plaintiff's enjoyment otherwise than by due process of law.

6. It is settled law that a person who is in settled possession cannot be disturbed or evicted otherwise than by due process of law. Even a person who is not the real owner can get a limited relief of injunction as it was granted by the lower Appellate Court by establishing his possession. In this case, on behalf of the defendants it is admitted that the plaintiff is in enjoyment of the property. As a matter of fact, the defendants admitted that the existence of the property and their right as legal heirs of the original owners was not known to them for a long number of years and that therefore, the plaintiff is entitled to the limited relief that he should not be evicted or interfered with otherwise than by due process of law.

7. The defendants have raised grounds in the Appeal as if the lower Appellate Court has granted a Decree for permanent injunction contrary to the findings of the trial Court. That is not the position here. Hence, this Court is not inclined to entertain the Second Appeal.

8. As a result, the Second Appeal is dismissed and the Judgment and Decree passed by the learned Subordinate Judge, Pattukottai, in A.S.No.2 of 2015, dated 22.02.2017 is perfectly in order and hence confirmed. However, liberty is given to the defendants to work out



their remedy for recovery of possession in the manner known to law. No order as to costs. Consequently, connected Miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1. The Subordinate Judge, Pattukottai.
2. The District Munsif cum Judicial Magistrate,
Orathanadu.
3. The Record Keeper, V.R.Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.R.Ghireedharan, Advocate, SR.No.40959

+One cc to Mr.D.Gnanasekaran, Advocate, SR.No.40837

pmu
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