



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2018

CORAM:

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.477 of 2016
and
C.M.P.(MD)No.5173 of 2016

S.Rajan Premkumar ... Appellant/ Appellant/ Plaintiff

-Vs-

1.K.Manuvel Nadar
2.Grace Ammal
3.Selvam @ Selvakumar
4.Latha
5.Devabalan

...Respondents/ Respondents/ Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the lower appellate Court dated 30.03.2016 passed in A.S.No.122 of 2010 on the file of the II Additional Subordinate Court, Tiruchirappalli, confirming the judgment and decree of the trial Court dated 28.01.2009 passed in O.S.No.1555 of 2007 on the file of the III Additional District Munsif Court, Tiruchirappalli.

For Appellant : Mr.M.Saravanan

For Respondents : Mr.T.Vadivelan
R1,R3,R4
Caveators

JUDGMENT

The second appeal has been filed against the judgment and decree dated 30.03.2016 passed in A.S.No.122 of 2010 on the file of the II Additional Subordinate Court, Tiruchirappalli, confirming the judgment and decree of the trial Court dated 28.01.2009 passed in O.S.No.1555 of 2007 on the file of the III Additional District Munsif Court, Tiruchirappalli.

2.The plaintiff is the appellant in this second appeal. The appellant has filed a suit in O.S.No.1555 of 2007 on the file of the III Additional District Munsif Court, Tiruchirappalli, for bare injunction restraining the defendants and their agents from interfering with the peaceful possession and enjoyment of the suit properties, either by threat to interfere with the plaintiff's business in the suit property or otherwise in the manner whatsoever except due process of law. The suit property has been described as a

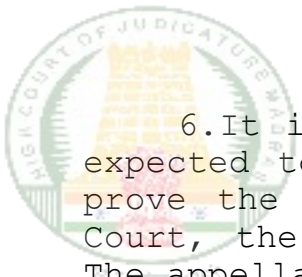


shop, measuring 13x10 feet, bearing Door No.76-A, Amma Mandapam Road within the Trichirapalli Corporation limit.

3. In the suit, the plaintiff admitted that the property originally belonged to the father of the plaintiff by virtue of a registered sale deed of the year 1976. It is also admitted that the plaintiff's father died intestate on 02.06.1980, leaving the second defendant as his wife and the plaintiff and the defendants 3 and 5 as his sons. It is the case of the plaintiff that his father, during his life time, was running a business in the suit property and that after his father death, during the year 1980, the suit property was in occupation of a tenant, by name, Muthu Kumar. It is the further case of the plaintiff that the tenant was vacated by the plaintiff by paying a sum of Rs.30,000/- and that he started his own business in the name and style of "Semaraj Kadalai Kadai". It is also stated by the plaintiff that he has spent a sum of Rs.1,25,000/- towards improvement and that he has given certain amount to the second defendant for his expenses and to the fifth respondent to start a business on his own.

4. It is stated that the plaintiff became the sole proprietor to run the business in the suit property, as agreed and consented by the defendants 2, 3 and 5 and that the business run by the plaintiff in the suit property is his exclusive business. It is stated that his possession over the suit property cannot be interfered with by the defendants except due process of law. Alleging further that the defendants came to the suit properties along with rowdies and threatened to interfere with the plaintiff's possession in respect of the suit property, it is stated that the plaintiff was constrained to file a suit for bare injunction. Though the plaintiff has filed a suit for the relief of injunction, claiming exclusive right over the business that is being run in the suit property, he has not asked for any declaration. It is further stated by the plaintiff himself that his father was doing business in the suit property and that the plaintiff is carrying on business, which is similar to the business run by his father. However, it is stated that the property was given on lease for some time to a stranger.

5. The suit was contested by the defendants, by denying the averments made in the plaint. The second defendant specifically stated that the business that is being run by the plaintiff in the suit property is a family property. It is stated further that they have contributed for the business and for the mobilisation of capital. The trial Court dismissed the suit, holding that the plaintiff has not proved his case that the defendants have consented the plaintiff to run the business as his exclusive property. When there is a dispute with regard to title, the suit for bare injunction is not maintainable. In this case, the trial Court has justified in dismissing the suit. On appeal, the appellate Court also confirmed the findings of the trial Court and dismissed the



6.It is pertinent to mention that the appellant / plaintiff is expected to prove his exclusive possession, but, he has failed to prove the same. Aggrieved by the findings of the lower appellate Court, the present second appeal has been filed by the plaintiff. The appellant has raised the following substantial questions of law:

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(a)Whether in law, the Courts below are right in refusing to grant injunction to protect the settled possession of the appellant as held in 2001 (7) MLJ 1110?

(b)Whether in law, the Courts below is overlooked to see that the appellant is in settled possession and he cannot be dispossessed except by due process of law by filing a suit for partition and possession?

(c)Whether in law, the judgment of lower appellate Court is vitiated as no points for determination was framed under Order 41 Rule 31 of C.P.C.?

(d)Whether in law, the judgment of the lower appellate court is liable to be set aside as the same was passed without following the mandatory provision under Order 41 Rule 31 of C.P.C. As held in 1996 (II) MLJ 550?

7.It is not in dispute that the plaintiff and the defendants 2, 3 and 5 are the co-owners, as they are the legal heirs of the father of the plaintiff. The case of the plaintiff is that the business in the suit property was carried on by him exclusively. But the same is not accepted by the Courts below, after considering the pleadings and evidence, both oral and documentary. The issue with regard to the enjoyment of the property is a factual issue. The Courts below have applied their mind independently and decided the issue. The Courts below have concurrently found that the plaintiff has not proved his exclusive possession. In the light of the findings of Courts below, the substantial question of law (a) and (b) have no basis. The learned Counsel for the appellant raised a plea that the appellate Court has not framed the point for determination as per Order 41 Rule 31 of C.P.C. From the reading of the judgment, the issues that were raised for consideration before the lower appellate Court has been properly addressed and discussed. It is not pointed out that the lower appellate Court has failed to consider any issue or material evidence. The judgment of the lower appellate Court is well founded and supported by materials and reasons. Hence, this Court finds that there is no substantial question of law involved in this appeal. Since the judgment and decree of the Courts below are not vitiated either for any failure to consider the evidence or for its perversity, this Court is not inclined to interfere with the findings of the Courts below. Hence, the second appeal is dismissed and the judgment and decree of the lower appellate Court in A.S.No.122 of 2010, dated 30.03.2016, on the file of the II Additional Subordinate Court, Tiruchirappalli, confirming the judgment and decree of the trial Court dated 28.01.2009 passed in



O.S.No.1555 of 2007 on the file of the III Additional District Munsif Court, Tiruchirappalli is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The II Additional Subordinate Court,
Tiruchirappalli.

2.The III Additional District Munsif Court,
Tiruchirappalli.

COPY TO:

The Section Officer, (2 COPIES)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO M/S.T.VADIVELAN, ADVOCATE, SR NO.49811

+1CC TO M/S.R.SUBRAMANIAN, ADVOCATE, SR NO.49774

Judgment made in
S.A. (MD) No.477 of 2016
20.02.2018

cmr

MS/SV-MMS/SAR-2/26.04.2018/4P.7C