

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.01.2019
CORAM
THE HONOURABLE Ms. JUSTICE P.T. ASHA
S.A.No.66 of 2019
&
C.M.P.No.1324 of 2019

T.Krishnan

... Appellant

Vs

Mrs.Chitra

... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 17.09.2018 made in A.S.No.30 of 2015 on the file of the Court of the Principal Subordinate Judge, Krishnagiri, confirming the Judgment and Decree dated 29.07.2015 made in O.S.No.280 of 2011 on the file of the Court of the District Munsif, Krishnagiri.

For Appellant : Mr.T.Dhanasekaran

JUDGMENT

The defendant is the appellant before this Court. He has challenged the concurrent Judgement and Decree passed in the suit filed by the plaintiff for a declaration of her title to the suit properties, for a direction to the defendant to deliver possession of the suit properties and for a permanent injunction restraining the defendant from alienating the suit property or in any other manner encumbering the suit properties.

2.The facts necessary for disposing of the above Second Appeal are as follows:

The plaintiff who is the respondent in the Second Appeal had married the defendant (the appellant herein) on 31.08.1986 and out of this wedlock a son was born to them. On 22.04.1997, the plaintiff had purchased the suit properties out of her fund which she got by selling her Jewels and with the support from her parents.

3.The defendant who was her husband had been managing the property on her behalf. In fact the property belonged to the defendant's brother one T.Natarajan who had got it in a family partition and since the said T.Natarajan had tried to sell the

suit properties to third parties, the plaintiff has managed to purchase the same.

4.It appears that all was not well in the matrimonial life of the plaintiff and defendant, as a result, decree for a divorce was passed in H.M.O.P.No.100 of 2008 by the Subordinate Judge, Krishnagiri dissolving the marriage between the plaintiff and the defendant. Despite repeated demands by the plaintiff to the defendant to handover the vacant possession of the property, the defendant was refusing to do so, thereby, constraining the plaintiff to issue legal notice dated 09.08.2011. On 30.08.2011 the defendant had issued a reply notice denying the plaintiff's title to the suit properties and also refused to hand over the possession of the same. The original documents are all in the possession of the defendant and therefore left with no other alternative the plaintiff had filed a suit for the reliefs stated above.

5.The defendant inter alia denied of the plaintiff's title to the suit properties. The defendant had setup a plea that the suit properties were ancestral properties and their appear to be misrepresentation of the property. He would also contend that the Purchase was made by the plaintiff by fraud, undue influence and misrepresentation. He would also contend that his brother T.Natarajan hae no right or title to the property and he was not in possession of the suit Item No.2 of the property and this property was purchased by the defendant's father forty years ago and on his death his wife, son and daughters succeeded to the same. The defendant would contend that all of them were in joint possession and enjoyment of the suit property. Under a partition deed dated 13.07.2011 the joint family properties were partitioned in which the defendant had been allotted two items of property.

6.The learned District Munsif, Krishnagiri before whom the Trial in O.S.No.280 of 2011 had taken place on hearing the parties and considering the evidence had decreed the suit.

7.This Judgement and Decree was taken up on appeal to the Principal Subordinate Judge, Krishnagiri, in A.S.No.30 of 2015 by the defendant. The learned Principal Subordinate Judge also confirmed the Judgement and decree of the learned District Munsif, Krishnagiri. Challenging this concurrent Judgement and Decree the defendant is before this Court.

8.Mr.T.Dhanasekaran, learned counsel, who appeared on behalf of the appellant would contend that the respondent had left the plaintiff's company in the year 1997 itself and therefore the claim of recovery of possession was barred by limitation. The learned counsel would further argue that the

plaintiff has not proved the source of fund for purchasing the property and the sale has been obtained by undue influence, fraud and misrepresentation. Therefore prayed for set aside in the concurrent Judgement and Decree.

9.The records would show that the plea of limitation has not been made by the defendant in his written statement and it has been projected for the first time before this court in a Second Appeal. Be that as it may, the defendant was in possession of the suit property with the permission of the plaintiff and it was only after the divorce between the two in the year 2010 that she had demanded vacant possession of the suit property and within a year that is in the year 2011 this suit as been filed and therefore by no stretch of imagination can it be stated that the suit is barred by limitation. More particularly when the refusal to vacate the place takes place in the year 2010. The defendant who comes forward with a case that the sale deed Ex.A.1 was fraught by fraud, undue influence and misrepresentation has not deemed it fit to examine his brother, the vendor of the plaintiff or his other siblings to prove that the vendor of the plaintiff did not have any right to execute the said deed. The plaintiff has given a cogent evidence stating that she had purchased the property in the year 1997 and after the divorce in the year 2010 under Ex.A.2 she had made an attempt to take possession and on the refusal she is before this Court.

The defendant has not proved any of the defense raised by him in his written statement and the concurrent Judgement and Decree does not require interference by this Court. In the result, the Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Subordinate Judge, Krishnagiri.

2.The District Munsif, Krishnagiri.

+1 cc to Mr.t.Dhanasekaran, Advocate Sr.No.5759

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CSL/09.05.2019