

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.NO.1278 OF 2009

&

S.A.NO.474 OF 2017

Sundari

..Appellant in both Second Appeals

Vs.

1. Shanmugam

2. Devaraj

3. Manoharan

4. Sanjeevi

5. The Commissioner,
Tiruvottiyur Municipality,
Tiruvottiyur,
Chennai 600 019.

..Respondents in both Second Appeals

COMMON PRAYER:

Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned Subordinate Judge, Ponneri, dated 15.11.2006 in A.S.Nos.7 and 29 of 2002, against the partial judgment and decree of the learned District Munsif cum Judicial Magistrate, Tiruvottiyur, dated 25.01.2002 in O.S.No.661 of 1997.

For Appellant

in both S.As : Mr.S.Purushothama doss

For Respondents

in both S.As : Mr.R.Krishnasamy (for R1 to R4)

J U D G M E N T

The plaintiff in O.S.No.661 of 1997 having lost a suit for injunction before the Courts below has come up with the second appeals.

2. The suit in O.S.No.661 of 1997 was filed by the plaintiff seeking a decree for permanent injunction restraining the defendants from interfering with the possession of the property on the ground that she had purchased the property from one Raja

Shanmugam under a sale deed dated 02.04.1983. Pursuant to the said purchase, the Revenue records were also mutated in her name. In support of her claim the plaintiff has produced the sale deed 02.04.1983 and extract of Town Survey Land Register issued by the Municipality on 10.09.1991. The sale deed was marked as Ex.A1 and Town Survey land Register was marked as Ex.A2.

3. The defendants 1 to 4 resisted the suit contending that the suit property forms part of the road in the lay out plan, which was approved in the year 1975 by the Director of Town and Country Planning, Chengalpattu. Therefore, the vendor of the plaintiff had no title over the property and hence, the plaintiff would not derive any title under the sale deed dated 02.04.1983.

4. It was also claimed that the 5th defendant namely the Municipality had issued a notice to the plaintiff for alteration of the Revenue Records. The 5th defendant/Municipality remained exparte.

5. The trial Court, upon consideration of the evidence on record as well as the commissioner's reports concluded that the suit property was situated on the 50 feet road shown in the approved plan which was abutting plot Nos.49 and 54 in the lay out. On the said conclusion, the learned trial judge dismissed the suit. The trial Judge also concluded that the plaintiff's vendor had no right to alienate the property having sold the plots. The purchasers of the plots abutting the road on either side would get the right over the road. The learned trial Judge, however dismissed the suit against defendants 1 to 4 and decreed it against the 5th defendant alone.

6. Aggrieved, the plaintiff filed an appeal in A.S.No.7 of 2002 and defendants 1 to 3 have filed an appeal in A.S.No.29 of 2002. While the plaintiff challenged the dismissal of the suit the defendants 1 to 4, filed the appeal challenging the decree granted against the Municipality.

7. The lower Appellate Court on reconsideration of the evidence substantially agreed with the findings of the trial Court. The lower appellate Court exercised its power under Order 41 Rule 33 of C.P.C., to set aside the decree against the Municipality in the appeal filed by the plaintiff in A.S.No.7 of 2002. In view of the judgment in A.S.No.7 of 2002, the appeal in A.S.No.29 of 2002 is dismissed.

8. Aggrieved, the plaintiff has come forward with these two second appeals.

9. I have heard Mr.S.Prushothama doss, learned counsel for the appellant and Mr.R.Krishnasamy, learned counsel for respondents 1 to 4.

10. Notice of motion was ordered in second appeal No.1278 of 2009 on 17.06.2010. Pursuant to the same, the learned counsel for the respondents have entered appearance.

11. Mr.S.Prushothama doss, learned counsel appearing for the appellant would vehemently contend that the Courts below were not right in dismissing the suit more so when the plaintiff is in possession of the property pursuant to the Sale Deed dated 02.04.1983 having purchased the property from the original owner and in the absence of the cancellation of the Town Survey Land Registration Certificate issued by the Municipality; the Courts below erred in coming to the conclusion that the plaintiff has not proved her possession.

12. No doubt, true, Ex.A1 Sale Deed dated 02.04.1983, has been executed by the person who promoted the lay-out, however, the copy of the Town Survey Land Registration Certificate Ex.A2 produced by the plaintiff would show that in the said certificate, the land has been classified as Nanja Land, which by itself would show that the Town Survey Land Registration Certificate has been obtained from the Municipality, by using unfair means. It is also found that the Municipality has issued notice to one Hemavathy under Ex.B1 claiming that the portion of the property in her occupation forms a part of 50 feet road as per the approved lay out. Ex.B2 is a approved layout of the area obtained by the vendor of the plaintiff. On a perusal of Ex.B2, it is found that the suit property is shown as a part of 50 feet road in the approved plan. The Courts below have also relied upon the Commissioners' reports and plan to show that the suit property forms part of the 50 feet road. The above finding clearly demonstrates that the plaintiff's vendor has no right over the property and the plaintiff, is in occupation of portion of the road, in which, all the purchasers of the plots in the approved layout have got a right of access. In such circumstances, the Courts below were right in negating the injunction prayed for. The trial Court however granted a decree against the Municipality. The suit was laid for injunction restraining individuals and the Municipality from interfering with the possession of the property. The trial Court has found that the plaintiff has no title over the suit property. Once it is found that the plaintiff has not established the possession over the properties, the suit for bare injunction has to be necessarily dismissed. A Decree for injunction cannot be granted merely because the respondent remains exparte. The lower appellate Court has rightly exercised its powers under Order 41 Rule 33 of C.P.C., to set aside the decree against the

Municipality in the appeal filed by the plaintiff.

13. Therefore, I do not find any illegality or perversity in the findings of the Courts below. I do not find any question of law much less any substantial question of law arising in this appeal. Hence, both the second appeals are dismissed without being admitted. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vum

To

1. The Subordinate Judge,
Ponneri.

2. The District Munsif cum
Judicial Magistrate,
Tiruvottiyur.

+1cc to Mr.V.Ajay Khose, Advocate, S.R.No.81730

+2cc to Mr.S.Purushothamadoss, Advocate in
sr.no.81360 (10.02.2020)

S.A.No.1278 of 2009
& S.A.No.474 of 2017

RSV(CO)
CS/21/01/2020

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