

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.11.2019
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.561 of 2007
and
M.P.No.1 of 2007

Sivam

... Appellant

Vs

Kokilavathi
rep by the Power Agent Ponniah

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 14.07.2006 made in A.S.No.63 of 2006 on the file of the Sub court, Mannargudi confirming the Judgment and decree dated 16.09.2005 made in O.S.No.263 of 1997 on the file of the District Munsif Court, Mannargudi.

For Appellant : Mr.Srinath Sridevan
For Respondent : Ms.P.T.Ramadevi

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below.

Brief facts leading to the filing of the second appeal:

2. The Appellant is the defendant in the suit O.S.No.263 of 1997 on the file of the District Munsif Court, Mannargudi and the respondent is the plaintiff in the said suit.

3. For the purpose of convenience, parties are referred to as per their ranking before the Trial Court.

4. The suit was filed for recovery of possession of the suit schedule property. It is the case of the plaintiff that her mother, Mariyayee purchased the suit property from one Duraisamy on 13.03.1986 and she became the absolute owner of the suit schedule property by virtue of a release deed dated 29.01.1997. According to the plaintiff, the defendant has trespassed into the suit schedule property and he is a trespasser. Since the defendant failed to vacate the suit schedule property, it is the

case of the plaintiff that he is constrained to file a suit for recovery of possession.

5. However, it is case of the defendant as seen from the written statement that he purchased the suit schedule property from one Vengata Lakshmi Ammal through a sale deed dated 11.04.1980 and thereafter, he sold it to one Duraisamy who is none other than his uncle through a sale deed dated 25.10.1980. It is the case of the defendant that since there are no issues to Duraisamy, even after the sale of the property, the defendant was in joint possession of the suit property with Duraisamy. According to the defendant, he has been in continuous and lawful possession of the suit schedule property and he is not a trespasser.

6. Before the Trial Court, the plaintiff has filed 10 documents which were marked as Ex.A1 to Ex.A10 and three witnesses were examined on the side of the plaintiff. On the side of the defendant, 12 documents were filed which were marked as Ex.B1 to Ex.B12 and three witnesses were examined on the side of the defendant. During the pendency of the suit, an Advocate Commissioner was also appointed by the Trial Court who also filed a report along with sketch which were marked as Ex.C1 and Ex.C2.

7. The Trial Court by its judgement and decree dated 16.09.2005 decreed the suit O.S.No.263 of 1997 as prayed for by the plaintiff and granted the relief of recovery of possession. Aggrieved by the same, the defendant preferred an appeal before the lower appellate court namely Sub Court, Mannarkudi in A.S.No.63 of 2006. The lower appellate court confirmed the findings of the Trial court and dismissed the appeal on 14.07.2006. Aggrieved by the same, the defendant preferred this second appeal.

8. Heard Mr.Srinath Sridevan learned counsel for the Appellant/defendant and Ms.P.T.Ramadevi, learned counsel for the respondent/plaintiff.

Discussion:

9. Before the trial court, as seen from the evidence and materials available on record, the defendant has not disputed the release deed dated 29.01.1997 executed by other legal representatives of Mariayee in favour of the plaintiff which was marked as Ex.A3. The only defence of the defendant in the suit is that he has been in continuous possession and enjoyment of the suit schedule property even after the sale of the property by him to Duraisamy under the sale deed dated

25.10.1980 (Ex.B3). This being the case, the Trial Court has rightly held that he cannot continue to be in possession of the suit schedule property without any right whatsoever as he has already sold the property.

10. Admittedly, when there is no dispute about the execution of the release deed in favour of the plaintiff, the defendant cannot have any right to hold on to the property even though he continues to be in possession despite the sale by him to Duraisamy. It is abundantly clear that the defendant is only a trespasser. The plaintiff has traced her title only through Duraisamy. The Trial court has rightly held that the defendant has not established as to how he can continue to be remain in possession even after the sale of the property by him.

11. Based on the evidence available on record, this Court is of the considered view that the Trial Court has rightly decreed the suit in favour of the plaintiff who has become the absolute owner of the suit schedule property by virtue of the release deed dated 29.01.1997 (Ex.A3). The lower Appellate court has also rightly confirmed the findings of the Trial Court and dismissed the appeal filed by the defendant.

12. This Court admitted this second appeal on 24.06.2010 and formulated the following substantial questions of law:

"1. Whether the Court is justified in deciding the title of the Plaintiff without a prayer for declaration of title especially when the title of the Plaintiff is denied by the Defendant?

2. Whether the Court is justified without considering the description of suit property in commissioner report with the plaint to hold that the plaintiff has title for the suit house?

3. Whether the Court is justified in not considering various documents of possession filed by the Defendant for the house with Door No.14A/1 and not giving a finding that the property in possession of the Defendant is not the suit property with the Door No.14A/2?

4. Whether the decree of possession of house Door No.14A/2 is executable for possession of the house with Door No.14A/?"

13. Since the defendant has not disputed the execution of the release deed in favour of the plaintiff, which was marked as Ex.A3, there is no necessity to file a suit for declaration and the suit for recovery of possession is very much maintainable as the plaintiff's title over the suit property is an undisputed

one.

14. The description of the property found in the commissioner's report as well as the schedule mentioned in the plaint tallies. Further in the case on hand, the plaintiff has a registered release deed in his favour which has not been disputed by the defendant in the suit. Therefore, the Trial Court has rightly compared the description of the suit property found in the commissioner's report with the plaint and only thereafter has come to the conclusion that the plaintiff is the absolute owner of the suit schedule property.

15. It is an admitted fact that the defendant has sold the property to Duraisamy and the plaintiff traces her title only through Duraisamy. The Trial Court has rightly held that the defendant has not established as to how he remains in continuous possession and enjoyment of the suit schedule property, even though he had sold the property to Duraisamy. The Trial Court based on the evidence available on record, has rightly decreed the suit for recovery of possession filed by the plaintiff.

Conclusion:

16. For the foregoing reasons, the substantial questions of law formulated by this Court on 24.06.2010 are answered in favour of the Plaintiff who is the respondent herein.

17. This court does not find any perversity in the findings of both the courts below. Accordingly, the judgment and decree of the Trial Court as well as the lower appellate court is hereby confirmed and the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

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To

1. The Subordinate Judge Mannargudi
2. The District Munsif Court, Mannargudi.

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S.A. No.561 of 2007

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