

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.12.2019

PRONOUNCED ON : 20.12.2019

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN
S.A.No.481 of 2009

Santhana Krishnan ... Appellant/defendant

Vs.

1.Vijayarani
2.Mahadevan
3.Ranganathan Respondents/plaintiffs

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 24.03.2008 in A.S.No.53 of 2007 on the file of learned Principal Subordinate Judge, Myladuthurai, confirming the judgment and decree dated 28.08.2006 passed in O.S.No.113 of 2004 on the file of learned Principal District Munsif, Myladuthurai.

For Appellant : M/s.AL.Ganthimathi

For Respondents : Mr.S.Rajasekar

J U D G M E N T

This Second Appeal has been filed against the Judgment and decree dated 24.03.2008 passed in A.S.No.53 of 2007 on the file of learned Principal Subordinate Judge, Myladuthurai, confirming the judgment and decree dated 28.08.2006 passed in O.S.No.113 of 2004 on the file of learned Principal District Munsif, Myladuthurai.

2. The appellant herein is the defendant in the suit and the respondents herein are the plaintiffs in the suit. The respondents/plaintiffs have approached the trial Court seeking the relief of permanent injunction not to interfere in any manner with the peaceful possession and enjoyment of their suit schedule mentioned

properties.

3. The brief facts which gave raise to the filing of the said suit are stated hereunder:

The first plaintiff is the wife of defendant. The second and the third plaintiffs are the children of the defendant. The suit schedule properties are all located at Thirunallar Vattam, Pallarayapettai Panchayat, Mayiladuthurai Taluk. According to the plaintiffs, the grandfather of the plaintiffs 2 and 3 and the father of the defendant namely Kuzhandhaivel Chettiar had purchased the lands in respect of first item of the suit properties in his name and started Timber Dipot in and about 1980. In a similar manner, the second item of the suit properties was purchased in the name of the defendant from the assets of the joint family business. According to the plaintiffs, the defendant's grandfather namely Pitchaimuthu Chettiar had possessed an vast extent of lands in Mayiladuthurai Taluk. The defendant's father Kuzhandhaivel Chettiar sold the said lands and started business at Tiruvarur in 1957. The plaintiffs and the defendant have established a Saw-mill , which is the second item of the suit property in 1999 and according to the plaintiffs 2 and 3, they also managed the business belonging to the joint family.

4. At some point of time, it appeared that the defendant married second time when the first marriage with the first plaintiff was still subsisting. The defendant had illicit intimacy with the sister of the first plaintiff and started living with her. In view of wayward behavior, he was not able to manage the suit properties including the Mill properly. However, the plaintiffs, particularly, the plaintiffs 2 and 3 were taking care of the business of the family. In view of his wayward behavior, the plaintiffs suffered loss in the business and therefore, the family felt that in the interest of the business, not to allow the defendant to take care of the same. In the said circumstances, a family arrangement was entered into between the plaintiffs and defendant in the presence of panchayatars on 01.05.2001. The family arrangement was reduced to writing wherein, certain properties were divided including the business run by the defendant, which were mentioned in the plaint schedule properties. The defendant was allotted Timber business in Tiruvarur and the same was handed over to him and he moved away from

Mayiladuthurai to Tiruvarur, on being re-located. The plaintiffs 2 and 3 have also undertaken to discharge the debts owed by the defendant to the tune of Rs.46,33,000/-.

5. While matter stood thus, it appeared that the defendant and his henchmen started disturbing the peaceful possession and enjoyment of the plaintiffs over the suit schedule properties, which were in their possession during 2001-2002, which forced the plaintiffs, to approach the trial Court seeking for permanent injunction.

6. The suit was stoutly resisted by the defendant by filing written statement inter alia stating that all the averments contained in the plaint were false and incorrect. It was averred on behalf of the defendant in the written statement that the properties were managed by him successfully and it was the fact that the plaintiffs 2 and 3 were not looking after the business properly. The defendant has also stated in the written statement denying the factum of entering into family arrangement (Muchalika) with plaintiffs and therefore, the possession of the suit schedule properties claimed by the plaintiffs was false and they were not entitled to the relief of permanent injunction. According to the defendant, that no compromise was entered into between him and the plaintiffs and even assuming so, the same was not acted upon.

7. The trial Court which heard the matter in extenso, had allowed the suit in favour of the plaintiffs/respondents herein on the ground that the possession was established by the plaintiffs without any doubt and the trial Court had relied upon Ex.A8, a compromise which was entered into between the parties. The trial Court has also held that all the materials produced and the evidence would unequivocally establish the fact that the plaintiffs were in possession of certain suit properties and they have been managing the business and the properties were under their possession. Once the possession was established, the attempt by the defendant and his men to disturb the peaceful possession and enjoyment of the properties at the hands of the plaintiffs was uncalled for and therefore, the plaintiffs were entitled for relief as prayed for by them in the suit.

8. As against the decree and judgment of the trial Court in favour of the plaintiffs, an appeal was preferred in AS.No.53 of 2007, by the defendant. The lower Appellate Court, which heard the appeal, has ultimately confirmed the decree and judgment of the trial Court. In fact, the lower Appellate Court has given extensive reasons as to how the findings of the trial Court were in order and not to be tinkered with. In fact, the lower Appellate Court has clearly held in the judgment that the defendant himself had admitted in his evidence that there was a compromise between the plaintiffs and him on 01.05.2001(Ex.A8) and by virtue of the same, the plaintiffs were put in possession of the same. Even otherwise also according to the lower Appellate Court, the defendant again admitted that he had moved away from Mayiladuthurai to Tiruvarur on being relocated over a period of time and was doing business at Tiruvarur. Considering the clinching evidence in favour of the plaintiffs, and also the possessory rights enjoyed by the plaintiffs, the lower Appellate Court has confirmed the decree and judgment of the trial Court and dismissed the appeal. As against that, the present Second Appeal has been filed.

9. M/s.AL.Ganthimathi, learned counsel appearing for the appellant/defendant would submit that both the Courts below have erred in decreeing the suit in favour of the plaintiffs without reference to the various contentions of the defendant. Although, it was contested stoutly by the defendant about the factum of possession by the plaintiffs in respect of the suit properties, and also the denial of factum of executing the Compromise (Ex.A8), both the Courts below have committed an error by relying on Ex.A8 for the purpose of coming to the conclusion about the possession aspect. According to the learned counsel, on the whole, both the Courts below have failed to appreciate the stand of the defendant as against the plaintiffs, but have overlooked the crucial facts before decreeing the suit in favour of the plaintiffs.

10. During the course of arguments, it is brought to the notice of this Court that during the pendency of the Second Appeal, a Sale Deed was executed, which was a registered as Document No.1016/2014 dated 17.04.2014 at SRO, Mayiladuthurai by the appellant/defendant in favour of one of the plaintiffs and also a Settlement Deed dated 05.05.2014 registered in favour of one of the plaintiffs

as Document No.1137/14 at SRO, Mayiladuthurai. The said documents viz., both the Sale Deed as well as the Settlement Deed cover the substantial suit schedule properties. The learned counsel would agree that in view of the subsequent developments, the plaintiffs have become the absolute owners of the suit schedule property.

11. Mr.S.Rajasekar, the learned counsel for the respondents/plaintiffs would submit that the documents as mentioned above i.e., Sale Deed dated 17.04.2014 and the Settlement Deed dated 05.05.2014 would cover item nos.2 & 3 of second item and the first item in suit properties respectively. What remains to be considered by this Court is only item nos.1 & 4 of second item of the suit schedule properties.

12. Considered the submissions of the learned counsel appearing for the parties and perused the pleadings and the materials and the entire evidence placed on record.

13. The trial Court, while considering the relief claimed in the original suit, has adverted to various materials/documents and the oral evidence tendered by the parties. The trial Court found that there was over whelming evidence in favour of the plaintiffs in regard to the factum of possession of the suit properties by the plaintiffs. In fact, in the cross examination, the defendant himself has admitted about the possession and execution of the Compromise dated 01.05.2001(Ex.A8). Although, it was stoutly denied in the written statement filed on behalf of the defendant, ultimately in the evidence tendered by him in the proceedings of the Courts below, it was categorically admitted by the defendant about the execution of the above said document ie., Ex.A8. It was also transpired from the further evidence of the defendant himself, that the Compromise entered into between the parties(Ex.A8), was also acted upon. In fact, the defendant himself has agreed that he moved away to Tiruvarur from Mayiladuthurai and was residing there and looking after the business located at Thiruvarur.

14. In such circumstances, both the Courts below have come to the correct conclusion that the plaintiffs were in possession of the suit schedule properties and therefore, they were entitled to grant of relief of

permanent injunction. In fact, the Courts below have categorically held that the defendant was not able to establish his case at all. The defendant, in fact admitted and it was also recorded by the lower Appellate Court that the suit schedule properties were, not in his possession, The lower Appellate Court has also clearly recorded that the defendant had accepted in his cross examination that as per Ex.A8, the properties were divided and the suit schedule properties were given to the plaintiffs. In the face of such clinching evidence from the mouth of the defendant himself, who was examined as DW1, no more evidence was required to the Courts below to come to the conclusion in favour of the plaintiffs.

15. From the over all evidence and consideration of the Courts below that it was a open and shut case for the plaintiffs and although there was a semblance and resistance put up on behalf of the defendant, ultimately, in the face of his own evidence coupled with the materials placed for consideration, the case of the defendant eventually fell flat. Contrarily, the plaintiffs' case was supported by the complete evidence and the factum of their possession of the suit schedule properties was unequivocally established beyond any pale of doubt. In the said circumstances, the Court below have decreed the suit in favour of the plaintiffs which according to this Court, do not call for any interference.

16. Accordingly, the substantial questions of law framed by this Court at the time of admitting the Second Appeal are answered in favour of the plaintiffs / respondents and as against the appellant / defendant.

17. For the above said reasons, this Court finds that the Second Appeal is completely being devoid of merits and substance and therefore, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Subordinate Judge, Myladuthurai
- 2.The District Munsif at Myladuhurai.

Copy to:The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Mrs.AL.Ganthimathi, Advocate, S.R.No.106453

+1cc to Mr.S.Rajasekar, Advocate, S.R.No.106171

S.A.No.481 of 2009

RJI (CO)
CB(21/07/2020)



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