

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2019
PRONOUNCED ON : 19.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1414 of 2005

K.Gangadharan

...Appellant/Plaintiff

Vs.

Kandasamy

...Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 31.01.2005 made in A.S.No.430 of 2004 on the file of the Court of the Principal City Civil Judge at Chennai confirming thereby the decree and judgment dated 29.06.2004 made in O.S.No.4953 of 2003 on the file of the court of the XV Assistant City Civil Judge, Chennai.

For Appellants : Mr.A.Abdul Kadar

For Respondent : Mr.K.P.Gopalakrishnan

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 31.01.2005 passed in A.S.No.430 of 2004 on the file of the Principal Judge, City Civil Court, Chennai, confirming the judgment and decree dated 29.06.2004 passed in O.S.No.4953 of 2003 on the file of the XV Assistant Judge, City Civil Court, Chennai.

2. The second appeal has been admitted on the following substantial question of law.

"a) Whether the Courts below are right in law in proceeding to deal with the matter as though the suit is one for title to the suit passage whereas the appellant has claimed merely exclusive right of user of the same?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. The plaintiff has laid the suit simplicitor for the relief of permanent injunction against the defendant. The property in dispute is only with reference to the passage leading to the plaintiff's flat put up in the suit survey number from the car parking area measuring an extent of 7 feet x 38 feet.

6. Materials placed on record go to show that the suit property comprised in T.S.No.144 Block No.20 of the total extent of 4,580 sq.ft. situated at No.109, Puliur Village belonged to Devakiammal land she had entered into an agreement with one M/s.Viswakeerthi Associates for building 13 flats in the said area. It is seen that the plaintiff had purchased the flat No.E-5 measuring 686 sq.ft including common area in the ground floor together with 299 sq.ft. of undivided share in the abovesaid property from Devakiammal by way of a sale deed dated 17.08.2000 marked as Ex.A1. As above noted, the dispute between the parties is only as regards the passage measuring 7 feet x 38 feet and according to the plaintiff, he had been given exclusive right over the said passage by Devakiammal and accordingly he has been enjoying the same by putting up the iron gate, etc., and the defendant, without any entitlement, attempted to interfere with his possession and enjoyment of the abovesaid passage and hence it is stated that plaintiff has been necessitated to lay the suit for appropriate relief.

7. Per contra, according to the defendant, Devakiammal had sold only an extent of 299 sq. ft of undivided share of land in the abovesaid property to the plaintiff and when Devakiammal herself had not retained any exclusive right over the said common area, the case of the plaintiff that he had acquired absolute right in respect of the same from Devakiammal, as such, is untenable in the eyes of law. According to the defendant, all the flat owners are entitled to use the common area and the plaintiff's claim of exclusive right to the same is misconceived and denied the case of the plaintiff that he had interfered with his possession and enjoyment of the passage in dispute.

8. From the documents projected by the Plaintiff, it is seen that Devakiammal had retained only 972 of sq. ft of undivided share in the land and with reference to the remaining land, she had not retained any exclusive right. Accordingly, it is found that by way of Ex.A1 sale deed, she had only conveyed undivided share of the land with 299 sq. ft to the plaintiff in the common area and in such view of the matter, when Devakiammal herself had not retained exclusive right over the abovesaid area,

particularly, the passage in question, the claim of the plaintiff that he had been conveyed absolute right by Devakiammal over the passage, as such, cannot be accepted and rightly rejected by the courts below. In such view of the matter, the claim of the plaintiff, as regards the exclusive right to the abovesaid passage, by way of Exs.A2 and A3 documents, cannot be accepted, particularly, when his vendor had not retained any such right with reference to the same. Furthermore, there is no proof placed on the part of the plaintiff that either her vendor or he had exercised absolute possession and enjoyment of the passage in dispute exclusively. The plaintiff during the course of evidence has admitted that his vendor did not convey any exclusive right over the passage measuring 7 feet x 38 feet by way of Ex.A1. The courts below had culled out the admission on the part of the plaintiff made during the course of cross examination whereunder he has admitted that his vendor had not conveyed any exclusive right over the passage in dispute and he had purchased only undivided share of land in 299 sq. ft of the common area and no agreement had been entered into with reference to the passage of measuring 7 feet x 38 feet and also admitted that it is correct to state that he along with other flat owners should enjoy the abovesaid passage in common and the sale deed marked as Ex.A1 does not convey any exclusive right to him over the said passage and furthermore, has also admitted that the telephone wire, borewell pipe, etc., are passing through the common passage and also admitted that he has no objection in the abovesaid telephone wire, borewell, drainage pipe passing under the said passage and in such view of the matter, when it has been clearly admitted on the part of the plaintiff that he had not been conveyed any exclusive right to the passage in dispute and only conveyed the common right and the same to be enjoyed along with other flat owners of the property, in such view of the matter, the courts below are found to be fully justified in negating the reliefs sought for by the plaintiff. As rightly determined by the courts below, inasmuch as the plaintiff has not been conveyed any exclusive right over the passage in dispute, he has also not endeavored to seek the relief of declaration of title to the same and when the exclusive possession and enjoyment of the passage in dispute has not been established by the plaintiff and the same is found to be a common area laid out for the common enjoyment by all the flat owners, the relief of injunction cannot be sought for by the plaintiff against the other flat owners and the same had been rightly discountenanced by the courts below. I do not find any valid reason to interfere with the judgment and decree of the of the courts below in dismissing the plaintiff's suit. In my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial question of law formulated in this second appeal is accordingly answered against the plaintiff and

in favour of the defendant.

9.In conclusion, the second appeal fails and is dismissed with costs. Consequently, connected miscellaneous petition,if any, is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

bga
To

1. Principal Judge, City Civil Court, Chennai
2. XV Assistant Judge, City Civil Court, Chennai.

Copy to

The Section Officer, V.R.Section, High Court,
Madras

+1 CC to Mr.A.Abdul Kadar, Advocate sr 25551.

+1 CC to Mr.K.P.Gopalakrishnan, Advocate sr 25577.

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