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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :22.04.2019

PRONOUNCED ON:03.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1480 of 2005

1. Gandhi

2.Anjapuli

... Appellants/Defendants

Vs.

Ammasi

... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 11.10.2004 passed in A.S.No.40 of 2003 on the file of the Subordinate Court, Chidambaram confirming the judgment and decree dated 30.09.2003 passed in O.S.No.45 of 2000 on the file of the District Munsif cum Judicial Magistrate Court, Portnova.

For Appellants : M/s.A.Nilapher
for M/s.R.Meenal

For Respondent: Mr.A.Muthukumar

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 11.10.2004 passed in A.S.N.40 of 2003 on the file of the Subordinate Court, Chidambaram confirming the judgment and decree dated 30.09.2003 passed in O.S.No.45 of 2000 on the file of the District Munsif Court cum Judicial Magistrate Court, Portnova

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



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1. Whether in law, the Courts below are right in overlooking that Ex.B1 sale deed being prior to Ex.A1 title passed to the appellants and the respondent could not have his title declared?

2. Whether in law the Courts below are right in granting a decree for injunction in favour of the respondent when not a single documents has been filed to show possession subsequent to the date of purchase?

3. Whether in law the lower appellate Court was right in omitting to frame proper points for determination as mandated in Order 41 Rule 31 of CPC?

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. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. Suffice to state that the plaintiff has laid the suit against the defendants for the reliefs of declaration and permanent injunction.

6. It is not in dispute that the total extent of 4 acres and 24 cents in the suit survey number originally belonged to Balachandra Rediyar. Now, according to the plaintiff, he has purchased the suit property from Balachandra Rediyar, by way of Ex.A1 sale deed dated 15.05.2000 and claiming that it is only the plaintiff who has the title to the suit property and the same is in his possession and enjoyment and complaining that the defendants without any authority or entitlement, attempted to interfere with his possession and enjoyment, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

7. The defendants resisted the plaintiff's suit contending that they had been in the possession and enjoyment of an extent of 2.66 acres of land in the suit survey number by way of lease arrangement and thereafter the owner Balachandra Rediyar approached them for the sale of the extent covered in the suit survey number and accepting the same, according to the defendants, the extent of one acre and 15 cents had been purchased by the first defendant by way of a sale deed dated 12.05.2000 and the said sale deed had been registered on 08.09.2000 and further it is stated that the second defendant had purchased an extent of one acre lying to the south of the property purchased by the first defendant by way of a sale deed dated 08.09.2000 and accordingly it is contended that the defendants are entitled to the extent of 2 acres and 16 cents by way of the abovesaid purchases and the extent of 50 cents on the



northern side is in the possession and enjoyment of the defendants on lease arrangement and according to the defendants on account of enmity, the plaintiff entered into a speculative transaction and claimed a false title to the suit property and hence according to the defendants, the plaintiff is not entitled to seek and obtain the reliefs as prayed for.

8. On an appreciation of the materials placed on record, the Courts below were pleased to accept the plaintiff's case and aggrieved over the same, the present second appeal has been preferred by the defendants.

9. The plaintiff has examined the owner of the suit property Balachandra Rediyar as P.W.2. As could be seen from the averments contained in the plaint and in the written statement, it is found that both the plaintiff as well as the defendants claim to have purchased the various extents in the suit survey number from P.W.2 Balachandran. As abovenoted, the parties are not in dispute that P.W.2 is the original owner of the total extent of 4 acres and 24 cents in the suit survey number. P.W.2 has come forward and clearly deposed that he had alienated the suit property within the specific boundaries in favour of the plaintiff by way of Ex.A1 sale deed and also put the plaintiff in the possession of the same. Accordingly, it is seen that the same had been rightly accepted by the Courts below and on that footing proceeded to hold that it is only the plaintiff, who has the title to the suit property having acquired the same from the lawful owner thereof.

10. As abovenoted, the defendants also claimed to have purchased certain extents of land in the suit survey number from P.W.2. As rightly determined by the Courts below, inasmuch as, the defendants have not come forward in specific that they have purchased the suit property from P.W.2 and on the other hand, have only come forward that they have purchased the various extents in the said survey number by way of the sale deeds dated 12.05.2000 and 08.09.2000 marked as Exs.B1 and B2 and particularly not disputing the plaintiff's sale deed Ex.A1 and on the other hand, as abovenoted, would only claim that the plaintiff had ventured into the abovesaid sale transaction speculatively, in such view of the matter, as rightly determined by the Courts below, it is found that the defendants, as such, are not claiming to have purchased the suit property by way of Exs.B1 and B2 sale transactions. In such view of the matter, the case projected by the defendants that inasmuch as, their sale deeds particularly Ex.B1 is anterior in point of time and though Ex.B1 had been registered on 08.09.2000, the registration would date back to the date of execution as per law and accordingly contended that their sale deeds would have



precedence over the plaintiff's sale deeds Ex.A1. However, as rightly determined by the Courts below, the abovesaid proposition of law would not be applicable to the present case, as it is found that the defendants are not claiming that they had acquired the suit property in specific by way of Exs.B1 and B2 sale deeds. As could be seen from the recitals contained in Exs.B1 and B2, it is found that by way of Ex.B1, an extent of 1.15 acres of land had been acquired by the first defendant and by way of Ex.B2, 1 acre had been acquired by the second defendant, and inasmuch as, Ex.B1 had been executed on 12.05.2000 itself, while describing the property described therein, it has been shown as lying to the north of the land belonging to Balachandra Rediyar and inasmuch as, Ex.A1 sale deed had been registered on 08.09.2000 and Ex.A2 having been executed and registered on 08.09.2000, accordingly, it is found that while describing the property in Ex.A2, the same is shown to be lying to the south of the property acquired by the first defendant under Ex.B1 sale transaction. In such view of the matter, it is found that the property comprised in Ex.A1 is not the property comprised in Exs.B1 and B2. The suit property comprised in Ex.A1 is stated to be lying in the centre of the suit survey number within the specific boundaries and accordingly the boundary recitals are contained in Ex.A1 showing the same lying to the north of the Balachandra Rediyar's lands. Though the defendants would claim that they had been enjoying an extent of 2 acres and 66 cents in the suit survey number on lease arrangement, however to evidence the same, there is no material putforth on the part of the defendants. P.W.2 would claim that the defendants are not enjoying the abovesaid extent on lease arrangement. Furthermore, to evidence that the defendants had been in the possession and enjoyment of the extent of 2 acres and 66 cents on lease arrangement, absolutely, there is no material pointing to the same on the part of the defendants. Furthermore, the defendants have not come forward as to where the extent of 2 acres and 66 cents said to be in their possession on lease arrangement lies in the suit survey number, particularly, within which boundaries the same is found to be located. As rightly determined by the Courts below, if really, the defendants had been in the possession and enjoyment of 2 acres and 66 cents in the suit survey number, when the owner had approached them to purchase the extent in the abovesaid suit survey number, the defendants would have come forward to purchase the extent of 2 acres and 66 cents from the original owner and on the other hand, as abovenoted, by way of Exs.B1 and B2, the defendants are found to have purchased only an extent of 2 acres and 15 cents and furthermore, when the defendants have failed to establish that the remaining 50 cents is in their possession and enjoyment and that the remaining 50 cents form part of the suit property and also failed to establish that the 50 cents of land is in their possession and



enjoyment and when the documents projected by the defendants are standing only in the name of Balachandra Rediyar and when the true owner namely P.W.2 had clearly deposed that the suit property had been alienated only in favour of the plaintiff, in such view of the matter, the Courts below are fully justified in upholding the plaintiff's case. The defendants cannot be allowed to take advantage of the so called admission of P.W.2 that the defendants are in the possession and enjoyment of the land excluding the land covered under the sale deeds. As above noted, the suit survey number is found to be measuring an extent of 4 acres and 24 cents. When it is found that the defendants had acquired specific extent and the plaintiff has acquired the specific extent in the suit survey number from P.W.2, the so called admission of P.W.2 could also be interpreted, in such view of the matter, also excluding the land alienated in favour of the plaintiff namely, the suit property, the other extents are in the possession and enjoyment of the defendants. Even the defendants have not pleaded, they had been in the possession and enjoyment of the entire extent available in the suit survey number. When even according to them they are in the possession and enjoyment of only 2.6 acres under the lease arrangement and as at present, when they are found to have acquired only an extent of 2 acres and 15 cents under Exs.B1 and B2 put together and when there is no proof on the part of the defendants that the remaining extent of 50 cents is in their possession and enjoyment and that the same relates to the suit property and in such view of the matter, the abovesaid so called admission on the part of P.W.2 would not in any manner advance the case of the defendants and the same had been rightly considered and determined by the Courts below and in such view of the matter, it is found that the courts below had properly appreciated the materials placed on record in the right perspective and determined that it is only the plaintiff who has the title, possession and enjoyment of the suit property and the defendants have no right, possession and enjoyment in respect of the suit property and accordingly, rightly granted the reliefs in favour of the plaintiff.

11. In the light of the abovesaid discussions, no reason is warranted to interfere with the concurrent judgment and decree of the Courts below in upholding the plaintiff's case. In my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the defendants and in favour of the plaintiff.

12. The counsel for the plaintiff in support of his contentions placed reliance upon the decision reported in 2000 (3) MLJ 199 (SC) [Boramma Vs. Krishna Gowda and others]. The principles of law outlined in the abovesaid decision are taken



into consideration and followed as applicable to the case at hand.

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

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge, Chidambaram.

2. The District Munsif cum Judicial Magistrate, Portnova.

Copy to

The Section Officer,
VR Section, High Court,
Chennai.

+1cc to M/s.R.Meenal, Advocate SR.No.44818

+1cc to Mr.A.Muthukumar, Advocate SR.No.44566

S.A.No.1480 of 2005

SJ(CO)
GMY(21/10/2019)