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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2019

PRONOUNCED ON : 05.04.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.368 of 2005

Anjammal ...Appellant/Respondent/Plaintiff

Vs.

1. Varadharajan (deceased)
...1st Respondent/Appellant/Defendant

2.Mariammal

3.Rajadurai

4.Rajendran

5.Mallika

6.Kannagi

7.Gandhimathi ... Respondents 2 to 7

RR2 to 7 brought on record as Lrs of the deceased
R1 vide order of court dated 13.02.2019 made in
C.M.P. Nos.728 to 730 of 2012 in S.A.No.368 of 2005

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of Additional Sub Court, Mayiladuthurai, dated 21.12.2004 made in A.S.No.36 of 2004 reversing judgment and decree of Additional District Munsif Court, Mayiladuthurai dated 11.08.2003 made in O.S.No.154 of 2000.

For Appellant : Mr.S.Sounthar

For Respondents: Mr.A.Muthukumar

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 21.12.2004 passed in A.S.No.36 of 2004 on the file of the Additional Subordinate Court, Mayiladuthurai reversing the judgment and decree dated 11.08.2003 passed in O.S.No.154 of 2000 on the file of the Additional District Munsif Court, Mayiladuthurai.



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

"1. Whether the lower appellate court is justified in relying on documents marked in some other suit without proper proof in the manner known to law?

2. Whether the lower appellate court is erred in not framing proper points arising for consideration as mandated by order 41 rule 31 of C.P.C.?

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 their rankings in the trial court.

5. Suit for permanent injunction. The case of the plaintiff, in brief, is that she had purchased the suit property from one Balasubramania Iyer and enjoying the same for more than 20 years by paying kists, etc., and the plaintiff is a widow and the defendant is her brother. The plaintiff had been permitting the defendant to pluck usufructs of the trees lying in the suit property now and then and on the other hand, the defendant on its own, by attempting to trespass into the suit property, had endeavoured to enjoy the usufructs of the trees in the suit property and the same had been prevented by the plaintiff. However, inasmuch as the defendant continued in persisting his unlawful action and thereby disturbed the plaintiff's possession and enjoyment of the suit property, it is stated that the plaintiff has been necessitated to lay the suit for appropriate relief.

6. The defendant resisted the plaintiff's suit contending that the suit property has not been properly described, particularly, the boundaries to the suit property. To the north of the suit property, the land belonging to the defendant's wife Mariammal, measuring 11 ½ cent lie and only to the north of the same kalam lies and suppressing the same, the plaintiff has come forward with the suit inclusive of the property belonging to the defendant's wife. Even the extent of the suit property has not been correctly given. It should be only 54 kulies and the suit property is stated to be measuring 56 kulies and the suit property is inclusive of the defendant's wife's property as abovestated. Even the commissioner, who had been appointed in the matter, had noted the physical features obtaining in the suit property and therefore, the suit property is not in the



possession and enjoyment of the plaintiff as put forth in the plaint and hence the suit is liable to be dismissed.

7. In support of the plaintiff's case P.Ws.1 and 2 were examined and Exs.A1 to A8 were marked. On the side of the defendant, D.Ws.1 and 2 were examined and Ex.B1 was marked. Exs.C1 and C2 were also marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiff as prayed for. The first appellate court, on an appreciation of the materials placed on record, partly allowed the appeal by determining that the plaintiff is entitled to the relief of permanent injunction in respect of the house bearing door No. 5/61 lying in the suit property and in other aspects, dismissed the plaintiff's suit and accordingly disposed of the appeal preferred by the defendant. Impugning the same, the plaintiff has come forward with the second appeal.

9. From the materials placed on record, it is found that the plaintiff claims title to the suit property based on the sale deed dated 12.09.2000 marked as Ex.A7. The suit property is described as lying in the suit village in survey No.329/1A consisting of a house bearing door No.5/61 with backyard portion measuring an extent of 56 kulies lying to the east of road, west of Kannaiyan's land, south of kalam and north of the house and backyard of Krishnamurthy with backyard and trees thereon. Claiming that the abovesaid property, as described in the plaint, is in the possession and enjoyment of the plaintiff, the plaintiff has come forward with the suit alleging that the defendant, without any entitlement to the same, is disturbing her possession and enjoyment. On a perusal of the sale deed dated 12.09.2000 projected by the plaintiff for claiming title to the suit property from the erstwhile owner, the copy of the sale deed has been marked as Ex.A7 whereunder, it is seen that the plaintiff has acquired only an extent of 9 cents in survey No.329/1A of the suit village and the abovesaid property is described as lying to the south of kalam, east of Anjammal's house, north of Krishnamurthy's punjai and west of Kannaiyan's nanjai and the abovesaid property has been described as a vacant site in Ex.A7. By way of the abovesaid sale transaction, it is found that the plaintiff has acquired only a portion of the suit property, as described in the plaint, of an extent of 9 cents out of 56 kulies as shown in the plaint schedule. Even the extent of 56 kulies is not admitted by the defendant and according to the defendant, the extent is only 54 kulies. Be that as it may, by virtue of Ex.A7 sale transaction, at the most, the plaintiff would be entitled to claim title to an extent of 9 cents only and thereby, it is found that the claim



regards the claim of title to the suit property from Balasubramania Iyer, the owner, absolutely there is no material forthcoming on the part of the defendant. The defendant having put forth the defence that the suit property belonged to Balasubramania Iyer cannot turn around and state that his wife had purchased a portion of the suit property and inclusive of his wife's property, the plaintiff has come forward with the suit. It is thus found that even the defendant is not sure as to where his wife's property lies.

11. Be that as it may, when the plaintiff has come forward with the relief of permanent injunction on the footing that the suit property, as described in the plaint, is in her possession and enjoyment and would rely upon Ex.A7 sale transaction for acquiring the portion of the suit property from the owner Balasubramania Iyer, however, by way of the abovesaid document in isolation, it could not be determined that the plaintiff is in the possession and enjoyment of the suit property in entirety as described in the plaint and when the other documents projected by the plaintiff, for sustaining her case, are not useful to hold that the suit property, as described in the plaint, is in her possession and enjoyment, in such view of the matter, in my considered opinion, the plaintiff cannot be granted the equitable relief of permanent injunction as prayed for in respect of the suit property. Furthermore, when the description of the suit property, as found in the plaint schedule and the description of the property as found in Ex.A7 sale transaction, do not tally with each other as such, in such view of the matter, on the basis of Ex.A7 alone, we cannot infer that the plaintiff is in the possession and enjoyment of the suit property in entirety.

12. The defendant himself has admitted in the written statement that it is only the plaintiff, who has been in the possession and enjoyment of the house portion lying in the suit property. According to the defendant, on his permission, the plaintiff is residing there. However, the same had been refuted by the plaintiff. Be that as it may, as admitted by the defendant, the plaintiff is found to be in the portion of the suit property, particularly, where the house is lying.

13. In the light of the abovesaid factors, it is found that the first appellate court by determining that the plaintiff has failed to establish her possession and enjoyment of the suit property in entirety as claimed by her and her possession of the house lying in the suit property has been admitted by the defendant, accordingly, to the abovesaid limited extent alone, had granted the relief of permanent injunction in favour of the plaintiff and dismissed the plaintiff's suit as regards the other aspects.



14. That apart, the parties had been vying with each other for claiming the title to the suit property one way or the other, in such view of the matter, particularly, when the defendant has laid the suit claiming the title to the suit property against the plaintiff in O.S.No.161 of 2001, even thereafter, the plaintiff has not endeavoured to seek the relief of declaration of title to the suit property for sustaining her claim, on that score also, the first appellate court discountenanced the plaintiff's suit rightly.

15. In the light of the abovesaid factors, the plaintiff having failed to establish her possession and enjoyment of the suit property as described in the plaint and in such view of the matter, the first appellate court is found to be justified in granting the relief of permanent injunction in favour of the plaintiff only in respect of the house portion lying in the suit property as determined by it and justified in dismissing the plaintiff's suit in other aspects, and in my considered opinion, no interference is called for with reference to the same. In such view of the matter, it is seen that no substantial question of law is found to be involved in the second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendant.

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

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bga

To

1. Additional Subordinate Court,
Mayiladuthurai.
2. Additional District Munsif Court,
Mayiladuthurai.



Copy to

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

+lcc to Mr.S.Sounthar, Advocate Sr.33620
+lcc to Mr.A.Muthukumar, Advocate Sr.33297

S.A.No.368 of 2005

mr[co]
srg 31/07/2019