



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2019
PRONOUNCED ON : 09.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No. 723 of 2019
and
CMP No.13817 of 2019

Murugan ... Appellant/Appellant/Plaintiff

Vs.

Panneer Selvam ... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of dismissing the appeal suit in A.S.No.172/2016 dated 29-10-2018 on the file of the III Additional Judge, City Civil Court at Chennai by confirming the judgment and decree in O.S.No.1946/2008 dated 11-09-2015 passed by the XVII Assistant Judge City Civil Court at Chennai.

For Appellant : Mr.B.Gopalakrishnan

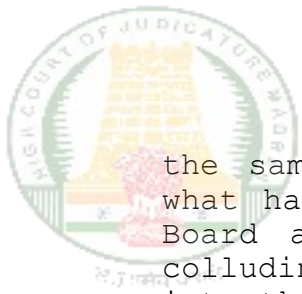
JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 29-10-2018, passed in A.S.No.172/2016, on the file of the III Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 11-09-2015, passed in O.S.No.1946/2008, on the file of the XVII Assistant Judge, City Civil Court, Chennai.

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

3. Suit for permanent injunction.

4. Claiming that the suit property had been allotted to him by the Tamil Nadu Slum Clearance Board and that the same had been in his possession and enjoyment and putting forth the case that one Nagammal, who had been allotted plot No.287 on the southern side of the plaintiff's property only for an extent of 46 sq.meter from the Tamil Nadu Slum Clearance Board, had sold



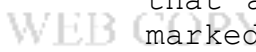
the same to the defendant, however, for a larger extent than what had been allotted to her by the Tamil Nadu Slum Clearance Board and consequently, it is put forth that the defendant, colluding with Nagammal, attempted to interfere and encroach into the suit property belonging to him and the plaintiff lodged a police complaint, despite the same, the defendant is bent upon to continue the misdeeds and hence, it is stated that the plaintiff had been necessitated to come forward with the suit for the relief of permanent injunction.

5. The defendant resisted the plaintiff's suit contending that the plaintiff has no cause of action to institute the suit and according to the defendant, his vendor Nagammal had been allotted plot No.285 by the Tamil Nadu Slum Clearance Board, measuring an extent of 75.26 sq.meters and that the same had been sold by Nagammal through her power of attorney in his favour for a valid consideration and accordingly, the defendant has been in the possession and enjoyment of the abovesaid property and the plaintiff has laid the suit on a misconception that Nagammal had been allotted only 46 sq.meters whereas in fact, she had been allotted 75.26 sq.meters and further, according to the defendant, it is only the plaintiff who had demolished the western side of the compound wall of the defendant's property with an intention to grab his suit property and the defendant at no point of time has interfered with the possession and enjoyment of the plaintiff in respect of the suit property and the plaintiff has no cause of action and therefore, the suit is liable to be dismissed.

6. Based on the materials placed on record and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

7. It is found that the plaintiff has been allotted the suit property. There is no dispute, as such, with reference to the same. It is further seen that the property lying to the south of the plaintiff's property had been allotted to Nagammal. According to the plaintiff, Nagammal had been allotted only 46 sq.meters in the abovesaid plot and she had sold a larger extent than what she had been allotted, in favour of the defendant under on that guise, it is stated that the defendant is attempting to interfere with his possession and enjoyment of the suit property.

8. Per contra, it is the specific case of the defendant that Nagammal had been allotted 75.26 sq.meters and the same had been alienated by her to him and the defendant is in the possession and enjoyment of the abovesaid extent and never interfered with the plaintiff's possession and enjoyment of the suit property



9. Considering the materials placed on record, it is found that as put forth by the defendant, particularly, the documents marked as Exs.B1 and B2, it is seen that Nagammal had been allotted the plot with an extent of 75.26 sq.meters and not 46 sq.meters as alleged by the plaintiff. Thus, it is seen that the plaintiff, without having any knowledge as regards the extent of the property allotted to Nagammal and purchased by the defendant, has come forward with the case as if Nagammal had sold more extent than what she is entitled to and on that basis, the defendant is attempting to encroach into his property. During the course of his evidence, the plaintiff has completely pleaded ignorance about the actual extent of the property allotted to Nagammal and alienated by her. With reference to the same, he has stated that he has not seen any document. In such view of the matter, it does not stand to reason as to how come the plaintiff would project the case that the defendant had purchased a larger extent from his vendor than what she is actually entitled to and thereby endeavouring to disturb his possession and enjoyment of the suit property. It is thus found that the plaintiff had not verified any facts and found to have laid the suit without any basis or reasons as if the defendant is attempting to disturb his possession and enjoyment of the suit property. Accordingly, it is evident, as determined by the Courts below that the very basis of the plaintiff's case falls to the ground when it is seen that Nagammal had been allotted an extent of 75.26 sq.meters in respect of the plot No. 285 and therefore, the cause of action projected by the plaintiff is found to be false and accordingly, the plaintiff is not able to sustain the same with acceptable materials. Even though the plaintiff is found to have examined one Chakkravarthi as PW2 and considering the evidence of PW2, in toto, when he is unable to state anything about the extent of the plot allotted to the plaintiff and acquired by the defendant and on the other hand, had been given wrong measurements and would admit that the problem had been erupted between the parties when the plaintiff attempted to reconstruct the wall lying between his property and the defendant's property and accordingly, it is seen that the Courts below had rightly not placed reliance upon his evidence for accepting the plaintiff's case. Though the plaintiff would claim that he has lodged a police complaint against the defendant for the alleged case of interference, with reference to the said plea, no material is forthcoming on the part of the plaintiff.

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only his property and not endeavouring to encroach into the plaintiff's property in any manner and the case projected by the plaintiff with reference to the same lacks support with acceptable evidence and on the other hand, when as above discussed, the plaintiff has instituted the suit with no cause of action as such and when the relief of permanent injunction, being the discretionary and equitable relief, has to be granted only to a rightful person to protect his property from unlawful interference and when there is no material put forth by the plaintiff that the defendant has attempted to cause interference with the possession and enjoyment of his suit property in any manner, in such view of the matter, the Courts below are found to be fully justified in declining the relief of permanent injunction prayed for by the plaintiff, particularly, by determining that the plaintiff has no cause of action at all to lay the suit against the defendant.

11. The reasonings and conclusions of the Courts below for dismissing the plaintiff's case found to be on the proper appreciation of the materials available on record and not suffering from any perversity or irrationality in any manner and also based on the principles of law governing the issues with reference to the parties, in all, it is seen that no interference is warranted in the concurrent judgment and decree of the Courts below. No substantial question of law is found to be involved in the second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1. The III Additional Judge,
City Civil Court, Chennai

2. The XVII Assistant Judge,
City Civil Court, Chennai.

+1 CC to Mr.B.Gopala Krishnan, Advocate sr 57523.

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RSV(CO)
SP(20/11/2019)