

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.07.2019

PRONOUNCED ON : 19.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.602 of 2019

1.K.Govindan
2.Venkatesan

... Appellants/Appellants/Plaintiffs

Vs.

1.Rose Mudaliar
2.Prathaban
3.Vedha
4.Ramesh

..Respondents 1 to 4/Respondents 2,4, to 6/
Defendants 2, 4 to 6

5.Uma
6.Rasi
7.R.Jothi

..Respondents 5 to 7/Respondents 7 to 9

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 22.11.2018 passed in A.S.No.13 of 2011 on the file of the Subordinate Court, Ponneri, confirming the Judgment and Decree dated 16.12.2010 passed in O.S.No.45 of 1998 on the file of the District Munsif Court, Ponneri.

For Appellants : Mr.R.Munuswamy

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 22.11.2018 passed in A.S.No.13 of 2011 on the file of the Subordinate Court, Ponneri, confirming the Judgment and Decree dated 16.12.2010 passed in O.S.No.45 of 1998 on the file of the District Munsif Court, Ponneri.

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

3.The suit has come to be laid by the plaintiffs for the relief of permanent injunction.

4.The plaintiffs claim title to the suit property based on the oral exchange said to have been entered into between the first defendant and the first plaintiff on 05.02.1966 and on that footing, contended that they are in the possession and enjoyment of the suit property and the defendants, without any entitlement, are attempting to interfere with their possession and enjoyment of the suit property and hence, according to the plaintiffs, they had been necessitated to lay the suit against

the defendants for appropriate relief.

5.The defendants resisted the plaintiffs' suit contending that they had acquired title to the suit property by way of the sale deed dated 07.04.1964 marked as Ex.B1 and thereafter, Masilamani Mudaliar had bequeathed the property by way of the Will dated 13.05.1977 marked as Ex.B2 and accordingly, contended that the plaintiffs have no manner of right, title and interest over the suit property in any manner and prayed for the dismissal of the plaintiffs' suit.

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

7.The plaintiffs claimed to be in the possession of the suit property based on the oral exchange, however, as rightly considered by the Courts below, when the plaintiffs have not come forward with any materials as to on what basis they had derived title to the suit property by way of oral exchange and with reference to the same, as to what property they had given to the first defendant by way of oral exchange, when with reference to the abovesaid plea, there is completely lack of materials on the part of the plaintiffs, the plea of oral exchange cannot be sustained in the eye of law and the Courts below are found to be totally justified in not believing the abovesaid case of the plaintiffs for sustaining their claim of possession and enjoyment of the suit property.

8.Barring the plea of oral exchange, the plaintiffs have not put forth any claim of title to retain the possession and enjoyment of the suit property. However, it is found that the plaintiffs during the course of arguments also sought to put forth the plea of adverse possession and the same has been rightly turned down by the Courts below, considering the position that such a plea of adverse title is quite inconsistent to the plea of oral exchange specifically taken by them and furthermore, the materials placed on record as well as the pleas do not advance their case of adverse plea as sought to be made out during the course of arguments.

9.The documents projected by the plaintiffs marked as Exs.A1 to A4 cannot be considered to be the documents of title for sustaining their legal possession and the same has also been considered by the Courts below holding that the documents projected by the plaintiffs do not create or extinguish title to the suit property and accordingly, discredited those documents put forth by the plaintiffs.

10.It is mainly contended by the plaintiffs' counsel that the defendants have admitted their possession and enjoyment of the suit property and on that footing alone, the courts below should have granted the relief in favour of the plaintiffs.

The defendants have challenged in toto the validity of the alleged patta document projected by the plaintiffs and contended that the same cannot be the basis for sustaining the possession and enjoyment of the suit property on the part of the plaintiffs lawfully and according to the defendants, the plaintiffs have no cause of action to institute the suit and that the plaintiffs are not in the possession and enjoyment of the suit property. In the light of the abovesaid defence projected by the defendants, the plaintiffs, as abovestated, having failed to establish the plea of oral exchange and also failed to establish the plea of adverse possession and the documents projected by them are not shown to be validly issued in their favour in recognition of their title to the suit property, in such view of the matter, the Courts below are found to be totally justified in non suiting the plaintiffs and declining the relief of permanent injunction sought for by them. The relief of permanent injunction being an equitable and discretionary relief, the plaintiffs having failed to establish their valid title to obtain the same, in such view of the matter, I do not find any valid reason to interfere with the judgment and decree of the Courts below.

11. For the reasons aforesaid, no substantial question of law is involved in this second appeal and accordingly, the second appeal is dismissed. Consequently, the civil miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

sms

To

1.The Subordinate Court, Ponneri.

2.The District Munsif Court, Ponneri.

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

+1cc to Mr.R.Munuswamy, Advocate SR.No.62021

S.A.No.602 of 2019

SJ(CO)

GMV(05/12/2019)