

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2019

PRONOUNCED ON : 22.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.724 of 2019

M.Sivaraman ... Appellant /Plaintiff

Vs.

1.Lakshmi
2.S.Vishwanathan ... Respondents/Defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 18.07.2018 passed in A.S.No.228 of 2017 on the file of the III Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 14.06.2017 passed in O.S.No.2626 of 2008 on the file of the XII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.Ashok Menon

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 18.07.2018 passed in A.S.No.228 of 2017 on the file of the III Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 14.06.2017 passed in O.S.No.2626 of 2008 on the file of the XII 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.The plaintiff is found to have laid the suit for the relief of permanent injunction restraining the defendants, their men, agents, servants or anybody claiming under them from dispossessing him from the suit property described in the plaint "B" schedule property except through due process of law.

5.The case of the plaintiff is that he is the nephew of the husband of the first defendant and as the first defendant and

her husband viz., Dhanushkoti had no issues, according to the plaintiff, he had been invited by them to come and stay in the suit property along with them and accordingly, it is put forth by the plaintiff that he had come to stay in the suit property described in the plaint "B" schedule and further, according to the plaintiff, he had been, accordingly, in the possession and enjoyment of the abovesaid suit property by paying current charges, water tax etc., though the receipts had been obtained in the name of the deceased Dhanushkoti and further, according to the plaintiff, it is he, who had been providing medical treatment to his paternal uncle Dhanushkoti till his demise and also performed his funeral obsequies and further, according to the plaintiff, after the demise of Dhanushkoti, the defendants endeavoured to dispossess the plaintiff from the suit property unlawfully without any entitlement and also the first defendant is found to have alienated the suit property in favour of the second defendant and inasmuch as the plaintiff had been residing in the suit property over a considerable period of time and his possession is not liable to be disturbed on any account by the defendants except through due process of law, according to the plaintiff, he has been necessitated to institute the suit against the defendants for appropriate reliefs.

6.The defendants resisted the plaintiff's suit contending that the plaintiff has no title, right or interest in any manner in respect of the suit property and they had admitted the relationship between the plaintiff and the first defendant's husband and also admitted that the plaintiff had been permitted to reside in the suit property and according to them, the plaintiff, in the guise of the abovesaid permission, is endeavouring to claim title to the suit property without any right whatsoever and further, according to the defendants, it is only the first defendant's husband, who is entitled to the suit property allotted to him under the Burma Repatriate Scheme and it is only the first defendant's husband, who had put up the structure in the property by obtaining loan and accordingly, it is only the first defendant's husband and after his demise, the first defendant is the lawful owner of the suit property and the plaintiff has no right, title or interest whatsoever and the first defendant is also entitled to alienate the other properties belonging to her, which could not be challenged or questioned by the plaintiff and further, according to the defendants, the first defendant had validly sold the suit property in favour of the second defendant and accordingly, the defendants, in toto, having withdrawn the permission granted to the plaintiff to reside in the suit property and thereafter, the plaintiff is not entitled to squat in the suit property, hence according to the defendants, the plaintiff is not entitled to seek the relief as prayed for against them.

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

8. Considering the materials placed on record, the fact remains that the plaintiff has been allowed to come and stay in the suit property at one point of time considering the relationship of the plaintiff with the first defendant's husband. Accordingly, it is found that on the permission granted by the first defendant and her husband, it is evident that the plaintiff had come and stayed and occupied the suit property. However, it is evident and as rightly determined by the Courts below, the plaintiff has no other claim of right over the suit property in any manner and the Courts below had rightly held that it is only the first defendant's husband, Dhanushkoti and after his demise, it is the first defendant, who had lawful title to the suit property, accordingly, it is seen that as could be gathered from the available materials on record and as held by the Courts below, rightly the first defendant had requested the plaintiff to vacate the suit property and hand over the possession of the same and the plaintiff having refused to do so, it is found that the parties had also been necessitated to approach the police with reference to the same. Furthermore, it is found that the first defendant had already, even before the suit had come to be laid, alienated the suit property in favour of the second defendant and that fact has not been controverted by the plaintiff. Therefore, when the permission granted by the plaintiff to occupy the suit property had been duly revoked by the defendants and the plaintiff is not entitled to squat in the property thereafter in any manner, in such view of the matter, as rightly found and determined by the Courts below, the relief of permanent injunction being an equitable relief and only to be granted in favour of a person lawfully entitled to the same and when it is seen that the plaintiff's occupation of the suit property is only under the permission granted by the defendants and when the abovesaid permission had been validly revoked by the defendants as determined by the Courts below correctly, the plaintiff is duty bound to hand over the possession of the suit property to the defendants and the plaintiff instead of complying with the abovesaid demand made by the defendants is found to be squatting in the suit property endlessly without any entitlement to the same whatsoever and in such view of the matter, when the permission granted to the plaintiff had been validly revoked and thereafter, the plaintiff's occupation of the suit property being unlawful and unauthorised and the plaintiff being found to be a person not entitled to the equitable and discretionary relief of permanent injunction prayed for, in such view of the matter, I do not find any reason worth acceptance to interfere

with the well considered judgment and decree of the Courts below for non suiting the plaintiff.

In the light of the abovesaid discussions, the second appeal is found to be devoid of merits. 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.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

sms

To

- 1.The III Additional Judge, City Civil Court, Chennai.
- 2.The XII Assistant Judge, City Civil Court, Chennai.

+1cc to Mr.Ashok Menon, Advocate, S.R.No. 63102

S.A.No.724 of 2019

KJI(CO)
GN(27/01/2020)