

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.08.2019

PRONOUNCED ON : 29.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.842 of 2019

J. Margabandhu ...Appellant/Appellant/Plaintiff

Vs.

1. Pushpa @ Santhammal

2. Jayakumar ...Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 06.12.2018 made in A.S.No.53 of 2015 on the file of the Principal Subordinate Judge, Vellore, Vellore District, confirming the judgment and decree passed in O.S.No.469 of 2009 on the file of the Principal District Munsif Court, Vellore, dated 27.01.2015.

For Appellant : Mr.H. Mohammed Farook

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 06.12.2018 passed in A.S.No.53 of 2015 on the file of the Principal Subordinate Court, Vellore, Vellore District, confirming the judgment and decree dated 27.01.2015 passed in O.S.No.469 of 2009 on the file of the Principal District Munsif Court, Vellore.

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

3. Suit for bare injunction.

3. The plaintiff claims to have purchased the suit property as described in the plaint schedule by way of the sale deed dated 02.09.1988 from the lawful owners and accordingly it is the case of the plaintiff that he has been enjoying the suit property and the defendants, without any manner of right, attempted to interfere with his possession and enjoyment and hence, according to the plaintiff, he has been necessitated to institute the suit for the relief of permanent injunction against the defendants.

4. The defendants inter alia disputed the plaintiff's claim of title, possession and enjoyment of the suit property based on the sale deed dated 02.09.1988 and also contended that the plaintiff's alleged vendors have no right, title or interest whatsoever in respect of the plaint schedule property and further according to the defendants, the suit property has not been properly described and the suit property described in the plaint schedule does not lie on ground and the plaintiff has never been in the possession and enjoyment of the suit property and also contended that the suit laid by the plaintiff without seeking the relief of declaration is not maintainable and also put forth that the plaintiff has not filed any document to sustain his claim of possession and enjoyment of the suit property and further also stated that the plaintiff had earlier filed a suit in O.S.No. 579 of 2002 against the defendants and another and the same had been dismissed as settled out of court and therefore, the plaintiff's present suit is barred by resjudicata and thereby prayed for the dismissal of the plaintiff's suit.

5. In support of the plaintiff's case, P.W.1 was examined and Exs.A1 and A2 were marked. On the side of the defendants D.W.1 was examined and Exs.B1 to B12 were marked.

6. On a consideration of the materials placed on record and the submissions made by the respective parties, the courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

7. The plaintiff having laid the suit claiming the relief of permanent injunction against the defendants, as rightly determined by the courts below, has to sustain his case that he is in the lawful possession and enjoyment of the suit property. The plaintiff claims title to the suit property based on the sale deed dated 02.09.1988 marked as Ex.A1. The defendants, in toto, have disputed the truth and validity of Ex.A1 sale deed and according to the defendants, the plaintiff's alleged vendors have no right, title or interest in the suit property. Such being the position, the plaintiff has not endeavoured to place any material to hold that his vendors had a valid title to the suit property and competent to convey the same in favour of the plaintiff under Ex.A1. Other than Ex.A1, there is no proof placed on the part of the plaintiff to hold that his vendors had a valid title to the suit property. Furthermore, the plaintiff has also not placed any material to hold that his vendors had been in the possession and enjoyment of the suit property. Resultantly, it is found that the plaintiff has also not placed any material to hold that following Ex.A1, he is in the lawful possession and enjoyment of the suit property. When it is found that, as per the description of the suit property, there is a building lying thereon with door number, the plaintiff has not placed any material to show that he is in the possession and enjoyment of the suit property by paying the

housetax and the other taxes in respect of the suit property to sustain his claim of possession and enjoyment. As could be seen from the materials placed on record marked as Exs.B1 and B2 in respect of the suit property, the plaintiff had earlier filed a suit in O.S. No. 579 of 2002 against the defendants and another and the said suit had been dismissed as settled out of court. The plaintiff has even suppressed the same in the present suit. No reason has been projected by the plaintiff with reference to the same. The plaintiff has not given any plausible explanation as to why he has not sought for the relief of declaration of title to the suit property particularly when the defendants are disputing the lie of the suit property, the title of the plaintiff's vendors to the suit property as well as the plaintiff's title to the suit property. Despite the abovesaid position, the plaintiff having not sustained his vendors' title to the suit property plus his title to the suit property as well as his vendors' and his possession and enjoyment of the suit property at any point of time in a lawful manner and the suit having been laid by the plaintiff simplicitor for the relief of permanent injunction and when there is no acceptable and convincing material on the part of the plaintiff to conclude that he is in the lawful possession and enjoyment of the suit property and in such view of the matter, the courts below are found to be justified in non suiting the plaintiff and the reasonings and conclusions of the courts below with reference to the same being based on the appreciation of the materials placed on record as well as the principles of law governing the issues involved between the parties, in all, they do not warrant any interference.

8. For the reasons abovestated, no substantial question of law is found to be involved in this second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

bga

To

1. Principal Subordinate Court, Vellore, Vellore District.
2. Principal District Munsif Court, Vellore,

+1cc to Mr.H. Mohammed Farook, Advocate SR.No.74555

S.A.No.842 of 2019

RSV(CO)

GMV(10/02/2020)