

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.08.2019

PRONOUNCED ON : 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.860 of 2019

1.K.Rukmani
2.Kalpana
3.E.Sasikumar

... Appellants/Appellants/Defendants

Vs.

V.Elumalai ... Respondent/Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.09.2018 passed in A.S.No.197 of 2017 on the file of the III Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 08.03.2017 passed in O.S.No.4768 of 2011 on the file of the XII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.G.T.Subramanian

For Respondent : Mr.C.R.Rukmani

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 28.09.2018 passed in A.S.No.197 of 2017 on the file of the III Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 08.03.2017 passed in O.S.No.4768 of 2011 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 declaration, permanent injunction, mandatory injunction and for past and future damages.

4.The relationship between the parties is not in dispute. It is found that the first defendant is the divorced wife of the plaintiff and the defendants 2 & 3 are the children born to the plaintiff and the first defendant before the divorce.

5.Various grounds had been put forth by the defendants for resisting the plaintiff's suit.

6. At the foremost, the defendants would plead that the plaintiff has valued the suit improperly and according to them, the market value of the suit property is more than Rs.35,00,000/- and the guideline value is also more than Rs.19,00,000/- and therefore, if the abovesaid value is taken into consideration, according to them, the trial Court would not have the jurisdiction to try and determine the suit laid by the plaintiff. It is found that the plaintiff has valued the suit for the reliefs of declaration and possession stating that the market value of the suit property as ascertained by the Civil Engineer is at Rs.1,98,880/- and accordingly, paid the Court fees thereon. However, according to the defendants, the suit property is of the value as abovestated by them. In this connection, the defendants would rely upon the report filed by the Civil Engineer marked as Ex.B11 and the Civil Engineer, who had prepared the abovesaid report, has been examined on their side as DW2. However, as rightly found and determined by the Courts below, considering the evidence of DW2 and his report marked as Ex.B11, it is found that before fixing the value, the civil Engineer has not given any notice to the plaintiff or his counsel. In addition to that, it is also admitted by the Civil Engineer DW2 that he had not taken steps to ascertain the guideline value of the suit property from the Sub-Registrar office and also not placed any material as to how he had determined the market value of the suit property as stated in his report and it is also found that the value fixed by him in the report does not point out as to for which year the same relates to and he has not clarified as to whether the suit property is located in lane or street and in the light of the abovesaid factors, when there is no material worth acceptance on the part of the defendants that the suit property is valued more than the value fixed by the plaintiff in the plaint, as above pointed out, the Courts below are found to be wholly justified in not relying upon the evidence of DW2 and his report Ex.B11. In such view of the matter, the contention put forth by the defendants' counsel that the market value of the suit property has not been properly fixed by the plaintiff and therefore, the trial Court had no jurisdiction to entertain the plaintiff's suit, as such, cannot be countenanced and the abovesaid issue had been rightly answered against the defendants and in favour of the plaintiff by the Courts below correctly. Hence, no interference is warranted with reference to the same.

7. As abovestated, the relationship between the parties is not in dispute. As could be seen from the order passed in FCOP No.2841 of 2006 on the file of the II Additional Family Court, Chennai, it is seen that in the divorce OP filed by the plaintiff against the first defendant in FCOP No.2841 of 2006, the matter had been settled between the parties and the first defendant had consent for mutual divorce and the same could be gathered from the order passed in the abovesaid proceedings marked as Ex.A2. Though it is put forth by the defendants that the abovesaid divorce had been obtained by the plaintiff by

committing fraud upon the first defendant, however, they had not come forward clearly as to in what manner, the fraud had been committed by the plaintiff for obtaining the mutual divorce in the abovesaid proceedings. In this connection, as rightly found by the Courts below, the first defendant has not entered into the witness box to challenge the order passed in FCOP No.2841 of 2006. On a perusal of Ex.A2 order, it is found that the plaintiff had settled Rs.50,000 to the first defendant and also settled his property bearing Door No.8/4. Subbarayalu Chetty Street, First Land, Nammalverpet, Chennai - 12 in favour of the first defendant and his children viz., the defendants 2 & 3 and in turn, it is also noted that the plaintiff had been permitted to retain the suit property and accordingly, on that basis, it is found that the settlement deed had been executed in favour of the defendants on 31.12.2006 marked as Ex.A4 and in the light of the abovesaid factors, it is found that the defendants cannot be allowed to question the order passed in the abovesaid FCOP on the ground of fraud without placing any material to sustain their abovesaid version.

8.If really, any fraud had been committed by the plaintiff in obtaining the divorce, at this point of time, the first defendant for the matter, would have initiated appropriate action against the plaintiff pertaining to the same. Therefore, the contention put forth by the defendants that Ex.A2 order had been fraudulently obtained by the plaintiff, as such, cannot be believed and rightly rejected by the Courts below. The plea has also been put forth that the divorce had been obtained only to save the plaintiff from the departmental action initiated against him, however, when there is nothing on record to point out the abovesaid contention, the same had been rightly rejected by the Courts below.

9.It is also put forth by the defendants that by way of the undated draft settlement deed dated 14.11.2006, the first defendant has been styled as the wife of the plaintiff and therefore, according to the defendants, no valid divorce had been made between the plaintiff and the first defendant. However, as held by the Courts below, on the date of Ex.A14, when the order of mutual divorce had not been passed, in such view of the matter, the description of the first defendant as the wife of the plaintiff, in the abovesaid document, would not assume any importance and therefore, the Ex.A14 or for the mater Ex.A15 would not in any manner buttress the defence version of the defendants. There is no materials placed on record to show that after Ex.A2 order, the plaintiff and the first defendant had lived together. Therefore, in all, the Courts below are found to be justified that the valid divorce had been passed between the plaintiff and the first defendant and accordingly, their marriage had been annulled.

10.The defendants would also put forth a Will had been executed by their grandmother and therefore, according to

them, the divorce proceedings would not take away their right in the suit property. In this connection, it is found that TOS No.40/2006 has been preferred to probate the Will put forth by the defendants. However, it is found that in view of the settlement arrived at between the parties and the defendants having given up right in the suit property as could be also gathered from the letter of undertaking given by them marked as Ex.A5, it is found that the abovesaid TOS had been dismissed as settled out of Court and the same could be gathered from the order passed in TOS No.40/2006 marked as Ex.A3. Therefore, when by way of the compromise memo entered into between the plaintiff and the defendants, the plaintiff had given another property to the defendants and also paid maintenance and the defendants had agreed that they have no right over the suit property and accordingly, the dispute between the parties having been settled once for all, the defendants cannot be allowed to go against the abovesaid undertaking given by them and claim right over the suit property. Therefore, the Courts below are found to be justified in determining that it is only the plaintiff, who is the lawful owner of the suit property.

11.Now, according to the plaintiff, during his absence, the defendants had trespassed into the suit property and unlawfully put up the construction and in this connection, the plaintiff had lodged various complaints to the authorities and the same could be gathered from the documents marked as Exs.A7, A8, A16, A17, A20, A23 to A25 and despite all the abovesaid efforts made by the plaintiff, it is found that the defendants with impunity had been putting up construction in the suit property without any authority and the illegal construction put up by the defendants had also been noted by the Advocate Commissioner and therefore, the plaintiff being the lawful owner of the suit property, hence it is seen that the Courts below had rightly ordered the removal of the unlawful construction put up by the defendants in the suit property. The argument put forth by the defendants that the property settled on them is subjected to encumbrances, however, when the settlement deed provides that the subsisting encumbrance in respect of the settled property should be discharged by the settlee and the settlement deed had been accepted by the defendants, in such view of the matter, the defendants cannot be allowed to put forth the abovesaid contention for acquiring title to the suit property.

12.The claim of the defendants that they are in continuous possession and enjoyment of the suit property and therefore, the plaintiff is not entitled to recover the possession of the suit property, as such, cannot be accepted, particularly, when the defendants are found to be not having any right over the suit property and found to have made unauthorised construction in the same by committing trespass and in such view of the matter, the plaintiff being the lawful owner of the suit property, the Courts below had rightly

granted the removal of the illegal construction put up by the defendants in the suit property by way of mandatory injunction in favour of the plaintiff.

13.The Courts below had also rightly determined the damages at a sum of Rs.1,000/- per month for the use and occupation of the suit property and the same do not warrant any interference.

14.The plea of limitation put forth by the plaintiff has also been rightly assessed by the Courts below and rejected the same. The determination of the Courts below on the point of limitation also do not warrant any interference.

15.In the light of the abovesaid factors, it is seen that the Courts below had properly assessed and analysed the oral and documentary evidence placed on record in the proper perspective and also rightly determined that it is only the plaintiff, who is the lawful owner of the suit property and that the defendants have no right whatsoever over the same and therefore, the Courts below are found to be justified in granting the reliefs in favour of the plaintiff as determined by them and the reasonings and conclusions of the Court below with reference to the same, not suffering from any infirmity or perversity, in such view of the matter, they do not warrant any interference.

For the reasons aforesaid, 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 (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.

+4cc to Mr.G.T.Subramanian, Advocate, S.R.No. 70645, 71783
+1cc to Mr.C.R.Rukmani, Advocate, S.R.No.71763

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