

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.2 of 2014

and

MP.No.1 of 2014

R.Premavathy

..Appellant/Respondent/Plaintiff

Vs.

T.Raja

..Respondent/Appellant/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the decree and judgment passed in A.S.No.92 of 2012 dated 09.10.2013 on the file of Subordinate Judge, Vellore reversing decree and judgment passed in O.S.No.172 of 2004 dated 14.03.2012 on the file of Additional District Munsif Court, Vellore.

For Appellant : Mr.P.Ganapathy

For Respondent : Mr.R.Lakshmi Narayanan

J U D G M E N T

The plaintiff whose suit for bare injunction was decreed by the trial court, on its reversal in appeal, has come forward with this Second Appeal.

2. According to the plaintiff, she has purchased the suit property from one Raja under a unregistered sale deed dated 29.01.2004. The said Raja, her vendor had purchased the suit property from the defendant under a registered sale deed dated 28.05.1996. Inasmuch as the defendant attempted to interfere with the possession of the property, she has come forward with the suit for bare injunction.

3. The defendant resisted the suit contending that the suit property is Government Poramboke land, he had sold only the house constructed in an extent of 660 sq.ft i.e., 33 ft. North South and 20 ft. East West excluding the land to the vendor of the plaintiff under a sale deed dated 28.05.1996. Therefore, the vendor of the plaintiff had no title to convey an extent of 1476 sq.ft i.e., 41 ft. North South and 36 ft. East West under

the unregistered instrument dated 29.01.2004. It is also the further contention of the defendant that the sale deed dated 29.01.2004 being an unregistered instrument will not confer any right on the plaintiff.

4. The trial court on a consideration of the evidence, concluded that the defendant had not denied the possession of the plaintiff. On the said premise the trial court decreed the suit as prayed for. Aggrieved the defendant filed an appeal in A.S.No.92 of 2012 on the file of the sub-court Vellore.

5. The lower appellate court upon re-consideration of the evidence on record concluded that the unregistered sale deed would not confer title on the plaintiff. The lower appellate court also found that the claim of the plaintiff to an extent of 1476 sq.ft i.e., 41 ft North South and 36 ft East West is not supported by any documents. Even the registered sale deed under which the plaintiff's vendor has purchased the property was only for an extent of 660 sq.ft. The learned appellate Judge also took note of the fact that there is a vast difference in the boundaries found in both the sale deeds. While the Western and Northern boundaries in the sale deed dated 28.05.1996 marked as Ex.A1 were shown as property of Charles Anandhakumar and Tulasiraman, the Western and Northern boundaries in the sale deed dated 29.01.2004 were shown as road and common pathway.

6. Taking into account the discrepancies, the lower appellate court concluded that the plaintiff has not established possession of the suit property on the date of the suit in order to enable her to obtain a decree for injunction protecting her possession. The lower appellate court also found that the plaintiff has not established her case and she cannot seek to rely upon the defects in the defendant's case. On the above said conclusion, the lower appellate court allowed the appeal setting aside the decree and judgment of the trial court. Aggrieved the plaintiff has come forward with this Second Appeal.

7. I have heard Mr.P.Ganapathy, learned counsel appearing for the appellant and Mr.R.Lakshmi Narayanan, learned counsel appearing for the respondent.

8. The following questions of law were framed for consideration:

1. Whether the defendant who sold the suit property and delivered possession can maintain that he is in possession of property?

2. Whether the lower appellate court is right in rejecting Ex.A4, which would establish the possession of the plaintiff in respect of the suit property?

9. Elaborating on the questions of law Mr.P.Ganapathy, learned counsel appearing for the appellant would contend that the defendant having sold the property by way of a registered instrument and having parted with possession cannot maintain that he continues in possession of the property. No doubt the plaintiff's vendor had purchased the property from the defendant, but the plaintiff's vendor had purchased lesser extent i.e., 660 sq.ft. he had however conveyed the larger extent of 1476 sq.ft, there is difference in North West boundaries in both the sale deeds. Therefore, the lower appellate court has come to the correct conclusion that the plaintiff is seeking an injunction of some other property than what was sold under Ex.A1 dated 28.05.1996 by the defendant to the plaintiff's vendor.

10. The lower appellate court had not rejected Ex.A1 out right. It has said that Ex.A4 would not confer title. In the absence of any other document to show that the plaintiff is in actual possession of the area of 1476 sq.ft. within four specific boundaries as set out in the schedule to the plaint, the learned sub-judge held that Ex.A1 alone cannot be taken as evidence of possession by the plaintiff. Hence, the question of law framed are answered as follows:-

- Since the description of the property and the extent of the property differs the defendant cannot be said to be barred from claiming to be in possession of the suit property, because he had sold certain other property under the sale deed dated 28.05.1986 to the plaintiff's vendor.
- The second question of law is answered to the effect that no doubt true the Ex.A4 can be used in evidence to show possession but the said document alone cannot be a basis for a decree for permanent injunction in the absence of any other evidence to show that the vendor under Ex.A4 had the right to convey the property and the purchaser viz., plaintiff was put in possession of the property and she was in enjoyment of the same on the date of the suit.

11. In view of the answers to the questions of law raised, the appeal fails and the same is dismissed. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge, Vellore.

2. The District Munsif, Vellore.

3. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to M/s.R. Margabandhu, advocate sr 79772.

+1 CC to Mr.R.Lakshmi Narayanan, Advocate sr 79737.

S.A.No.2 of 2014

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

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