

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2019

PRONOUNCED ON : 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.708 of 2019

K.Padmanabhan

..Appellant/Plaintiff

Vs.

1. M.Ramachandran

2. B.Krishna Kumar

..Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree in A.S.No.44 of 2014 dated 12.02.2019 passed by the Subordinate Judge, Kancheepuram, reversing the judgment and decree passed in O.S.No.1443 of 2008 dated 09.07.2014 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur.

For Appellant : Mr.L.Rajasekar

JUDGMENT

In this Second Appeal challenge is made to the judgment and decree dated 12.02.2019 passed in A.S.No.44 of 2014 on the file of the Subordinate Court, Kancheepuram, reversing the judgment and decree dated 09.07.2014 passed in O.S.No.1443 of 2008 on the file of the District Munsif cum Judicial Magistrate Court, Sriperumbudur.

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 claims the possession and enjoyment of the suit property based on the sale agreement dated 26.11.2003 said to have been executed in his favour by the first defendant and according to the plaintiff, he has paid the sale consideration of Rs.1,20,000/- to the first defendant under the sale agreement and only Rs.1,000/- remains to be paid and further according to the plaintiff, he had put up a hut in the suit property and enjoying the same by paying the tax, etc., and it is also pleaded by him that despite the notice, the first defendant has

not come forward to execute the sale deed and accordingly, he levied the suit for specific performance of the abovesaid agreement and according to the plaintiff, the defendants 1 and 2 colluded together and attempted to dismantle the hut put up in the suit property and thereby disturb his possession and enjoyment and hence, according to the plaintiff, he has been necessitated to institute the suit against the defendant for appropriate relief.

5. The second defendant after denying the plaintiff's case in toto, put forth the case that he had purchased the suit property from the first defendant by way of the registered sale deed dated 15.06.2005 and following the purchase, it is he, who has been in the possession and enjoyment of the suit property and furthermore, contended that the plaintiff has not whispered anything about handing over of the possession of the suit property in the legal notice dated 25.06.2005 and in the legal notice, there is also no reference about the hut said to have been put up by the plaintiff in the suit property and the plaintiff is not in the possession and enjoyment of the suit property as put forth by him and when according to the plaintiff, he has already levied the suit for specific performance, he is not entitled to maintain the present suit for permanent injunction and therefore, the suit laid by the plaintiff is liable to be dismissed.

6. Based on the materials placed on record and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiff as prayed for. On appeal by the second defendant, the first appellate court was pleased to set aside the judgment and decree of the trial court and consequently, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred.

7. Considering the pleas put forth by the plaintiff and the materials placed on record on his part, it is found that the plaintiff claims to have been put in the possession of the suit property only pursuant to the sale agreement dated 26.11.2003 marked as Ex.A1. Ex.A1 is found to be a unregistered instrument. As rightly found by the first appellate court, after the amendment in the Registration Act, 1908, which had come into effect on 24.09.2001, the sale agreement relied upon by the plaintiff, should have been registered and if such an instrument is not registered, it shall not have any effect for the purpose of Section 53A of Transfer of Property Act. Accordingly, when it is seen that the plaintiff has based his case based upon the sale agreement Ex.A1 and claims to have been put in the possession of the suit property pursuant to the same

and thereby also endeavoured to rest his case relying upon Section 53A of the Transfer of Property Act, in such view of the matter, as rightly found and determined by the first appellate court, considering the import of Section 17 (1) (a) of the Registration Act and Section 53A of the Transfer of the Property Act in toto, it is found that after the abovesaid amendment, unless the agreement put forth by the plaintiff is registered, the plaintiff cannot be allowed to seek the benefit of the possession based on such an unregistered instrument and therefore, as rightly found and determined by the first appellate court, when the plaintiff is mainly resting upon his case only upon Ex.A1 sale agreement, which does not have legal sanctity, as above discussed, and also determined by the first appellate court rightly and furthermore, in the absence of any case put forth by the plaintiff in the legal notice that he had been handed over the possession of the suit property pursuant to the sale agreement, however, when the plaint proceeds only on the footing that the plaintiff has been put in possession of the suit property pursuant to the sale agreement Ex.A1, in such view of the matter, the first appellate court is justified in not acceding to the case of the plaintiff, particularly when he seeks to rest his case of possession and enjoyment of the suit property based on an unregistered instrument and when as per the abovesaid provision of law, such an unregistered instrument shall not have any effect for the purpose of Section 53A of the Transfer of property Act. In such view of the matter, the first appellate court is right in determining that the plaintiff cannot claim the protection of possession under the unregistered sale agreement and hence no relief can be granted on the basis of the same. I do not find any valid reasons to interfere with the abovesaid determination of the first appellate court.

8. At the time of admission, the counsel for the appellant placed reliance upon the decision rendered by this court on 25.08.2015 in C.R.P. PD. No.4576 of 2011. The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

9. In the light of the above discussion, no substantial question of law is found to be involved in this second appeal. Accordingly the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Kancheepuram.

2. The District Munsif cum Judicial Magistrate,
Sriperumbudur.

+1 cc to M/s.L.Rajasekar, Advocate Sr.No. 58275

AKM/24.02.2020/4P-4C /

Judgment in
S.A.No.708 of 2019



WEB COPY