

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1104 of 2019

and

CMP.No.24006 of 2019

Arumugam

..Appellant/Appellant/Plaintiff

Vs.

Narayanan

..Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned Principal Sub-Court, Mayiladuthurai, dated 28.01.2019 in A.S.No.23 of 2017 confirming the judgment and decree in O.S.No.236 of 2010 on the file of the District Munsif Court, Seergali, dated 17.02.2017.

For Appellant : Mr.M.Muruganantham

For Respondent : Mr.S.Sounthar

J U D G M E N T

The plaintiff in O.S.No.236 of 2010 whose suit for declaration of title and recovery of possession was dismissed concurrently by the courts below has come up with this Second Appeal.

2. The case of the plaintiff is that the suit property was assigned to one Rasu in the year 1976 and the plaintiff had entered into an agreement with the said Rasu on 15.12.1980 to purchase the suit property. According to the plaintiff, on and from the date of agreement, he has been in possession of the property.

3. It is further claimed that the agreement vendor Rasu filed a suit in O.S.No.294 of 1985 seeking recovery of possession from the plaintiff. The suit was dismissed by the trial court on 24.09.1998. The appeal filed by Rasu against the said judgment and decree in O.S.No.294 of 1985 in A.S.No.64 of

1999 also came to be dismissed on 24.04.2000. Claiming that the plaintiff had permitted the defendant who is his brother to be in possession of the property along with his mother. After the death of the mother the defendant refused to vacate and denied the title of the plaintiff. Hence, the plaintiff had come forward with the suit.

4. The suit was resisted by the defendant contending that neither Rasu nor the plaintiff have any title. It was also claimed that Rasu is a necessary party to the suit. The defendant would contend that he has been in possession in his own right for more than 30 years and as such the plaintiff who does not have title cannot evict him.

5. At trial, the plaintiff was examined as PW1 and one Kandasamy was examined as PW2. Ex.A1 to Ex.A12 were marked on the side of the plaintiff. The defendant was examined as DW1. Ex.B1 was marked on the side of the defendant.

6. Both the courts below upon appreciation of the evidence, concluded that the plaintiff has neither established his title to the property nor the permission pleaded by him. It was also found that the suit filed by Rasu in O.S.No.294 of 1985 was dismissed as pre-mature and the said dismissal would not confer any title on the plaintiff.

7. Admittedly, the agreement is of the year 1980 and the plaintiff has not taken any steps to get the sale deed executed pursuant to the agreement. Therefore, the plaintiff has no title to the property. The courts below also concluded that the plaintiff having not proved that the defendant is in possession under him, pursuant to the permission granted by him, he is not entitled to a decree for recovery of possession, unless he proves his title by unimpeachable evidence.

8. The courts below have held that the agreement dated 15.12.1980 would not confer title on the plaintiff to enable him to recover possession from the 3rd parties. On the above conclusions, the courts below have dismissed the suit. Aggrieved the plaintiff is on appeal.

9. I have heard Mr.M.Muruganantham, learned counsel appearing for the appellant.

10. Mr.M.Muruganantham, learned counsel appearing for the appellant would contend that the courts below are in error in concluding that the plaintiff does not have title. He would submit that at best the plaintiff's title could be said to be defective. According to the counsel, based on the defective title, the plaintiff has been in possession of the property till

dismissal of the appeal filed by Rasu. The defendant who came into possession in 2002 under the permission of the plaintiff has denied his title, hence, the plaintiff is entitled to a decree for declaration and recovery of possession.

11. I have considered the submissions of the learned counsel for the appellant. The submissions of the counsel for the appellant overlook the primary principle of law that possession is nine points in law. Admittedly, the defendant is in possession. Both the courts below concurrently recorded a finding that the plaintiff has not proved the alleged permission granted by him to the defendant. It is also found in the evidence that the plaintiff has admitted that the defendant has been in possession for more than 17 years. The agreement dated 15.12.1980, undoubtedly would not confer any title or interest in immovable property on the plaintiff. Therefore, the person with defective title cannot recover possession of the property from even a person who has no title.

12. Hence, I do not find any question of law much less a substantial question of law in order to enable me to entertain this Appeal. Hence, the Second Appeal fails and is accordingly dismissed without being admitted. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

dsa

To

1. The learned Principal Subordinate Judge,
Mayiladuthurai.

2. The learned District Munsif,
Seergali.

3. The Section Officer, V.R. Section,
High Court of Madras, Chennai 600 104.

+1cc to Mr.S.Sounthar, Advocate SR.No.93724

+1cc to Mr.M.Muruganantham, Advocate SR.No.93535

+1cc to Mr.Sujith Kumar, Advocate SR.No.94565

S.A.No.1104 of 2019

VBA (CO)

GMV (17/08/2020)