

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.08.2019

PRONOUNCED ON : 12.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No.880 of 2019
and
C.M.P. No.18442 of 2019

1. K.Sasikumar
2. Deivasigamani
3. Alice
4. Vadivambal Appellants/Appellants/Defnedants

Vs.

Rechal Rathnavathi ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.146 of 2017 dated 26.02.2019 on the file of the Principal Judge, City Civil Court at Madras confirming the decree and judgment pronounced in O.S. No.2251/2012 dated 04.01.2017 on the file of the XIV Assistant Judge, City Civil Court at Madras.

For Appellants : Mr.A.Amalraj

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 26.02.2019, passed in A.S.No.146 of 2017, on the file of the Principal Judge, City Civil Court, Chennai confirming the judgment and decree dated 04.01.2017, passed in O.S. No.2251/2012, on the file of the XIV 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 permanent injunction.

4. According to the plaintiff, she has purchased the suit property by way of a sale deed dated 09.05.1997 and the suit property with a larger extent was originally owned by Venkatapathy Chettiar and he sold the same to A.Subramani, by way of a sale deed dated 18.11.1953 and the plaintiff had

purchased the suit property from the legal heirs of A.Subramani and put up a terraced building and enjoying the same by paying necessary taxes and charges and further, according to the plaintiff, there was a thatched house in the suit property in a dilapidated condition and the defendants, without any authority, attempted to interfere with the possession and enjoyment of the plaintiff and hence, according to the plaintiff, the need for the suit for appropriate reliefs.

5. Briefly stated, the defendants resisted the plaintiff's suit contending that the sale deed dated 09.05.1997 projected by the plaintiff is not a genuine transaction and the vendors of the abovesaid sale deed are not the absolute owners of the suit property and further, according to the defendants, their grandmother Muniammal was living in the hut located in the suit property for more than 35 years and after her demise, the defendants are in the occupation of the same and the plaintiff has failed to explain as to how she had acquired title to the extent of 805 sq.ft. and the superstructure put up thereon. The plaintiff has not purchased the suit property from the lawful owners and hence, the suit deserves dismissal.

6. In support of the plaintiff's case, PW1 was examined, Exs.A1 to A8 were marked. On the side of the defendants, DW1 was examined, Exs.B1 to B10 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to decree the suit in favour of the plaintiff as prayed for. Impugning the same, the defendants have preferred the present second appeal.

8. The suit property is described as the land along with a terraced building including two dilapidated huts, measuring an extent of 805 sq.ft. in R.S.No.1541/4 (part) bearing Door No.34, Ponnan Street, Chennai - 7 bounded with specific boundaries and with specific measurements and according to the plaintiff, she has purchased the same by way of the sale deed dated 09.05.1997, marked as Ex.A1. The parent title deed dated 18.11.1953, has been marked as Ex.A2. The property tax demand card, water charges card, EB charges card have been marked as Exs.A3 to A5 and the Encumbrance certificate has been marked as Ex.A8 on the side of the plaintiff. All the abovesaid documents cumulatively would go to show that the plaintiff is in the possession and enjoyment of the suit property.

9. Though the defendants would put forth the case that their grandmother Muniammal had been in the possession and enjoyment of the hut located in the suit property, however, the defendants have not explained as to on what basis their grandmother Muniammal had acquired title, possession and enjoyment of the abovesaid hut and from whom she had derived the title, possession and enjoyment with reference to the same.

From the description contained in Ex.A1 sale deed, it is found that the plaintiff has purchased an extent of 805 sq.ft. from the legal heirs of Murugesan, who has been described as the only son of Subramani and Subramani is stated to have acquired the property by way of a sale deed dated 18.11.1953 marked as Ex.A2. Even in the property described under Ex.A1, the same is shown as including two thatched huts in R.S.No.1541/4, as abovenoted, according to the plaintiff, after the purchase, she had put up the terraced building in the suit property and enjoying the same. The superstructure put up in the suit property is said to be bearing Door No.34. According to the defendants, they are in the occupation of the Door No.34, Ponnann Street, Chennai - 7, measuring 192 sq.ft in R.S.No.1541/1. So, the defendants would put forth the claim that they are in the possession and enjoyment of the property comprised in R.S.No.1541/1, whereas, according to the plaintiff, the suit property is comprised in R.S.No.1541/4 (part). As abovenoted, the defendants have not come forward clearly as to on what basis they are claiming title, possession and enjoyment to the abovesaid extent through their grandmother Muniammal.

10. From the materials placed on record, it is found that the superstructure in the locality bears Door No.34 with subdivision numbers and according to the defendants, they are in the occupation and enjoyment of the Door No.34. According to the plaintiff, she is in the possession and enjoyment of the suit property comprising Door No.34/5. It is found that there are five superstructures in the locality bearing Door Nos.34/1 to 34/5. Be that as it may, considering the documents of possession projected by the plaintiff marked as Exs.A3 to A5, in all, it is found that it is only the plaintiff who has been in the possession and enjoyment of the suit property as described in the plaint. In this connection, DW1, examined on behalf of the defendants, has clearly admitted that he has no right over the property belonging to the plaintiff. Furthermore, DW1 has also admitted that he has not filed any title deed evidencing his grandmother's title, possession and enjoyment of the Door No.34 as put forth by them and further admitted that the Door. No.34 which he claims to be in his possession and enjoyment is comprised in R.S.No.1541/1 and also admitted that in the abovesaid hut, only Muniammal had been residing and he had not been residing therein at any point of time and furthermore admitted that the abovesaid hut had fallen down and further admitted that he has not pleaded that the plaintiff is attempting to encroach into their property and also admitted that he does not know the Door number belonging to the plaintiff. Therefore, when it is found that when there are five huts bearing Door No.34 in the locality and the same bears Door Nos.34/1 to 34/5 and when according to the defendants, they are not claiming any title, possession and enjoyment over the property belonging to the plaintiff and when there is no material on record to evidence that the defendants are presently in the occupation of the Door No.34 which is stated to be in the

occupation of their grandmother Muniammal and when the defendants have admitted through DW1 that the hut where Muniammal had been residing had fallen down and as abovenoted, when the defendants have failed to establish their valid claim of title to any property comprised in R.S.No.1541/4 and when they would claim that their property is comprised in R.S.No.1541/4 and even for the same, the defendants having not placed any valid claim of title with reference to the same by producing title deeds etc., and also failed to establish their source of title to the same in any manner and when the defendants are found to be not residing at present in Door No.34 in R.S.No.1541/1 and when the documents projected by the defendants would only go to show that their grandmother Muniammal, at one point of time, was residing in Door No.34 and when the abovesaid hut had fallen down and thereafter, after the demise of Muniammal, when there is no proof to hold that the defendants are in the possession and enjoyment of the said Door number or particularly, the suit property and when from the documents projected by the plaintiff on the whole that it is found that the plaintiff has established her claim of possession and enjoyment of the suit property through lawful source, in such view of the matter, the Courts below are found to be justified in holding that the plaintiff has established her possession and enjoyment of the suit property and thereby right in granting the relief of permanent injunction in favour of the plaintiff.

11. The defendants' counsel, in support of his contentions, placed reliance upon the decisions reported in 2008 (6) CTC 237 (Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs. & others) and 2006 (1) CTC 55 (S.Ahamed Meeran Vs. S.Kumaraswamy). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

12. The reasonings and conclusions of the Courts below being based on the proper appreciation of the materials available on record and also centring on factual matrix and not suffering from any infirmity or irrationality, in all, the second appeal is not entitled for acceptance.

13. In the light of the abovesaid discussions, no substantial question of law is involved in this second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-V)

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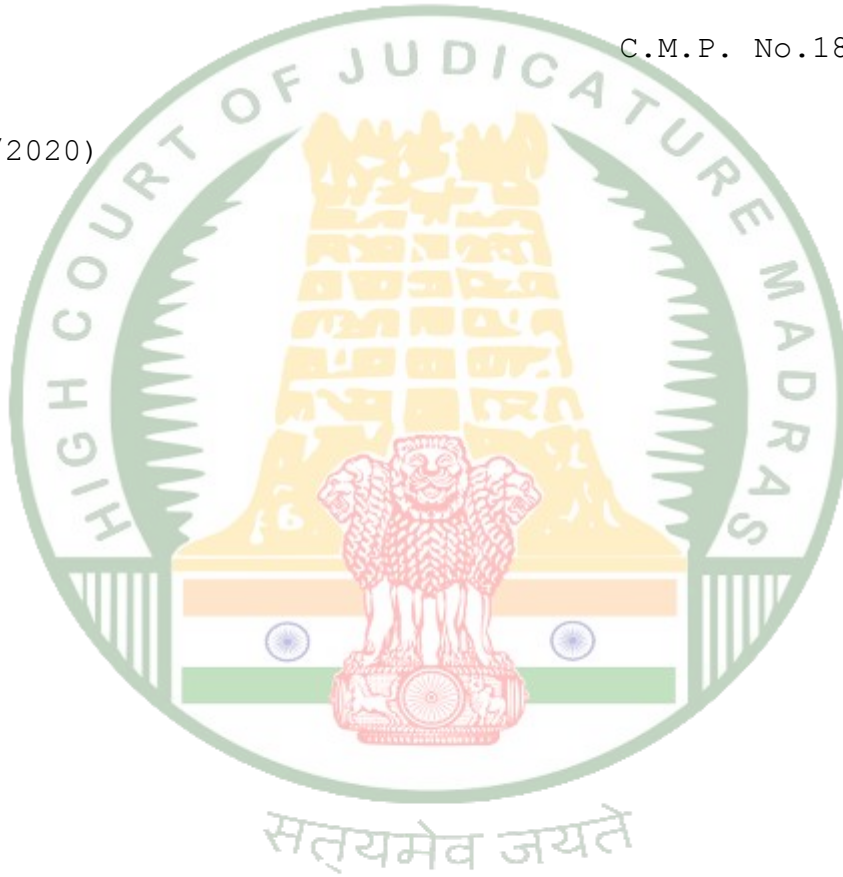
1. The Principal Judge,
City Civil Court, Chennai.

2. The XIV Assistant Judge,
City Civil Court, Chennai.

+1cc to Mr.A.Amalraj, Advocate SR.No.78400

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RJI (CO)
GMY (13/02/2020)



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