

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2019

PRONOUNCED ON : 03.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.881 of 2019

N.K.Perumal ...Appellant/Appellant/Plaintiff

Vs.

Janaki ...Respondent/Respondent/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 27.03.2019 passed in A.S.No.29 of 2018 on the file of the Subordinate Court, Coonoor, confirming the Judgment and Decree dated 17.04.2018 passed in O.S.No.50 of 2013 on the file of the District Munsif Court, Kothagiri.

For Appellant : Ms.R.Anitha

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 27.03.2019 passed in A.S.No.29 of 2018 on the file of the Subordinate Court, Coonoor, confirming the Judgment and Decree dated 17.04.2018 passed in O.S.No.50 of 2013 on the file of the District Munsif Court, Kothagiri.

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 to have purchased the suit properties as described in the plaint by way of the sale deeds marked as Exs.A1 to A3. It is found that by way of the abovesaid sale deeds, the plaintiff had purchased the extent of 86 ½ cents, 6 cents and 3 ¾ cents in new R.S.No.622/1B, 622/1A and 622/1C respectively and it is seen that as regards the extent of 86 ½ cents comprised in new survey No.622/1B, the plaintiff is found to have acquired the same from one Krishnamoorthy. Krishnamoorthy is found to have acquired the property by way of a sale deed dated 14.09.2012 marked as Ex.A4. On a perusal of Ex.A4, as determined by the Courts below, Krishnamoorthy is found to have acquired the same from 20 persons and it is found that the abovesaid 20 persons had

alienated the property describing that they had been enjoying the said property in common ancestrally and accordingly, jointly executing the same. It is thus found that the property acquired by Krishnamoorthy by way of Ex.A4 sale deed is an undivided extent owned by 20 persons and as could be seen from the said document, it is found that the brother of the defendant's husband one P.H.Raju has been shown as 14th executant. Therefore, when it is found that as per Ex.A4 sale deed, out of the total extent of 86 ½ cents, 67 cents belonged to 15 persons, 8 ½ cents belonged to P.H.Raju and the extent of 11 cents belonged to 4 persons and when the plaintiff has not put forth any case that the executants of Ex.A4 had divided the properties amongst themselves and when it is found that by way of Ex.A4, Krishnamoorthy had acquired three abovesaid items of the properties, in toto 86 ½ cents with common boundaries and when according to the defendant, her husband and his brothers had not divided the properties amongst themselves belonging to them ancestrally and as abovenoted, when P.H.Raju, the brother of the defendant's husband is one of the executant and when the three items of the properties are shown lying within the same boundaries and the three items are not shown lying in different and separate boundaries, in such view of the matter, following Ex.A4, when Krishnamoorthy is found to have alienated the extent of 86 ½ cents to the plaintiff, it does not stand to reason as to how within two months thereafter, the plaintiff would have been able to secure sub-division of the properties and separate boundaries of the extent and furthermore, when the plaintiff has failed to establish that the executants of Exs.A2 & A3 sale deeds have exclusively and independent title to the properties comprised therein and on the other hand, when according to the defendant, the suit property and other properties lying in survey No.622/1 belonged to various persons and furthermore, when the chitta extracts projected in the matter marked as Exs.A5 to A8, in all, go to show that the same stand in the name of the defendant as well as the plaintiff, when there is no indication that the property had been subdivided lawfully by demarcating the extent within the specific boundaries, in such view of the matter, the Courts below are found to be justified in holding that the plaintiff having failed to establish his vendor's claim of title to the suit properties as described in the plaint and on the other hand, when the earlier title deed marked as Ex.A4 would only go to show that his vendor had acquired the property in common without any sub division and comprised within the same boundaries and not in separate boundaries, in such view of the matter, as held by the Courts below within two months thereafter, the plaintiff has failed to explain as to how come his vendors would be competent to convey the properties to him by giving the sub divisions of survey No.622/1 and alienating the properties to him as lying separately and within distinct boundaries and in separate sub divisions and in such view of the matter, when the available materials on record go to disclose that the plaintiff has failed to establish his entire

and exclusive possession and enjoyment of the suit properties as described in the plaint, on the other hand, as contended by the defendant, the properties had not been lawfully divided amongst the co-owners, in such view of the matter, the Courts below are found to be right in declining the relief of permanent injunction sought for by the plaintiff as held by the Courts below. The plaintiff having failed to plead any partition amongst his predecessors in interest and separate possession and enjoyment of his predecessors in interest and on the other hand, the revenue records go to disclose that the suit properties stand both in the name of the plaintiff and the defendant and others, in such view of the matter, the plaintiff having failed to establish his exclusive possession and enjoyment of the suit properties as described in the plaint, accordingly, the courts below had rightly rejected the plaintiff's suit.

5.The reasonings and conclusions of the Courts below being founded on the proper appreciation of the materials available on record and centring on factual matrix and not suffering from any infirmity or perversity, in such view of the matter, the second appeal is found to be not entitled for acceptance.

For the reasons aforesaid, no substantial question of law is found to be involved in the matter and resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

sms

To

1.The Subordinate Court, Coonoor.

2.The District Munsif Court, Kothagiri.

+1cc to Ms.R.Anitha, Advocate SR.No.76007

S.A.No.881 of 2019

BS (CO)
GMY (14/11/2019)