

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 22.01.2019

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.306 of 2017

&

C.M.P.No.7755 of 2017

Mrs.Rani ... Appellant / Appellant/ Defendant

Vs

Mr.Chinnadurai ... Respondent / Respondent / Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.16 of 2012 dated 01.06.2015 passed by the Additional District Judge cum Chief Judicial Magistrate, Ariyalur, confirming the Judgment and Decree in O.S.No.4 of 2001 dated 31.08.005 passed by the District Munsif Court, Jayamkondam.

For Appellant : Mr.T.Velumani

JUDGEMENT

The defendant in a suit for permanent injunction is the appellant before this Court having suffered the concurrent Judgements against her. The facts in brief is narrated herein below and the parties are described in the same array as in the suit.

2.The plaintiff has filed a suit O.S.No.4 of 2011 on the file of the District Munsif Court, Jayankondam against the defendant for a permanent injunction. It is the case of the plaintiff that he had purchased the suit property from one Kaliyaperumal under a registered sale deed dated 13.07.2000 which was pursuant to an agreement of sale dated 11.05.1998. From the date of the purchase the plaintiff has been in peaceful possession and enjoyment of the suit properties. The patta has also been transferred in the name of the plaintiff in respect of the Survey No.440/5 measuring and extent of 0.25.5 ares in Patta No.2233.

3.While so, the defendant along with her henchmen, agents were constantly causing pinpricks to the enjoyment of the suit property by the plaintiff. The defendant was angered by the

fact that the said Kaliyaperumal had sold property to the plaintiff. Therefore, left with no other alternative the plaintiff was constrained to file a suit.

4.The defendant had filed a written statement inter alia disputing the contentions of the plaintiff and stating that she has purchased the suit property from the said Kaliyaperumal under a registered sale deed dated 23.05.2000. It was also her case that she had preferred a suit O.S.No.151 on the file of the Subordinate Court, Ariyalur for specific performance. She would also contend that the plaintiff was aware of the agreement of sale dated 23.05.2000 which was entered into between Kaliyaperumal and the defendant and therefore the purchase by the plaintiff was a fraudulent one with the intend to deprive the defendant off the property. The learned District Munsif, Jayamkondam by his Judgement and decree dated 31.08.2005 was pleased to decree the suit.

5.Challenging the same the defendant had filed A.S.No.16 of 2012 on the file of the Additional District Munsif Court-cum-Principal Sessions Judge, Ariyalur. The Appellate Court also confirmed the Judgement and Decree of the Trial Court. Challenging the same the defendant is before this Court.

6.Heard, Mr.T.Velumani, learned counsel for the defendant. The learned counsel would put forward an argument that defendant's suit for specific performance in O.S.No.151 of 2000 had been decreed in the year 2003 itself and considering the fact that the parties were claiming rival title and ownership of the suit property the suit for permanent injunction without seeking a declaration was bad and liable to be dismissed. The counsel would also contend that there is a collusion between Kaliyaperumal and the plaintiff.

7.Heard the counsel and perused the papers. It is seen that the sale deed in favour of the plaintiff was earlier in point of time, namely, the sale was entered into on 13.07.2000 whereas, from the records it is clear that the plaintiff had obtained a registered sale deed dated 13.07.2000 and it was in pursuant of agreement dated 11.05.1998, whereas, the defendant before this Court urges an agreement of sale dated 23.05.2000 which is much after the agreement in favour of the plaintiff. The defendant would draw strength from the decree for specific performance obtained by her in O.S.No.151 for 2000 on the file of the Sub-Court, Ariyalur. The defendant had filed the above suit only against the vendor of both the plaintiff and defendant, Kaliyaperumal. Thereafter, the plaintiff has filed the present suit for permanent injunction only against the defendant in the suit. The plaintiff has categorically mentioned about the sale in her favour and the fact that she is

in possession and enjoyment of the property. Despite being put on notice about the said sale the defendant did not deem it fit to implead the plaintiff in her suit O.S.No.151 of 2000 nor seeking a relief for setting aside the sale.

8.It is therefore clear that the suit O.S.No.151 of 2000 was a collusive suit meant to deprive the plaintiff off the fruits of the decree. The defendant had failed to prove that he is in possession and enjoyment of the suit property. That apart, the Courts below held that the defendant has been interfering in the possession and enjoyment of the suit property by the plaintiff. In these circumstances, the suit has been decreed and I find no infirmity warranting the interference by this Court.

In the result, the Second Appeal is dismissed. However there shall be no order as to cost. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge cum Chief Judicial Magistrate,
Ariyalur.

2.The District Munsif,
Jayamkondam.

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KAN(CO)
SSM(03/06/2019)