



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. [MD]No.123 of 2006

and

C.M.P. [MD]No.836 of 2006

J.Diraviam ... Plaintiff/Appellant/Appellant

Vs.

1.Issack Durairaj
2.Vetrikani
3.Jeyaselvam
4.Tamilselvi
5.Anbumani

...LRs of the Defendant/ Respondents/Respondents

PRAYER: Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 18.10.2004 in A.S.No.61 of 2002 on the file of the Additional Sub-Court, Dindigul as confirmed in O.S.No.21 of 2001, on the file of the District Munsif Court, Nilakottai dated 09.10.2001.

For Appellant : Mr.M.R.Sreenivasan
for Mr.R.Sridharan

For Respondents : No appearance

JUDGMENT

Aggrieved over the concurrent finding of the trial Court dismissing the suit filed for bare injunction, the present second appeal is filed. The second appeal is pending for admission from the year 2006.

2.Heard the learned Counsel appearing for the parties.

3.The brief facts leading to the filing of the present second appeal is as follows:

2.1.The plaintiff is the brother of the first defendant and he states that he is in possession of the suit property and vacant site. The suit property was purchased by the defendant on 11.04.1986. Thereafter, the first defendant has received consideration and executed unregistered sale deed in favour of the plaintiff. Plaintiff has also obtained patta in respect of the



property. When the matter stood thus, the defendant on 20.01.2001, suddenly made an attempt to dispossess the plaintiff from the suit property.

2.2.It is the case of the defendant therein that she is the owner of the property. Since she was working in Pandiyarajapuram Sugar factory and residing at Sandalpuram, in order to collect rents from the suit property, the defendant has given permission to the plaintiff to reside in the suit property. However, the plaintiff has fraudulently transferred the revenue records in his name and also has allowed to collect the rent and adjust the sum towards the loan availed by the defendant namely, Rs.10,000/- long back. Taking advantage of the illiteracy and also that the defendant is residing outside, the plaintiff managed to obtain revenue records in his name. Hence, prays for dismissal.

3.The trial Court and the First Appellate Court analysed the entire evidence and found that the plaintiff is not the owner of the property and only the defendant is the owner of the property and thus, injunction was not granted and hence, dismissed the suit. Though the plaintiff has claimed right on the basis of the unregistered document, the same has not been established. To claim title to the property, the document should have been registered under Section 17 of the Registration Act. But, he claims ownership on the basis of the unregistered document, which is rightly rejected by the trial Court. Exs.A2 to A4, revenue records indicate that the patta was issued in favour of the plaintiff. The trial Court analysing the evidence found that since the first defendant is the true owner, there cannot be any injunction. The First Appellate Court also confirmed the same.

4.It is an admitted case of the parties that the property was originally purchased by the first defendant. It is the case of the first defendant that the plaintiff was allowed to remain in the suit property to collect the rent and also adjust the rent towards the loan borrowed by the defendants long back. The above admission of the defendants and the revenue records clearly indicate that the plaintiff is in possession of the property. However, the fact remains that the plaintiff has no title to the property. The sole defendant in the suit purchased the property which is not in dispute. In view of the above, since the sole defendant is the true owner and title holder of the property, there cannot be any permanent injunction as rightly held by the Courts below. However, the appellant is in possession as per the admitted pleading of the defendant. Such being the matter, it is for the defendants who have to evict the plaintiff as per law and not otherwise. Till the plaintiff is evicted by due process of law, he cannot be evicted forcibly.



5.With the above observation, the Second Appeal stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MR

To

- 1.The Additional Sub-Court,
Dindigul.
- 2.The District Munsif Court,
Nilakottai.
- 3.The Section Officer, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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VB(17.02.2020) 3P 5C