



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.969 of 2009

AND

M.P.No.1 of 2009

Selladurai

.. Appellant /2nd Defendant

/versus/

1.Chinnammal

2.Karupannan

.. Respondents/Plaintiff/
1st Defendant

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.04.2009 made in A.S.No.19 of 2007 on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 09.06.2005 in O.S.No.1389 of 2004 on the file of the learned Principal District Munsif, Namakkal.

For Appellant :Mr.C.Jagadish

For Respondents:Mr.R.Rajesh for R1
Mr.M.Sudhakar for R2

J U D G M E N T

(The case has been heard through Video Conferencing)

This Second Appeal is filed against the concurrent findings of the Courts below in a suit filed for permanent injunction.

2. Heard the learned counsel for the appellant and the respondents.

3. The brief facts of the case is that the suit property belongs to the second defendant/the appellant herein. He executed a general power of attorney in favour of one Shanmugam on 11.03.2003, conferring power to deal with the property including alienation. Based on the said general power of attorney, the said Shanmugam has sold the property to the



plaintiff on 08.12.2003. The possession alleged to have handed over to the purchaser on 08.12.2003 and the plaintiff is in enjoyment and possession of the property after patta transferred in her name. Alleging that with the forged document, the defendants are preventing the plaintiff from putting up thatched shed, suit has been filed for injunction.

4. In the written statement filed by the first defendant, it is aware that the plaintiff and the second defendant are friends. The second defendant indebted to several persons. He borrowed Rs.50,000/- from the first defendant on 21.04.2002 and executed a pronote. Since the second defendant did not repay the money, sale deed was executed in favour of the plaintiff. This was sham and nominal transaction to defeat the other creditors of the second defendant. In fact, the first defendant had filed a suit in O.S.No.1333 of 2004 and an Advocate Commissioner has visited the suit property and found that the property is still in possession of the second defendant. Therefore, when the possession is still with the second defendant, there cannot be a suit for injunction based on the revenue document.

5. Before the trial court, the plaintiff Chinnammal was examined as P.W1. She has marked five documents, which are the sale agreement between the second defendant and her husband Nallathambi, the Power of Attorney executed by the second defendant in favour of Shanmugam to execute a sale Agreement Ex.A1 and the sale deed in favour of the plaintiff, patta copies were relied upon as plaintiff documents. The defendant neither mounted the witness box nor placed any document in his support.

6. The trial Court after considering Exs.A1 and A2, which is the sale agreement and Power of Attorney, held that the plaintiff has upheld title through the sale deed, which was executed by the Power Agent of the second defendant and she is in possession of the property.

7. On appeal, the First Appellate Court has confirmed the trial Court judgment.

8. In the Second Appeal, it is contended that when in the cause title itself the address of service to the second defendant is shown as suit property and when there are observations by both Courts below that the second defendant is in possession and also supported by the report of the Advocate Commissioner appointed in the other suit, the courts below ought not to have granted possession because the Revenue documents are not proof for possession.



9. Per contra, the learned counsel appearing for the plaintiff/first respondent submitted that the suit property being a vacant site alienated under duly executed sale deed in favour of the plaintiff/first respondent the transfer of patta is the proof for possession which follows the title. In the absence of contra evidence, merely because there is reference in the suit cause title regarding the address of service, the possession cannot be inferred. The report of the Advocate Commissioner is not final proof for possession. Moreso, when the earlier suit culminated in dismissal by the High Court in S.A.No.1038 of 2009.

10. On perusing the records and the findings of the Courts below, this Court finds that after execution of Power of attorney in favour of one Shanmugam, he in turn had executed the sale deed in favour of the plaintiff on behalf of the second defendant/appellant. Unless and until, contra evidence is placed before the Court to show the execution of power of attorney and subsequent sale deed is sham and nominal to defeat the creditors and the possession is still with the vendor, there cannot be any other decision than what the Courts below have arrived at.

11. The title deed of a vacant site and the revenue document are both in favour of the first respondent/plaintiff. In the light of strong evidence in favour of the plaintiff, the trial Court has granted the decree and the same has been confirmed by the First Appellate Court. On facts, both the Courts below have concurrently held in favour of the appellant herein. In the absence of any substantial question of law, this Court is not inclined to entertain the second appeal.

12. In the result, the Second Appeal is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Vri

To:

1.The Principal District Judge,
Namakkal.

2.The Principal District Munsif,
Namakkal.



+1cc to Mr.C.Jagadish, Advocate, S.R.No.39843
+1cc to Mr.R.Rajesh, Advocate, S.R.No.39241

S.A.No.969 of 2009

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