

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 197 of 2020

Sarath Kakumanu

..Appellant/Respondent/
Defendant

Vs.

India Heritage Foundation
Rep. By its Authorized Signatory
Shri Kondandarama Dasa,
S/o. K.Mariappan

..Respondent/Appellant/
Plaintiff

Prayer: Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 29.11.2019 passed by the learned III-Additional Judge, City Civil Court at Chennai in A.S.No. 116/2019 in reversing the decree and judgment passed in O.S.No. 134 of 2015 dated 17.12.2018 by the learned (FAC) IV ? Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.G.V.Sridharan

For Respondent : Mr.S.Veeraraghavan

J U D G M E N T

The defendant in O.S.No. 134 of 2015 who succeeded in convincing the Trial Court to dismiss the suit for injunction laid by the respondent / plaintiff upon its reversal by the Appellate Court has come up with this second appeal.

2. The suit was laid by the plaintiff claiming that the suit property covering about 2.5 grounds belongs to the plaintiff by virtue of its purchase under a sale deed dated 23.11.2006 from one Mr.P.S.Krishnan who in turn purchased the property from Rukmini Devi Arundale Trust pursuant to a compromise entered into in O.S.A.No. 380 of 2001 on the file of this Court. As per the said compromise, the power agents of the trust executed a sale deed in favour of the plaintiff's vendor namely, P.S.Krishnan which was registered on 07.07.2004 as Document No.4579 of 2004. The sale was also ratified by this Court by

its order dated 06.04.2005 made in C.M.P.No. 917 of 2006 in O.S.A.No. 380 of 2001. It is also the case of the plaintiff that Patta was also issued to the plaintiff after the purchase on 17.06.2010. Contending that the defendant who owns the property on east and south of the suit property attempted to interfere with the possession of the plaintiff by engaging one Arunkumar and removing the fence put up by the plaintiff, the plaintiff come forward with the above suit.

3. The suit was resisted by the defendant contending that the plaintiff is not the owner of the property and he has also obtained Patta for the extent of land described as the suit property. The claim that the defendant attempted to trespass was stoutly denied. It was contended that it is the plaintiff, who had after obtaining the interim order, attempted to interfere with the defendant's possession of the suit property. At trial, the authorized agent of the plaintiff was examined as Ex.P.W.1 and Exs.A1 to A9 were marked. The defendant was examined as D.W.1 and no documents were produced on his side. It is also not in dispute that pending suit an injunction was granted and an application was filed under Order 39 Rule 2 A complaining of breach of the order of injunction and the defendant was sentenced to undergo imprisonment in the said interlocutory application. Thereafter, it is stated that the said order was not executed in view of the apology tendered by the defendant before the Trial Court.

4. On the appreciation of the evidence on record, the learned Trial Judge came to the conclusion that the plaintiff has not established the attempted interference by the defendant. The Trial Court found that the documents namely, Exs.A7, A8 and A9 namely, the police complaint, copy of petition receipt and photograph with a compact disc are not sufficient to establish the alleged interference by the defendant. On the said finding, the learned Trial Judge dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No. 116 of 2019. The Appellate Court, upon a reconsideration of the evidence on record concluded that the plaintiff has proved his title by producing the relevant title documents and revenue records. The lower Appellate Court also concluded that Exs.A6 to A7 and A9 would justified claim of the plaintiff that the defendant had attempted to interfere with the plaintiff's possession of the suit property. On the said conclusion, the Appellate Court reversed the findings of the Trial Court and decreed the suit. Aggrieved, the defendant has come up with this second appeal.

5. I have heard Mr.G.V.Sridharan, learned counsel appearing for the appellant.

6. Mr.G.V.Sridharan, learned counsel appearing for the appellant

would vehemently contend that there was no proof of the alleged interference by the defendant. He would also claim that P.W.1 has admitted that the defendant is not seen any one of the videos and photographs, which were marked as Ex.A9 by producing additional typed set of papers containing various complaints alleged by him against plaintiff. Mr.G.V.Sridharan, argues that the decree for injunction cannot be granted to the plaintiff to aid the plaintiff to interfere with the possession of the defendant, I am unable to countenance the said submission of the learned counsel. The additional typed set of papers containing various documents cannot be looked into unless not made part of the record before the Courts below. Further, though the defendant had specifically claimed in the written statement that he has been favoured with the Patta in respect of the suit properties, the said Patta has not been produced. In fact, no document was produced by the defendant before the Courts below to show that he has got some interest in the suit property namely, the land situated in survey Nos. 211/8 part and 211/9 part in Patta No. 858 of 2010.

7. On the contrary, the plaintiff has produced the compromise decree in O.S.A.No. 380 of 2001 and sale deed executed pursuant to compromise on 07.07.2004. The said sale deed is ratified in C.M.P.No. 917 of 2006 by order dated 06.04.2006. The plaintiff has purchased the property from the purchaser under the sale deed dated 07.07.2004 on 23.11.2006 and Patta has also been issued on 17.06.2010. The above documents would establish the title and possession of the plaintiff over the suit property. While the defendant would claim that he has also obtained Patta, he has failed to produce the Patta. Though, the defendant would claim that the Patta issued plaintiff is not correct no action has been initiated to have the said Patta cancelled till date.

8. In the light above, the lower Appellate Court had concluded that the plaintiff has proved its possession as well as the title over the suit properties and the attempted interference by the defendant. I do not think that the findings of the lower Appellate could be termed as perverse or against material evidence on record and I do not see any reason to enable me to entertain this appeal. Hence, this appeal is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:-

1. The III-Additional Judge,
City Civil Court, Chennai.
2. The IV- Assistant Judge, FAC,
City Civil Court, Chennai.

+1 cc to Mr. S.Veeraraghavan, Advocate Sr.No. 19025

S.A.No. 197 of 2020

EV(CO)
RMP(22/03/2021)



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