

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA. No.530 of 2020
and CMP No.11465 of 2020

K.Kanniappan

.. Appellant/Defendant

Vs.

Thana Kotteshwari

.. Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and decree dated 02.12.2019 made in A.S.No.9 of 2019 on the file of Additional District Judge, Arni (Tiruvannamalai District Court AS No.1 of 2019), confirming the judgment and decree made in OS No.160 of 2013 dated 24.09.2018 on the file of the Subordinate Judge, Cheyyar.

For Appellant : Mr.R.Thiagarajan

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

The defendant in OS No.160 of 2013, who suffered a decree for declaration and permanent injunction at the hands of the Courts below, has come up with this Second Appeal.

2. The plaintiff sued for declaration of her title and consequential injunction claiming that she had purchased the suit property which originally belonged to one Mani, who sold the same under a Sale Deed dated 12.03.1987 to one Sundaraj son of Veerasamy Naidu. It is her further claim that the said Sundaraj sold the property purchased by him under the Sale Deed dated 12.03.1987 to the plaintiff on 20.08.1997. The plot number of the suit property is shown as Plot No.9. Pursuant to the said purchase, the plaintiff had applied for mutation of the Revenue Records and patta has also been granted to the plaintiff under Exs.A7 and A9. According to the plaintiff, the defendant who is the owner of the adjacent plot namely Plot No.8, having purchased the same under the Sale Deed dated 11.05.2007 from one Gopiramanan, attempted to interfere with her possession necessitating the suit.

3. The defendant resisted the suit contending that he had purchased Plot No.8 measuring about 1200 sq.feet under a Sale Deed dated 16.05.2007. According to him, he is in possession of the property purchased by him from the date of purchase and he has not attempted to interfere with the plaintiff's possession. On the said contention, the defendant sought for dismissal of the suit.

4. At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A11 were marked. The defendant examined himself as D.W.1, apart from examining two other witnesses as D.Ws.2 and 3. D.W.3 is the vendor of the defendant. Exs.B1 to B12 were marked on the side of the defendant.

5. The learned Subordinate Judge, Cheyyar who tried the suit proceeded on a totally erroneous direction and concluded that the plaintiff has filed the suit for a unknown property, despite availability of documentary evidence, which put the title of the plaintiff beyond any veil of doubt. The learned Subordinate Judge, however, granted a decree in favour of the plaintiff. Aggrieved, the defendant preferred an appeal in AS No.9 of 2019.

6. The Appellate Court on a re-examination of the evidence on record concluded that the Trial Court was not right in observing that the plaintiff has filed a suit for a totally non-existent property. The learned Additional District Judge, Arani, who heard the Appeal, concluded that the plaintiff has established her title by producing title documents including the Sale Deed in favour of her vendor, apart from the Revenue Records viz. the Patta, Town Survey Register and the proceedings of the Tahsildar, Vandavasi, effecting transfer of patta. The learned Additional District Judge also found that it is not the case of the defendant that he is entitled to any portion of land in Plot No.9. On the said findings, the learned Appellate Judge confirmed the judgment and decree of the Trial Court. Aggrieved, the defendant has come up with this Second Appeal.

7. I have heard Mr.R.Thiagarajan, learned counsel appearing for the appellant.

8. Mr.R.Thiagarajan would vehemently contend that once the Trial Court has held that the plaintiff has sued for a non-existing property, the Appellate Court was not right in granting a decree for declaration and injunction. He also expressed his apprehension that with the aid of this decree, the plaintiff would interfere with the appellant's possession of his land in Plot No.8. I do not think both the contentions of the learned counsel appearing for the appellant could be sustained.

9. As regards the finding of the Trial Court, I already observed that the Trial Court had totally misdirected itself and concluded that the plaintiff has filed the suit for a non-existing property. As rightly pointed by the Appellate Court there is overwhelming documentary evidence to show the plaintiff's ownership of Plot No.9. The Appellate Court has also observed that the defendant is entitled to 1200 sq.feet of land in Plot No.8. The Appellate Court has specifically recorded the finding that neither party is disputing the title of the other party to the land purchased by them under the respective Sale Deeds. Therefore, I do not think that the argument of the counsel based on the erroneous finding of the Trial Court, could be sustained.

10. As regards the second contention, as already pointed out the Appellate Court has specifically found that the plaintiff is not claiming any right over Plot No.8 vis.a-vis the appellant is also not claiming any right over Plot No.9. In such a situation, I do not think there is any scope for the apprehension expressed by the learned counsel for the appellant/defendant that the plaintiff may interfere with his possession of 1200 sq. feet of land situate in Plot No.8, which has been purchased by him in the year 2007. The decree in the present suit will be confined only to the title of the plaintiff's Plot No.9 and to safeguard her possession of Plot No.9. It does not confer any right on the plaintiff to plot No: 8.

11. I do not find any question of law much less substantial question of law in order to enable me to entertain the Second Appeal. The Second Appeal therefore fails and it is accordingly dismissed without being admitted. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

jv

To

1.The Additional District Judge,
Arni.

2.The Subordinate Judge, Cheyyar.

+1cc to Mr.R.Thiagarajan, Advocate SR.No.34054

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CNR (CO)

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GMR (07/05/2021)

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