

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 508 of 2020
and
C.M.P.No. 10945 of 2020

M.Ramalingam ...Appellant/Appellant/Defendant

Vs.

M.Thangesawaran ...Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No. 47 of 2017 dated 25.02.2020 on the file of the Principal Sub-Court, Mayiladuthurai, confirming the decree and judgment in O.S.No. 51 of 2007 dated 24.04.2017 on the file of the District Munsif Court, Sirkali.

For Appellant : Mr.S.Sarath Chandran for
Mr.S.P.Harikrishnan

J U D G M E N T

The defendant in O.S.No. 51 of 2007, who suffered a decree for declaration of title and for delivery of possession of the suit A and B schedule properties at the hands of the Trial Court upon its confirmation of the Appellate Court in A.S.No.47 of 2017 has come up with this second appeal.

2. The suit was laid by the plaintiff, who is the brother of the defendant claiming that he has purchased the suit property under sale deed dated 21.05.1975 and the defendant was allowed to reside in the suit A schedule property considering the fact that the defendant did not have a regular job at that point of time. Claiming that such permission has been revoked, the plaintiff sought for recovery of possession of the suit A schedule property and injunction restraining the defendant from interfering with his possession of the suit B schedule property. Since the defendant had trespassed in to the suit B schedule property pending suit, the suit came to be amended as one for recovery of possession of both the items.

3. The suit was resisted by the defendant contending that, though the sale deeds stands in the name of the plaintiff, he was not the absolute owner of the suit properties. The suit property was purchased out of the income from the joint family properties, in the name of the plaintiff, he being the eldest son in the family. It was also pleaded that the defendant is in possession of both A and B schedule property as a sharer and not as a permissive occupant under the plaintiff.

4. At trial, the plaintiff was examined as P.W.1. Three other witnesses also examined as P.W.2 to P.W.4 and Exs.A1 to A73 were marked. On the side of the defendant, the defendant was examined as D.W.1 and two other witnesses examined as D.W.2 and D.W.3. Exs. B1 to B11 were marked. A Commissioner visited the property and filed a report. His report and plan were marked as Exs.C1 and C2. Upon consideration of the evidence on record, the Trial Court found the fact that the sale deeds stands in the name of the plaintiff would prima facie establish the plaintiffs' title to the suit property. It is for the defendant, who alleges that the property was purchased from and out of the funds of the joint family to prove existence of the joint family properties and income therefrom, which would have formed the source for purchase of the suit property in the name of the plaintiff.

5. The Trial Court noted total absence of such evidence on the side of the defendant to conclude that the plaintiff is the absolute owner of the suit property. The fact that the plaintiff was serving in Indian Army during the relevant period was not denied by the defendant. Upon finding that the plaintiff is the owner of the property, the Trial court concluded that he is entitled to a decree for possession. On the above conclusion, the learned Trial Judge decreed the suit. Aggrieved, the defendant preferred an appeal in A.S.No.47 of 2017 on the file of the Sub-Court, Mayiladuthurai. The learned Sub-Ordinate Judge, upon reconsideration of the evidence on record concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved, the defendant has come up with this second appeal.

6. Heard Mr.Sarath Chandran for Mr.S.Harikrishnan, learned counsel for the appellant.

7. Mr.Sarath Chandran, learned counsel for the petitioner would vehemently contend that the Courts below were not right in rejecting the claim of the defendant that the suit properties were purchased out of the joint family nucleus. He would draw my contention to the evidence of P.W.1 wherein, he has stated that the plaintiff and the defendant are not in taking terms for

nearly 40 years to contend that the very plea that he had permitted the defendant to reise in the suit property is false.

8. The suit is one for possession based on title. The plaintiff has claimed that he is the owner of the property. The defence set up was that the property was purchased out of the joint family funds. The sale deed Ex.A1 admittedly stands in the name of the plaintiff, it is for the defendant, who pleads that the property purchased from and out of joint family funds to prove essential ingredients namely, availability of joint family property, availability of sufficient income therefrom and existence of surplus that would have contributed towards the purchase of the property in the name of the plaintiff. The findings of the Courts below are that there is absolutely no evidence to establish the above legal requirements in order to conclude that the property is a joint family property purchased in the name of the plaintiff.

9. In the absence of such evidence, I do not think I can interfere with the findings of the Courts below particularly, sitting in second appeal. I find no question of law much less a substantial question of law in order to enable me to entertain this second appeal. Therefore, this second appeal fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To:

1. The Principal Sub-Court,
Mayiladuthurai.
2. The District Munsif Court,
Sirkali.

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