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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA. No.597 of 2020
and
CMP No.12611 of 2020

Malika ..Appellant/Respondent/Plaintiff

Vs.

1. The Secretary
ZC98, Prathyangarai
Primary Agriculture Cooperative,
Thrift and Credit Society Ltd.,
Prathyangarai Village,
Vedaranyam Taluk, Nagapattinam District.

2. The Special Officer,
ZC98, Prathyangarai
Primary Agriculture Cooperative,
Thrift and Credit Society Ltd.,
Prathyangarai Village,
Vedaranyam Taluk,
Nagapattinam District.

..Respondents/Appellants/Defendants

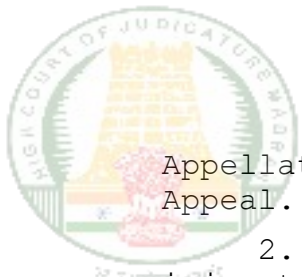
PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed by learned Sub- Judge, Nagapattinam, in AS No.14/2016 dated 27.08.2020, reversing the Judgment and Decree passed by Learned District Munsif cum Judicial Magistrate, Vedaranyam, in O.S.No.43/2012 dated 28.09.2015.

For Appellant : Mr.S.Parthasarathy

J U D G M E N T

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

The plaintiff in OS No.43 of 2012 on the file of the District Munsif cum Judicial Magistrate, Vedaranyam, who was able to convince the learned District Munsif to grant a decree for permanent injunction in her favour, upon its reversal by the



Appellate Court in AS No.14 of 2016 has come up with this Second Appeal.

2. The plaintiff sought for a decree for permanent injunction claiming that she is in possession of an extent of about 10 cents of land in Survey No.159/5 of Prathyangarai Village of Vedaranyam Taluk. According to the plaintiff, the property, which is classified as a Grama Natham, was originally in possession of one Kuppusami Pillai, who had sold the same under a Deed dated 23.03.1983, styled as "அனுபவ மாற்று பத்திரம்". Contending that the defendants who own about 8 cents of land in Survey No.159/5 are now attempting to dispose the plaintiff and put up a construction for the purposes of the office of Prathyangarai Primary Agriculture Cooperative Society Ltd.

3. The suit was resisted by the defendants contending that the suit property is not situate in Survey No.159/5. The defendants would contend that it had purchased an extent of 8 cents in Survey No.159/5 and an extent of 10 cents in Survey No.159/2 from one Souriraja Iyengar under a registered Sale Deed dated 02.04.1962 and the society has been in possession of the property by constructing its office and a godown in the said property. It was also pleaded that the plaintiff and her husband had encroached upon an extent of about 3829 sq. ft. in Survey No.159/2 during April 2004 and are in possession as trespassers. The title of the plaintiff to the said land in Survey No.159/5 was seriously disputed.

4. At trial, the plaintiff was examined as P.W.1 and Exhibits A1 to A3 were marked. One Thiru.Vallavan, the secretary of the Prathyangarai Primary Agriculture Cooperative Society Ltd., was examined as D.W.1 and Exhibits B1 to B4 were marked. A Commissioner was appointed by the Court and his Report and Plan were marked as Exhibits C1 and C2.

5. The learned Trial Judge upon a consideration of the evidence on record concluded that the plaintiff would be entitled to an injunction, inasmuch as, the defendants have admitted the possession of the plaintiff of an extent of 3829 sq.ft. of land. Upon such conclusion, the learned Trial Judge granted a decree in favour of the plaintiff. Aggrieved, the defendants preferred an appeal in AS No.14 of 2016.

6. The Lower Appellate Court upon a re-appreciation of the evidence particularly the Report and Plan of the Commissioner which showed that the plaintiff is not in possession of any portion of land in Survey No.159/5 which is the suit property concluded that the plaintiff has not proved her possession on the date of the suit. Upon such conclusions the appellate court reversed the judgment and decree of the Trial Court and dismissed the suit.



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7. The Lower Appellate Court also found that though the plaintiff claims to have purchased the property from Kuppusamipillai, the plaintiff was not able to support title of Kuppusamipillai by acceptable documentary evidence. It was the further finding of the Appellate Court that the plaintiff ought to have sued for declaration and declaration of title, since her title to the suit property was very seriously disputed by the defendants. On the above conclusions, the learned Appellate Judge allowed the Appeal and dismissed the suit. Hence the Second Appeal.

8. I have heard Mr.S.Parthasarathy, learned counsel appearing for the appellant.

9. Mr.S.Parthasarathy, learned counsel appearing for the appellant would vehemently contend that once the defendants admit the possession of the plaintiff, the Lower Appellate Court was not right in dismissing the suit by reversing the judgment and decree of the Trial Court.

10. I have considered the submissions of the learned counsel.

11. The so called admission is not unqualified admission of possession of the plaintiff. All that the defendants would state in the written statement is that the plaintiff had encroached upon an extent of 3829 sq. ft. in Survey No.159/2 during the year 2004, and had come up with the suit in 2012. It is the further plea of the defendants that an extent of about 8 cents in Survey No.159/5 and an extent of about 10 cents in Survey No.159/2 were conveyed to the Society under the Sale Deed dated 02.04.1962 marked as Ex.B4. The Commissioner's Report and Plan are more revealing. They demonstrate that the extent of land available in Survey No.159/5 is only 7 $\frac{2}{3}$ cents and Souriraja Iyankar has conveyed 8 cents in Survey No.159/2 to the defendants in the suit. Therefore, there was no land available in Survey No.159/5 enable Kuppusami pillai to be in possession of or to transfer the same to the plaintiff.

12. As per the Commissioner's Report, the plaintiff is actually in possession of Survey No.159/2 even after the filing of the Commissioner's Report, the plaintiff had not chosen to amend the plaint but continued to prosecute the suit, as if, she is in possession of some land in Survey No.159/5. This factual aspect was totally overlooked by the Trial Court when it assumed that the defendants had admitted the possession of the plaintiff of the suit property. I am therefore of the considered opinion that the Lower Appellate court was perfectly justified in coming to the conclusion that the plaintiff has not established possession of the suit property as described in the plaint. It is also seen from the records that the defendants have in fact filed the suit in OS No.102 of 2012 for recovery of possession. It is stated that the said suit has been decreed and an Appeal



against the said decree is pending. I therefore do not find any illegality or perversity in the findings of the Lower Appellate Court.

13. Despite its best efforts, Mr.S.Parthasarathy, is unable to make out a question of law much less a 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-IV)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Subordinate Judge,
Nagapattinam.

2. The District Munsif cum Judicial Magistrate,
Vedaranyam.

Copy To

The Section Officer,
V.R.Section, High Court of Madras.

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No. 37466

SA. No.597 of 2020
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GJ(CO)
GN(25/08/2021)