

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.652 of 2014 &
M.P.No.1 of 2014

P.Maheswaran .. Appellant/Appellant/Plaintiff

Versus

1.Meganathan
2.Giri
3.Arasu

.. Respondents/Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code to set-aside the Judgment and Decree dated 12.12.2013 made in A.S.No.212 of 2012 passed by the learned V Additional District Judge, City Civil Court, Chennai, confirming the Judgment and Decree, dated 13.03.2012 made in O.S.No.393 of 2004 passed by the learned II Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.Sathish Rajan

For Respondents: Mrs.P.Kavitha
For Mr.B.Divakaran

JUDGMENT

The unsuccessful plaintiff in O.S.No.393 of 2004, on the file of II Assistant Judge, City Civil Court, Chennai is the appellant herein. The prayer in the suit is for declaration of his title over the property and for consequential permanent injunction.

2. The plaintiff would state that his father is having patta land measuring an extent of 6 cents in Konnur Village, and the suit schedule property is situated on the eastern side of the plaintiff's patta land. The suit property was occupied by the plaintiff's father Pachaiappan about 40 years ago and it was being used as backyard. After the marriage of the plaintiff, he was put in possession and thereafter, he constructed a house and living therein continuously. Revenue records stood in the name of the plaintiff and his father.

3. It is alleged that the defendants have no right or interest over the suit property and they are total strangers, but with a view to grab the vacant land, they attempted to trespass into the suit property in the year 1999. So, the plaintiffs' parents instituted a suit in O.S.No.2847 of 1999. Though the suit was decreed by the trial Court, but on appeal, the appellate Court allowed the Appeal Suit No.336 of 2003 with an observation, the plaintiffs have not proved their possession. Hence, the present suit.

4. The suit was resisted by the defendants contending that the suit is frivolous, vexatious and the same is not maintainable in law. It is further contended that the earlier suit O.S.No.2847 of 1999, resulted in favour of the defendants and the present suit is filed with an ulterior motive to somehow grab the property of the defendants. It is further stated that the plaintiff and his mother are residing just opposite to the property of the defendants and prayed for dismissal of the suit.

5. On the basis of the above pleadings, the trial Court framed necessary issues. On behalf of the plaintiff, P.W.1 was examined and Exs.A1 to A22 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B20 were produced. The trial Court, upon consideration of the oral and documentary evidence, held that the plaintiff is not entitled for the decree and dismissed the suit. On appeal, the finding of the trial Court was confirmed. Hence, the present appeal.

6. The Second Appeal was admitted on the following substantial questions of law:-

"(a) Whether the first appellate Court failed to follow the procedure of law in marking documents viz., Exhibits B21 to B24 filed as additional evidence before the first appellate Court at a belated stage.

(b) Whether the first appellate Court has committed an error in not following the procedure contemplated under Order 41 Rule 27 and Rule 28 of CPC in dealing with the application seeking permission to adduce additional evidence in the appellate stage."

7. The learned counsel for the appellants would submit that the Courts below failed to appreciate the evidence both oral and documentary adduced by the parties in a proper perspective. It is further submitted that the trial Court without following the procedure under Order 41 Rule 27 and 28 of CPC, permitted the respondents / defendants to mark the additional documents as Exs.B21 to B24, hence the Judgment of the appellate Court is liable to be set aside.

8. Per contra, Mrs.P.Kavitha, the learned counsel for the respondents submitted that the parents of the appellant have lost their case in the first round of litigation, but their son has now filed this vexatious suit to grab property of the respondents / defendants.

9. Heard the learned counsels on either side and perused the materials available on record.

10. In the matter on hand, the appellant herein, as plaintiff filed the present suit for declaration of his possessory title to the suit property and for consequential permanent injunction. It is his specific case that the suit property was originally occupied by his father Pachaiappan about 40 years ago and the plaintiff was put in possession of the suit property later. It is not disputed that the parents of the plaintiff instituted the suit in O.S.No.2847 of 1999 for permanent injunction. Perusal Exs.A9 & A10 would reveal that the suit was decreed, however, the Judgment and Decree was set-aside by the appellate Court on 05.01.2004 and the present suit came to be filed on 13.01.2004, i.e., within a period of one week from the date of dismissal of the earlier suit.

11. It is also not disputed that in A.S.No.336 of 2003, it has been categorically held that the parents of the plaintiff was not in possession of the suit property. Both the Courts having considered the evidence produced by the appellant / plaintiff found that no evidence was produced by the plaintiff to prove his possession, after the dismissal of the earlier suit. Exs.A11 to A22 relate to the years between 1974 and 1994. Exs.B3 to B5 and B7 were relied upon to show that the defendants have paid urban land tax and Exs.B11, 12, 13 and 15 revenue records are standing in the name of the defendants. They were marked to prove that the defendants are the owners of the property. Ex.B21 to B24 were sought to be marked at the appellate stage to establish that some of the documents marked by the appellant / plaintiff are forged. It appears that the appellate Court allowed the application, as they are public documents and relevant to decide the case. In paragraph No.20, the appellate Court found that Exs.B21 to B24 reveal that the document filed by the appellant / plaintiff, Exs.A1, A2, A12, A13, A21 and A22 are not issued by the concerned Departments in the name of the appellant and held that the appellant has not produced any document to prove his right or possessory title over the suit property. The perusal of the records shows that the plaintiff has not proved his case. Therefore, I concur with the finding of the Courts below. Even those additional documents Exs.B21 to B24 are eschewed from the consideration, in my opinion, the appellant / plaintiff has not established his case.

12. It is contended by the learned counsel for the appellant that the defendants have not established their case. It is well settled law that in the suit filed for declaration, the burden of proof is on the plaintiff and he cannot take advantage of the loopholes in the case of the defendants.

13. For the foregoing reasons, the questions of law are answered against the appellants and the appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The V Additional District Judge,
City Civil Court,
Chennai.

2. The II Assistant Judge,
City Civil Court,
Chennai.

Copy to :

The Section Officer
VR Section, High Court Madras.

+1 cc to Mr.S.Sathish Rajan, Advocate Sr.No. 15187

+1 cc to M/s.P.Kavitha, Advocate Sr.No. 15103

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M.P.No.1 of 2014

BR (CO)

RMP (23/04/2021)

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