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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :02.03.2021

PRONOUNCED ON :15.03.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1203 of 2008

and

M.P.No.1 of 2008

Khathoon Bi

W/o. S.K. Lalan @ Mader Sahib

...Appellant/Plaintiff

Vs.

1. Y. Hussain

S/o. Yusuf Khan

2. Jaibun bi

W/o. Y. Hussain

3. Ahemad Basha

S/o. Lalan Sahib

4. Ameerun

W/o. Ahemed Basha

...Respondents/Defendants 1 to 4

Prayer: Second Appeal is filed under Section 100 of CPC, 1908 against the judgment and decree dated 30.11.2007 made in A.S.No.51/2007 on the file of the court of the Subordinate Judge, Tirupattur, reversing the judgment and decree dated 11.04.2007 made in O.S.No.394/2000 on the file of the court of the District Munsif, Tirupattur.

For Appellant : Mr. A.Sundaravadhanam
for M/s. D. Balachandran

For Respondents

For R1 & R2 : Mr. C. Prakasam

R3 and R4 : No appearance. Set exparte vide order
dated 02.03.2021.



JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 30.11.2007 passed in A.S.No.51/2007 on the file of the Subordinate Court, Tirupattur, reversing the judgment and decree dated 11.04.2007 passed in O.S.No.394/2000 on the file of the District Munsif Court, Tirupattur.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The plaintiff in O.S.No.394/2000 is the appellant in the second appeal.

4. Suit for permanent injunction.

5. The case of the plaintiff, in brief, is that, the suit property and the other properties belonged to Beejan Bi and S.K.Lalan @ Madar Sahib and they were in the possession and enjoyment of the same and they sold the suit property to the plaintiff for valid consideration on 07.09.1965 and delivered the possession of the suit property to the plaintiff and following the abovesaid sale deed, the plaintiff is enjoying the suit property and residing in the house put up in the suit property along with her husband and the house tax has been assessed in the name of the plaintiff and the plaintiff is also paying the property tax and the suit property has been registered in the Revenue Department only in the name of the plaintiff. The plaintiff and her husband have gifted the suit property to one Dowlath Basha, the son of their daughter and delivered the possession of the same and it is Dowlath Basha, who is in the possession and enjoyment of the suit property. The defendants, without any manner of right, title or interest over the suit property, demanded the plaintiff to settle the suit property in their favour and when the plaintiff refused to accede to their demand, the defendants attempted to trespass into the suit property unlawfully and as their actions persisted, according to the plaintiff, she has been necessitated to lay the suit for the relief of permanent injunction.

6. The defendants 2 and 3 resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and it is false to state that the suit property originally belonged to Beejan Bi and S.K.Lalan @ Madar Sahib and they were enjoying the same and subsequently, sold the same to the plaintiff on 07.09.1965. The alleged vendors of the plaintiff have no title to the suit property and therefore, the sale deed dated 07.09.1965 is invalid in law. The suit property and the other properties



belonged to Yusuf khan and he was in the possession and enjoyment of the same and he died in 1960 leaving behind his wife and six sons including the defendants and three daughters including the plaintiff as his legal heirs and all his legal heirs were in the possession and enjoyment of the same. The mother Rokkoya Bi gifted the suit property to the second defendant on 23.05.1974 and thereafter, the second defendant has spent huge amount and constructed a shop and the tax has been assessed in the name of the third defendant and it is only the defendants 2 and 3 who are enjoying the suit property, as above stated, and the plaintiff was given in marriage at Harur in 1960 and she did not live with her husband and returned to her parent's house and so the second defendant, who is the brother of the plaintiff had given some property to her for her maintenance and it is false to state that the plaintiff and her husband had gifted the property to Dowlath Basha. The plaintiff's husband S.K.Lalan @ Madar Sahib has no right, title or interest over the suit property and the plaintiff and her husband have no right to gift the suit property to Dowlath Basha. The allegations put forth in the plaint that the defendants requested the plaintiff to settle the suit property in their favour is false and further allegation that the defendants endeavoured to disturb her possession and enjoyment of the suit property is also false. The defendants 1 and 4 are unnecessary parties to the suit and they are in collusion with the plaintiff. The plaintiff is not in the possession of the suit property. Only with a view to grab the suit property from the defendants, the plaintiff has filed the present suit without any cause of action. The suit laid by the plaintiff simplicitor for the relief of permanent injunction without seeking declaration of her title to the suit property is not legally maintainable and on that score also, the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined and Exs.A1 to A3 were marked. On the side of the defendants D.Ws.1 and 2 were examined and Exs.B1 to B7 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties, and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiff as prayed for. Impugning the same, the defendants 2 and 3 had preferred the first appeal and the first appellate court, on an appreciation of the materials available on record, both order and documentary, and the submission put forth by the respective parties, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendants 2 and 3, dismissed the plaintiff's



suit. Challenging the same, the present second appeal has been laid by the plaintiff.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration in the second appeal.

- 1) Whether the lower appellate court is right in holding that the appellant/plaintiff had filed the suit for permanent injunction without seeking the relief of declaration and without establishing her right over the suit property is not maintainable and bad in law?
- 2) Whether the lower appellate court is correct in not acting on the admission of the 1st defendant, since an admitted fact need not be proved?"

10. From the pleas and the materials placed on record, it is found that the plaintiff and the second defendant are the children of Yusuf Khan and they are vying with each other regarding the claim of title, possession and enjoyment of the suit property one way or the other. The plaintiff being the suitor and come forward with the suit seeking for the equitable and discretionary relief of permanent injunction, at the foremost, it is for the plaintiff to establish that she is legally entitled to enjoy the suit property and further the suit property is in her possession and enjoyment.

11. The plaintiff claims title to the suit property based on the sale deed dated 07.09.1965, the certified copy of which has been marked as Ex.A1 and according to the plaintiff, the same had been executed in her favour by Beejan Bi and her husband S.K.Lalan @ Madar Sahib. According to the defence version, the plaintiff's vendors, above stated, have no right, title or interest over the suit property. The plaintiff has not placed any document worth acceptance as to how her vendors had acquired the title to the suit property. When in Ex.A1 sale deed though it is claimed by the vendors that the suit property belonged to them, however, as rightly concluded by the first appellate court, it has not been explained in the said document as to how the vendors acquired the title to the suit property and furthermore, when the plaintiff has also not placed any proof or material to hold that her vendors had acquired a valid title to the suit property and when the plaintiff has also not explained during the course of evidence as to how her vendors had acquired title to the suit property other than stating that she had disclosed about the same in the plaint, however, when in the plaint, the plaintiff having not come forward with any specific plea as to how her vendors had acquired title to the



suit property, therefore, merely on the basis of Ex.A1 sale deed, it cannot be construed or held safely that the suit property had been lawfully acquired by the plaintiff from her vendors, particularly, when the vendors' title to the suit property had not been established by the plaintiff in the manner known to law. The claim of the plaintiff that she had acquired a valid title to the suit property under Ex.A1 sale deed is found to be highly untenable and on that score alone, the plaintiff's suit is liable to be dismissed.

12. Now according to the plaintiff, following Ex.A1 sale deed, she is in the possession and enjoyment of the suit property. However, during the course of cross examination, the plaintiff examined as P.W.1 has clearly admitted that it is only the defendants 2 and 3 who are in the occupation of the suit property by putting up the shop and also enjoying the same by obtaining the service connection and would also further testify that only with a view to recover the possession of the property, which is in the possession of the defendants 2 and 3, she has laid the suit. Therefore, as rightly determined by the first appellate court, even as per the admission of the plaintiff, it is only the defendants 2 and 3 who are in the occupation of the suit property by putting up a shop and enjoying the same by obtaining the service connection, etc. To buttress their case, the defendants have also filed the electricity bills, receipts for the payment of licence towards the shop, marked as Exs.B2 to B7. Though some documents of the defendants, abovestated, are found to have been secured after the institution of the suit, however, as rightly concluded by the first appellate court, considering Exs.B2 to B5 and coupled with the abovesaid admission of P.W.1, it is evident that it is only the defendants 2 and 3 who are in the occupation of the suit property as above pointed out.

13. The plaintiff would claim that she is residing in the house put up in the suit property by paying the tax, etc., and the suit property has been entered in the revenue records in her name, however, pointing to the same, there is no acceptable and reliable material forth coming on the part of the plaintiff. The suit property is stated to be consisting of the house bearing door No.154. The only tax receipt projected by the plaintiff marked as Ex.A3 does not contain any door number and there is nothing contained in Ex.A3 that it pertains to the suit property. Therefore, Ex.A3 would be of no use to sustain the plaintiff's case. Ex.A2 is the copy of the adangal extract. When the plaintiff has failed to establish that her vendors had title to the suit property, as above pointed out, and in such view of the matter, the plaintiff's claim of title to the suit property based on Ex.A1, as such, cannot be accepted in the eyes



of law. It does not stand to reason as to how come Ex.A2 adangal extract is found to have been secured in the name of the plaintiff. The plaintiff has not explained as to under what facts and circumstances Ex.A2 had been recorded in her name, particularly, when she, as above stated, has failed to establish her claim of title to the suit property.

14. Furthermore, when according to the plaintiff she and her husband had already settled the suit property in favour of one Dowlath Basha, her daughter's son and delivered the possession of the same to Dowlath Basha, it does not stand to reason as to how the present suit is maintainable by the plaintiff claiming that the suit property is in her possession and enjoyment. The alleged settlement deed said to have been executed by the plaintiff and her husband in favour of Dowlath Basha is not forthcoming. Dowlath Basha is not a party to the present proceedings. He has not come forward with any suit seeking for permanent injunction based on the alleged settlement deed on the footing that the defendants are endeavouring to disturb the possession and enjoyment. Therefore, the very maintainability of the plaintiff's suit claiming herself to be in the possession of the suit property is questionable, particularly when she has averred that she had delivered the possession of the suit property to one Dowlath Basha pursuant to the alleged settlement deed said to have been executed by her and her husband in favour of Dowlath Basha.

15. Furthermore, considering the adangal extract Ex.A2, as rightly determined by the first appellate court, the plaintiff should have endeavoured to examine the authority who had issued the same to clear the doubt as to on what basis he had issued the adangal extract in favour of the plaintiff, particularly, the plaintiff having failed to establish her title to the suit property as above pointed out.

16. The only conclusion that could be arrived at in view of the above discussions is that, the plaintiff has miserably failed to establish her title to the suit property as well as her possession and enjoyment of the suit property either on the date of the suit or prior to the filing of the suit or even subsequent to the institution of the suit. On the other hand, as above pointed out, she had clearly admitted that it is only the defendants 2 and 3 who are in the possession and enjoyment of the suit property by putting up a shop and obtaining the service connection etc. No doubt, D.W.1, the second defendant would admit in the course of cross examination that the plaintiff has two houses in the suit property and it is only the plaintiff who is paying the house tax and the door No.154 belongs to the plaintiff and on the basis of the abovesaid admission, it is contended by the plaintiff's counsel that the



second defendant having admitted the title of the plaintiff to the suit property, the first appellate court had erred in not relying upon the same and granting the relief in favour of the plaintiff. No doubt, D.W.1 had tendered evidence on the abovesaid lines. However, considering the evidence of D.W.1 in toto, when he has been vehemently disputing the plaintiff's claim of title to the suit property as well as her possession and enjoyment and when, as above pointed out, the plaintiff has miserably failed to establish her claim of title to the suit property as well as her possession and enjoyment and having admitted that the defendants 2 and 3 are in the possession and enjoyment of the suit property, as pointed supra, merely because D.W.1 has admitted that the plaintiff is having two houses in the suit property and paying the tax for door No.154, however, no tax receipt pertaining to Door No.154 having been projected by the plaintiff and when the plaintiff has also not endeavoured to produce the patta said to have been issued in her favour qua the suit property, in my considered opinion, the abovesaid admission of D.W.1, by itself, would not be sufficient and adequate to hold that the plaintiff is in the lawful possession and enjoyment of the suit property. The plaintiff having miserably failed to establish her claim of title to the suit property and considering the relationship between the parties, even if it is to be taken that the defendants 2 and 3 have also failed to establish their claim of title to the suit property by placing acceptable and reliable materials as such, however, as the plaintiff being the suitor and when she claims that the entire extent of the suit property measuring east-west 50 feet and north-south 30 feet inclusive of the hut etc., in survey No.421/9 old No.163 is in her possession based on the title and when the same has not been established by the plaintiff and despite the denial of the plaintiff's title to the suit property by the defendants vehemently, the plaintiff having failed to seek for the relief of declaration of title as outlined by the Apex Court in the decision reported in CDJ 2008 SC 603 (Anathula Sudhakar V. P.Buchi Reddy (dead) by Lrs and others), in all, the first appellate court is justified in non suiting the plaintiff by setting aside the judgment and decree of the trial court.

17. The reasonings and conclusions of the first appellate court for negating the relief sought for by the plaintiff being based on proper appreciation of the materials available on record, both on factual matrix and on the point of law, I do not find any valid reason to interfere with the same. In my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.



18. In conclusion, the judgment and decree dated 30.11.2007 passed in A.S.No.51/2007 on the file of the Subordinate Court, Tirupattur, reversing the judgment and decree dated 11.04.2007 passed in O.S.No.394/2000 on the file of the District Munsif Court, Tirupattur, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bga

To

1. The Subordinate Judge, Tirupattur
2. The District Munsif, Tirupattur.
3. The Section Officer, VR Section, High Court, Madras

+1 CC to Mr.D. Balachandran, Advocate sr 16296

+1 CC to Mr.C. Prakasam, Advocate sr 16540.

S.A.No.1203 of 2008

NMI (CO)

SP(29/10/2021)