



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

31.08.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.590 OF 2021

AND

CMP.NO.12531 OF 2021

M.Vetrivendhan

... Appellant/
Plaintiff in Trial Court

Vs.

1. M.Muniappan
2. The Branch Manager,
State Bank of India,
By-pass Road,
Dharmapuri Town,
Dharmapuri Taluk & District.

... Respondents/
Defendants in Trial Court

PRAYER:

Second Appeal filed under section 100 of the Civil Procedure Code against the Judgement and Decree dated 31.10.2019 made in A.S.No.29 of 2018 on the file of the learned Principal Sub Court, Dharmapuri confirming the judgment and decree dated 29.02.2016 made in O.S.No.230 of 2012 on the file of the learned District Munsif Court, Dharmapuri.

For Appellant : Mr. N.Manoharan

JUDGEMENT

The plaintiff in a suit for bare injunction is the appellant before this Court having unsuccessfully contested the suit in both the Courts below.

2. It is necessary to briefly allude to the facts of the case in order to appreciate the issue in the above second appeal. For the ease of understanding, the plaintiff and the defendant are referred to in their same status as before the trial Court.

3. The plaintiff had instituted the suit in O.S.No.230 of 2012 on the file of the District Munsif, Dharmapuri, for the



reliefs stated supra. It is the case of the plaintiff that the suit items 1 and 2, are the joint family properties of the plaintiff and the first defendant. It is the further case that the first item of the suit property was settled on him by the first defendant on 15.12.2006 and the second item has been allotted to him under an oral partition, since then, he has been in possession and enjoyment of the same. The plaintiff had carried out repairs to the old buildings and made improvements thereon by spending his money. That apart, The first defendant with an intent to create an encumbrance on the suit property was attempting to illegally dispossess the plaintiff and with this intent, has been disturbing his possession and threatening him. On 11.09.2012, the second defendant along with his henchmen, had attempted to enter into the suit property. The first defendant has tried to obtain a loan from the second defendant on the security of the suit property. In view of the above interference, the plaintiff has come forward with the above suit.

4. The first defendant though served with the summons had failed to enter appearance and was therefore, set ex parte. The second defendant had filed a written statement inter alia contending that the entire allegations contained in the plaint was totally false. The second defendant Bank would submit that they are not joining issue with reference to the first item of the suit property, however, the second item of the suit property has been mortgaged by the first defendant to the Bank and therefore, they have an interest in the same. The second item of the suit property belongs to the first defendant and now with an intent to wriggle out of the liability, the first defendant had set up the plaintiff to file this suit stating that the second item of the property is an ancestral property. The second item of property is a separate property of the first defendant and the plaintiff has no right, title or interest in the same. The first defendant had obtained a loan by offering the second item of the property as a security. Since the first defendant had not cleared his dues, the second defendant had exercised his right under the SARFAESI Act and taken possession of the second item of the suit property through the Chief Judicial Magistrate, Dharmapuri. The writ petition filed by the first defendant in W.P.No.26715 of 2012 challenging the proceedings under the SARFAESI Act, 2002, has been dismissed on 22.02.2013. In fact, the first defendant had moved M.P.No.1 of 2012 for an interim order. The first defendant had obtained an interim order on condition that the first defendant should remit some amount towards his loan. The first defendant had failed to do so and thereafter, the writ petition and the miscellaneous petition came to be dismissed. The defendant would contend that the cause of action as pleaded in the plaint, namely the trespass on 11.09.2012 etc., is a fabricated and concocted allegation. The first defendant would therefore



contend that the suit be dismissed against them.

5. The learned District Munsif, Dharmapuri, had framed issues and the parties had gone to trial where the plaintiff was examined as PW1 and only Ex.A1 was marked viz., the settlement deed executed by the first defendant in favour of the plaintiff dated 15.12.2006. The defendants had examined one Manikandan as DW1 and marked and marked Exs.B1 to B4. After considering the evidence, the trial Court had dismissed the suit and challenging the same, the plaintiff had filed A.S.No.29 of 2018 on the file of the Principal Sub Court, Dharmapuri, the learned Judge also followed suit and dismissed the appeal. Challenging this concurrent judgment and decree, the plaintiff is before this Court.

6. Mr.N.Manoharan, the learned counsel for the appellant would submit that though the second defendant bank had submitted that they had no objection with reference to the first item of the suit property, the learned Judge had dismissed the suit in its entirety. Therefore, the second appeal ought to be admitted and this issue considered.

7. Heard the learned counsel and perused the records.

8. The plaintiff has come forward with the case that the first item of the suit property has been gifted to him and the second item has been orally partitioned and in that partition, the second item had fallen into share of the plaintiff. The first defendant has remained ex parte. The second defendant has very clearly and categorically stated that they were joining issue only with reference to the second item of the suit property which the first defendant had mortgaged in their favour and obtained a loan. The first defendant has contested the proceedings initiated by the Bank under the SARFAESI Act, which clearly shows that the case of oral partition is an after-thought. The plaintiff who claims that his possession has been disturbed by the defendants, particularly, with reference to the first item of the property has not proved the same. In fact, the cause of action pleaded has not been proved at all. Therefore, the statement of the second defendant that they were not concerned with the suit first item of the property does not automatically entitle the plaintiff to a decree with reference to the first item of the property. The plaintiff has to prove that his possession has been disturbed or an attempt has been so made. Without such proof, he is not entitled to a decree for injunction. As regards the second item of the suit property, the second defendant Bank by filing Exs.B1 to B5 have proved their interest in the same and the fact that the property continued to remain that of the first defendant. It also proved that the plaintiff has come to Court with a false case.



9. In these circumstances, I do not find any grounds for interfering with the finding of the Court below and further no substantial questions of law has been made by the appellant. In the result, this second appeal stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub Court,
Dharmapuri.
2. The District Munsif Court,
Dharmapuri.

+1cc to Mr.N.Manoharan, Advocate, S.R.No.43575

S.A.No.590 of 2021
&
CMP. No.12531 of 2021

PMK (CO)
PM/20/10/2021