



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.Nos.151 of 2017
and
C.M.P.No.3174 of 2017

1.S.Palanivel

2.S.Duraiaraj

3.S.Ramaiyan

...Appellants/Appellants/Defendants

Vs

A.Parameswari

...Respondent/Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgement and decree dated 07.12.2016 made in A.S.No.45 of 2014 on the file of the Subordinate Judge, Nagapattinam confirming the judgment and decree dated 27.10.2014 made in O.S.No.40 of 2012 on the file of the District Munsif Cum Judicial Magistrate Court, Vedaranyam.

For appellants : Mr.M.Meenatchi for
Mr.Anbarasan

For Respondent : No appearance

JUDGMENT

The appellants are the defendants in the suit in O.S.No.40 of 2012 on the file of the learned District Munsif Cum Judicial Magistrate, Vedaranyam. The respondent herein filed the said suit for bare injunction restraining the appellant herein from encroaching into the suit property and from interfering with the right of plaintiff to put up a home in the suit property.

2.The suit property is described as two items. The first item is an extent of 5 cents in S.No.182/2 in Aayakkaranpulam Village, Vedaranyam Taluk, Nagapattinam District and the second item is an extent of 17 cents out of 0.39.0 hectares in



S.No.182/4D in the same village.

3. In the plaint, it is stated that the plaintiff had acquired title to the property as per the registered sale deed dated 12.05.2011. Stating that the respondents/defendants claim certain rights as if they are the joint owners in respect of the portion of the suit property, the suit is filed for injunction.

4. In the written statement, it is stated that the vendors of the plaintiff were never in enjoyment of the suit property. It was further stated that the land measuring an extent of 24 cents was kept as undivided share even in the subsequent partition deed dated 12.05.1994 and that they are entitled to get the land measuring an extent of 30 cents as per the sale deed dated 07.09.2006, obtained from one Somasundaram and Swamyappan. The appellants/defendants also contented that the suit for bare injunction is not maintainable without seeking for declaration of title. The appellants/defendants categorically denied the title of the plaintiff. The trial Court framed necessary issues and held that the respondent/plaintiff is in possession of the property as per the sale deed dated 12.05.2011. The trial Court also considered the documents filed by the appellants and the documents and evidence of plaintiff claiming title to the property through their vendor under document i.e Ex.P1. After considering the legal and factual issues in a proper manner, the trial Court decreed the suit.

5. Aggrieved by the judgment and decree of trial court, the appellants preferred an appeal in A.S.No.45 of 2014 before the Sub Court, Nagapattinam. After considering the issues independently, the Sub Court, Nagapattinam, also dismissed the appeal and confirmed the judgment and decree of the trial Court.

6. From the evidence, it is seen that the plaintiff has started the construction work in the suit property. The appellants relied upon the sale deed which was obtained in the year 2006 and a partition deed. The documents filed by the appellants have been considered and it is found that rights of the vendor of the plaintiff are recognized. Hence the documents filed by appellants do not support the appellants to sustain the claim of title. The possession and title have been decided based on the appreciation of evidence adduced by both sides.

7. The learned counsel for the appellants however stated that the suit for bare injunction is not maintainable without seeking relief for declaration of title. It is well settled that a person in possession can file a suit for injunction against anyone who has no better title.



8. This Court is unable to find any valid question of law to entertain the second appeal and also any material error or irregularity in appreciation of evidence. Hence, the second appeal is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (Spl. Cell CJ Conf)

//True Copy//

Sub Assistant Registrar

tta

To

1. The Subordinate Judge,
Nagapattinam.
2. The District Munsif Cum Judicial Magistrate,
Vedaranyam.

Copy To

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

+1cc to Mr.P.Anbarasan, Advocate, S.R.No.22765

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GPL (CO)
RGA (11/11/2021)