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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.Nos.1327 & 1328 of 2011

and

M.P. Nos.1 & 1 of 2011

S.A. No.1327 of 2011

Thirugnanam

...Appellant/Appellant/Plaintiff

Vs.

1. Balakrishnan.

2. Rasammal

3. Gandhimathi @ Vasuki

...Respondents/Respondents/
Defendants 2 to 4

S.A. No.1328 of 2011

Saravanan

...Appellant/Appellant/Plaintiff

Vs.

1. Balakrishnan.

2. Rasammal

3. Gandhimathi @ Vasuki

...Respondents/Respondents/
Defendants 2 to 4

Common Prayer : Second Appeals filed under Section 100 CPC, 1908 against the decree and judgment dated 21.04.2011 passed in A.S. Nos.16 and 17 of 2009, on the file of the Subordinate Court, Chidambaram, upholding the decree and judgment dated 29.11.2008 passed in O.S.Nos.233 and 232 of 2002, on the file of the Principal District Munsif, Chidambaram.

For Appellant

(in both appeals)

: Mr.A. Muthukumar

For Respondents

(in both appeals)

: Ms. R. Meenal

COMMON JUDGMENT

The unsuccessful plaintiffs before both the courts below have filed the present second appeals. The appellants are the plaintiffs in O.S.Nos.233 and 232 of 2002 respectively, on the file of the Principal District Munsif, Chidambaram. They filed



2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeals would also be indicated.

3.1 The plaintiff in O.S.No.232 of 2002 and the plaintiff in O.S.No.233 of 2002 are brothers. The case of Saravanan, the plaintiff in O.S. No.232 of 2002, is that the suit property in Survey Nos.52/10, 52/11 and 52/12 of Keezhakundalapadi Village, measuring 30¾ cents out of 92 cents originally belonged to the three sons of Anjan, namely, Thirugnanam, Thirumeni and Thirusanku. Thirusanku died leaving behind his two sons, namely, Sekar and Thirunavukkarasu. Thirugnanam, Thirumeni, Sekar and Thirunavukkarasu executed a registered Release Deed dated 01.07.2002 in favour of the plaintiff and ever since the date of the said Release Deed, the plaintiff is in possession and enjoyment of the suit property by cultivating crops. The patta also stands in his name and he has also been paying kists for the suit properties. The first defendant (since deceased) owns a property adjacent to the land of the plaintiff. The second defendant is the son of the first defendant. The first defendant died during the pendency of the suit and his legal heirs were brought on record as defendants 3 and 4. According to the plaintiff, the defendants 1 and 2 demanded the plaintiff to sell the suit property in their favour and since the same was refused by the plaintiff, they started interfering with the possession and enjoyment of the suit property by the plaintiff. Hence he filed the suit for a bare injunction.

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4. The suit was resisted by the defendants on the ground that the suit properties in Survey Nos.52/10, 52/11 & 52/12 of Keezhakundalapadi Village belonged to three brothers namely Gundusamban, Veerapan, Pakkirisamban. They divided the suit properties among themselves and northern portion measuring 17 cents out of 37 cents in R.S.No.52/10 and southern portion measuring 17 cents out of 51 cents in R.S.No.52/12 were allotted to the share of Gundusamban and southern portion of 18 cents out of 37 cents in R.S.No.52/10 was allotted to the share of Pakkirisamban. On 05.06.1940 the legal heirs of Pakkirisamban sold the southern 18 cents in R.S.No.52/10 to one Navammal, mother of the first defendant. After the death of Gundusamban his son Marudhan and his wife Navammal were in enjoyment of 37 cents in S.No.52/10 and 17 cents in S.No.52/12. After the death of Marudhan and Navammal the first defendant and his elder brother Rathinam continued to enjoy the suit property jointly and they also executed a registered gift deed dated 06.07.1959 (Ex.B2) in respect of one cent of land out of 37 cents in favour of Tamilnadu Government. The suit filed by the plaintiff for bare injunction is not maintainable as the plaintiff has not sought for the relief of declaration of title. They have, therefore, prayed for the dismissal of the suit.

5.Both the suits were tried jointly and evidence was recorded in common in O.S.No.233 of 2002. In the trial court, the plaintiffs examined themselves and one another witness and marked Ex.A1 to Ex.A7. The second defendant examined himself and one another witness and marked Ex.B1 to Ex.B12. An Advocate Commissioner was appointed by the trial court and he filed his report which was marked as Ex.C1.

6.After full contest, the learned Principal District Munsif dismissed the suits filed by the plaintiffs vide his decree and judgment dated 29.11.2008 on the ground that both the plaintiffs have not adduced acceptable evidence to show that they are in possession of the suit properties. It is further observed that the defendants have adduced sufficient documentary evidence to show that the suit properties belonged to them.

7. Aggrieved over the same, the plaintiffs filed appeals in A.S.Nos.16&17 of 2009 before the Subordinate Court, Chidambaram. The learned Subordinate Judge after analysing oral/documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide his decree and judgment dated 21.04.2011.

8.Now the present second appeals are filed on the following substantial questions of law :

- 1) Whether the suit for bare injunction could be disposed of without rendering any finding with regard to possession when the defendant is not found to be the true owner?
- 2) Whether the lower appellate court erred in law in not



9. Heard, Mr.A.Muthukumar, learned counsel for the appellant and Ms. R. Meenal, learned counsel for the respondents in both the appeals.

11. According to Thirugnanam, the plaintiff in O.S.No.233/2002, the middle portion of S.Nos.52/10, 52/11 & 52/12 was allotted to the share of Vaithilingam. In order to



show his possession over the suit property he relied on the sale deed dated 26.12.2000 (Ex.A1) executed in his favour. However, the patta was issued prior to the sale deed. Therefore, as rightly pointed out by the learned counsel for the respondent there is nothing to show that kist receipts Ex.A3 to Ex.A5 relate to the suit properties. Similarly, Ex.A2 patta is not also in the name of the plaintiff Saravanan. Ex.A7 kist receipt is also prior to the relinquishment deed (Ex.A6). Thus, both the plaintiffs have not proved their possession over the suit properties. It is settled law that in a suit for bare injunction title need not be gone into. However, both the plaintiffs state that they have title over the suit properties and are in possession of the same. When the plaintiff in O.S.No.232/2002 relies on the relinquishment deed (Ex.A6) in his favour and the plaintiff in O.S.No.233/2002 relies on the sale deed dated 26.12.2000 (Ex.A1) executed in his favour, the onus of proof lies with them to adduce satisfactory evidence. As already observed, both of them were not able to state how their vendors/predecessors in title became entitled to the suit properties. The plaintiffs also did not adduce any acceptable evidence to show that they were in possession of the suit properties.

12.Mr.A.Muthukumar, learned counsel for the appellant contended that the plaintiffs/appellants filed a petition in I.A.No.21/2011 before the first appellate court for receiving two additional documents namely, Registration copy of usufructuary mortgage deed dated 21.06.1971 and the registration copy of the sale deed dated 17.07.1972 executed by Vaithilingam and others in favour of Ganapathy. According to the counsel, these two documents would throw some light on the title and possession of the suit properties in favour of the plaintiffs. According to him, the first appellate court without considering these two documents dismissed the first appeal. A perusal of the judgment of the first appellate court shows that I.A.No.21/2011 was dismissed. The counsel who appeared on behalf of the appellants before the first appellate court did not take any steps to mark these two documents. No revision was filed against the dismissal of the petition by the first appellate court. These two documents were not also filed before this court as additional documents.

13.Both the courts below have concurrently held that the plaintiffs have not proved their possession over the suit properties and this is purely based on oral/documentary evidence and by no stretch of imagination it can be stated to be perverse. In view of the same the substantial questions of law 1 & 2 are answered against the plaintiffs/appellants in both the appeals.



14.It is also pertinent to mention that this a second appeal under Section 100 of the Code of Civil Procedure where the jurisdiction of the High Court is confined to substantial questions of law. A full Bench of the Supreme Court in Bholaram Vs. Ameerchand reported in AIR 1981 SC 1209 has held that the High Court cannot interfere with the concurrent factual findings of court below in a second appeal. In fine, these second appeals fail and are dismissed.

15.In the result,
i.the second appeals are dismissed. No costs.
Consequently connected miscellaneous petitions are closed.

ii.The decree and judgment dated 21.04.2011 passed in A.S. Nos.16 and 17 of 2009, on the file of the Subordinate Court, Chidambaram, and the decree and judgment dated 29.11.2008 passed in O.S. Nos.233 and 232 of 2002, on the file of the Principal District Munsif, Chidambaram, are upheld.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

bga

To

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

+1cc to M/s.A.Muthu Kumar, Advocate, S.R.No.19844

+2cc to M/s.R.Meenal, Advocate, S.R.No.20197 and 20198

S.A.Nos.1327 & 1328 of 2011

SJ(CO)
RGA(04/04/2022)