



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.875 of 2015

S.Jayaraman

... Appellant/First
Plaintiff in Trail Court

Vs.

K.Arumugam

... Respondent/Defendant
in Trail Court

PRAYER: Second Appeal is filed under Section 100 of C.P.C., challenging the judgment and decree dated 07.02.2015 in A.S.No.27 of 2011 on the file of the Subordinate Judge of Tiruvallur in confirming the judgment and decree dated 21.12.2020 passed in O.S.No.22 of 2007 on the file of the District Munsif cum Judicial Magistrate Court, Uthukottai.

For Appellant : Mrs.V.Srimathi

For Respondent : No Appearance

J U D G M E N T

The plaintiff is the appellant in this second appeal.

2. The case of the plaintiff is that the 'A' schedule property was purchased through registered sale deed dated 05.12.1996, marked as Ex.A1. There was some mistake in this document and hence the rectification deed also came to be executed on 17.12.1997, which was marked as Ex.A2. Thereby, the plaintiff was claiming right over this property as the absolute owner. The further case of the plaintiff is that the 'A' schedule property was allotted in his favour through oral partition that took place in the year 1998 and thereafter, the plaintiff had also mutated his name in the revenue records and was paying the kisth.

3. The further case of the plaintiff is that the 'B' schedule property which is a Grama Natham and Poramboke property was also purchased in the name of the 1st plaintiff. It is stated that the plaintiff, defendant and one Gopal were running a partnership business in the name and style of Sri Thai Arul Brick Chambers. The grievance of the plaintiff is that his partner viz., the defendant wanted to annexe the suit property also along with the brick chambers and he removed the earth very adjacent to the suit land. Hence, the plaintiff apprehended



'A' schedule property and accordingly, the plaintiff was held to be not entitled for the relief of permanent injunction for the 'A' schedule property.

10. Insofar as the 'B' schedule property is concerned, it is an admitted case that it was a Grama Natham property. The claim of the defendant is that he purchased this property and he is in possession of the same on behalf of Sri Thai Arul Brick Chambers. Both the Courts below mainly relied upon the oral evidence of DW2 and DW3. Both the Courts also took into consideration the evidence of PW1 and the affidavit dated 22.06.2000, marked as Ex.B8. On an analysis of this evidence, it was categorically found that there was a panchayat between the plaintiff and the defendant, whereby the plaintiff had received a sum of Rs.2,00,000/- from the defendant and the possession was also handed over to the defendant. DW2, who was present at the time of the panchayat had spoken about this in his evidence.

11. The learned counsel for the appellant vehemently questioned the findings of the Courts below by relying upon the so called affidavit dated 22.06.2000. The learned counsel submitted that Ex.B8 by no stretch can be construed as a sale deed and this document does not convey any right or title in favour of the defendant. The learned counsel further submitted that the lower appellate Court completely mis-directed itself and concluded as if the plaintiff had conveyed both the 'A' schedule and 'B' schedule properties through Ex.B5. The learned counsel therefore submitted that the findings of the lower appellate Court in this regard is perverse and requires the interference by this Court.

12. Insofar as the findings of the lower appellate Court to the effect that the plaintiff had sold the suit properties to the defendant through Ex.B5 along with the 'B' schedule property, it may not be right and it is not factually correct. Through Ex.B5, what was conveyed was the portion that the plaintiff was enjoying after the oral partition and which was described as 'A' schedule property. Insofar as the 'B' schedule property is concerned, it was admittedly a Grama Natham and Poramboke land. Hence, there was only an understanding between the parties which was spoken to by DW2 and DW3. They speak about the panchayat that was convened and the money that was handed over by the defendant to the plaintiff and also of the fact that the plaintiff handed over the property to the defendant. This evidence was considered along with Ex.B8. It is true that Ex.B8 cannot be construed to be a sale deed or an instrument conveying any ownership or title over the property. It has to be borne in mind that the present suit is not a suit concerning the title and this is a bare injunction suit. Hence,



the Court has to only look into the fact as to who is in possession of the property. Both the Courts below considered the evidence of DW2 and DW3 along with Ex.B8 and came to a conclusion that the possession of 'B' schedule property has been handed over to the defendant. Ex.B8 can be relied upon for the limited purpose of seeing if the plaintiff had handed over possession of the property to the defendant. It has been specifically said so in the document. The signature found in this document has not been put to challenge and there is nothing available on record to discredit this document. Therefore, both the Courts were right in coming to the conclusion that the plaintiff did not establish his possession over the 'B' schedule property.

13. In view of the above discussion, this Court find that both the Courts had assigned sufficient reasons while coming to a conclusion that the plaintiff has not established his possession over the suit properties. The findings of both the Courts below were based on appreciation of evidence and this Court does not find any perversity in those findings. The substantial question of law framed by this Court is answered accordingly.

14. In the result, this Court does not find any merits in this second appeal. Accordingly, the second appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Subordinate Judge, Tiruvallur.

2. The District Munsif cum Judicial Magistrate,
Uthukottai.

COPY TO

The Section Officer,

VR Section, High Court, Madras-104.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.20065

S.A.No.875 of 2015

GPL(CO)

CT 07/04/2022