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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.427 of 2014

1.Ranganathan

2.Thangammal

3.Rajalakshmi

4.Pushpanathan

5.Saravanan

...Appellants / Defendants

Vs.

1.Rathinavelu

2.Rani

...Respondents / Plaintiffs

PRAYER : Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 28.02.2011 of the learned Sub Court, Mettur in A.S.No.2 of 2010 confirming the Judgment and Decree dated 14.12.2009 of the learned District Munsif Court, Mettur in O.S.No.102 of 2006 by allowing the second appeal with cost.

For Appellants : Mr.S.Chandra Bose

For Respondents : M/s.Zeenath Begum

JUDGMENT

The unsuccessful defendants are the appellants in the present second appeal.

2.The respondents/plaintiffs filed the suit against the appellants seeking for the relief of permanent injunction on the ground that they are the owners of the subject property by virtue of two Sale Deeds dated 13.02.1991 which were marked as Ex. A1 and A2 and that the appellants were attempting to trespass into the property and in order to protect their possession, the suit came to be filed.



3.The case of the appellants/defendants is that they are close relatives of the respondents and an agreement of sale was executed in their favour on 24.10.2004 which was marked as Ex.B1 and the possession was also handed over in part performance of the agreement. Therefore, the appellants have taken a stand that they are in possession of the property and there is no question of interfering with the possession of the plaintiffs.

4.During the pendency of the proceedings, the plaintiffs filed a memo and reported that they are not pressing their relief insofar as the pipeline that was running in the schedule mentioned properties. Therefore, the plaintiffs contested the suit only insofar as the relief of injunction for restraining the defendants from interfering with their possession and enjoyment.

5.Both the Courts below on appreciation of the oral and documentary evidence and after considering the facts and circumstances of the case, proceeded to allow the suit concurrently. Aggrieved by the same, the defendants have filed the present second appeal.

6.The learned counsel for the appellants submitted that the plaintiffs by giving up a portion of the relief pertaining to the pipeline running over the property, have virtually given up their entire relief and it only shows that the appellants are also enjoying the water from the pipeline for the properties situated in the 2<sup>nd</sup> and 3<sup>rd</sup> item of the suit schedule property. It was further contended that the appellants are in possession of the suit schedule property by virtue of the agreement of sale and therefore, both the Courts below failed to appreciate this fact and ought not to have granted the relief in favour of the plaintiffs.

7.This Court carefully considered the submissions made by the learned counsel of the appellants and carefully perused the evidence available on record.

8.There is no dispute with regard to the fact that the plaintiffs are the owners of the suit properties by virtue of the title documents marked as EX.A1 and A2. The plaintiffs had also marked the revenue records as well as House Tax receipts to prove their possession in the suit property. The appellants/defendants are claiming a right only in their capacity as agreement holders. According to the defendants, possession was handed over in part performance of the agreement and hence, the plaintiffs are not entitled for the relief sought for in the suit.



9.Both the Courts below have appreciated the materials available on record and found that plaintiffs are in possession and enjoyment of the property. It was also found that the plaintiffs just by giving up a portion of the relief pertaining to the pipelines, cannot be held to be disentitled for the other relief pertaining to injunction restraining the defendants from interfering or trespassing into the suit property.

10.Insofar as the contention regarding handing over of possession in part performance of the agreement is concerned, EX.B1 is admittedly an unregistered document. A transferee in possession in part performance of an agreement can rely upon such an agreement only if it is compulsorily registered. The law on this issue is well settled and useful reference can be made to the judgment of S.Baskar vs. Palanisamy and others reported in 2014 (1) MWN Civil 61. In the present case, the agreement in question is admittedly an unregistered document and therefore, the issue with regard to possession cannot be determined by looking into this document.

11.The next issue that has been projected by the learned counsel for the appellants is with regard to giving up a portion of the relief pertaining to the pipeline. Where a larger relief is sought for by the plaintiff, it is always left open to the plaintiff to give up a portion of the relief even during the pendency of the proceedings. Such a right is available under Order 23 Rule 1 of C.P.C. The Court will be handicapped only where plaintiff has sought for a lesser relief and ultimately seeks for a larger relief. Under such circumstances, such a larger relief cannot be granted by the Court. This issue has also been properly appreciated by both the Courts below.

12.In the considered view of this Court, both the Courts below have dealt with all the issues and rendered their findings based on the oral and documentary evidence. This Court does not find any perversity in the findings rendered by both the Courts below. This Court cannot reappreciate the evidence in exercise of its jurisdiction under Section 100 of C.P.C. This Court does not find any substantial questions of law involved in the present second appeal.

13.In the result, the second appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ssr



To

1. The Sub Court,  
Mettur.

2. The District Munsif Court,  
Mettur.

Copy To

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

+1cc to Mr.S.Chandrabose, Advocate, Sr.No.8390

+1cc to Mrs.Zeenath Begum, Advocate, Sr.No.7903

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CA(CO)  
RVM(08/04/2022)