BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 18.02.2022
DELIVERED ON : 23 .02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.206 of 2019
and
C.M.P(MD)No.4254 of 2019

P.Paulvarna Perumal ... Appellant/Appellant/Plaintiff

Vs.

V.Santha ... Respondent/Respondent/Defendant

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated, 09.03.2017, passed in A.S.No.38 of 2014 on the file of I Additional Sub-Court, Nagercoil, confirming the judgment and decree dated, 23.01.2014 passed in O.S.No.651 of 2008 on the file of II Additional District Munsif, Nagercoil.

For Appellant : Mr.M.P.Senthil
For Respondent : No appearance

JUDGMENT

The plaintiff is the appellant.

2. The plaintiff filed a suit for permanent injunction, not to disturb her peaceful possession and enjoyment of the plaint schedule property. The suit was dismissed by the trial Court. The plaintiff filed A.S.No.38 of 2014 before I Additional Subcourt, Nagercoil. The learned Subordinate Judge dismissed the appeal. As against the same, the plaintiff has filed the present second appeal.

3. The plaintiff has contended that the suit schedule properties are the absolute properties of the plaintiff and she had purchased the same under Exhibit A.1, dated, 05.05.1999. The plaintiff has further contended that at the request of the defendant, the plaintiff has sold 3 cents of land in favour of the defendant under Exhibit A.2 on 04.09.2002. Thereafter, another 3 ¼ cents were sold by the plaintiff in favour of the defendant under Exhibit A.3 on 04.05.2005.

4. According to the plaintiff, a house is located in the property, conveyed under Exhibit A.2. At the time of purchase, the defendant was not willing to purchase the house and hence she

purchased only the site, over which, the building was standing. According to the plaintiff, the defendant had agreed to pay the market value of the building on a later point of time and thereafter, purchase the building standing over the site sold under Exhibit A.2.

5. The plaintiff has further contended that the property tax assessment continues to stand in his name and he has been regularly paying the property tax under Exhibits A.5 to A.8. According to the plaintiff, the defendant has started disturbing the possession of the house property. Hence, the present suit for permanent injunction.

6. The defendant filed a written statement contending that under Exhibit A.2, dated, 04.09.2002, the defendant had purchased not only the site, but also the superstructure standing over the said site. In order to avoid payment of higher stamp duty, the building was not mentioned in Exhibit A.2-sale deed. The defendant had further contended that on the date of the Exhibit A.2 sale deed, she had taken possession of the suit schedule property including the house property. The defendant had further contended that if the defendant had not paid the amount for the building in the site covered under Exhibit A.2, the plaintiff would not have executed another sale deed on 04.05.2005 under Exhibit A.3 for an extent of 3/4 cents. Hence, she prayed for dismissal of the suit.

7. The trial Court after considering the oral and documentary evidence, arrived at a finding that though the building is not mentioned under Exhibit A.2-sale deed, the same is deemed to have been conveyed under the said document, in view of Section 8 of the Transfer of Property Act. The trial Court also arrived at a finding that the property tax assessment was originally standing in the name of the plaintiff. But the same is yet to be transferred in the name of the defendant. Hence, the property tax assessment or the payment of property tax cannot cloth the plaintiff with a legal right to be in possession of the suit schedule properties. Based upon the said findings, the trial Court dismissed the suit.

8. The First Appellate Court after independent consideration of the oral and documentary evidence, arrived at a finding that under Exhibit A.2-sale deed, the plaintiff has specifically mentioned that the possession has been handed over to the defendant. The learned Appellate Judge has also referred to Sections 3 and 54 of Transfer of Property Act to hold that the building embedded in the site will automatically get transferred to the purchaser, once the site is transferred. Based upon the said findings, the First Appellate Court dismissed the appeal.

9. The learned counsel for the appellant contended that Exhibit A.2-sale deed does not reflect the conveyance of the building constructed over 3 cents of land conveyed under Exhibit A.2-sale

deed. The recitals regarding handing over of possession in Exhibit A.2 can only interpreted to mean that possession of the site. He further contended that when building is not specifically mentioned in the schedule of property, the handing over possession of the building cannot be presumed. According to the learned counsel for the appellant, any presumption with regard to the conveyance of the building under Exhibit A.2-sale deed would only be contrary of the terms of Exhibit A.2-sale deed.

10. The learned counsel for the appellant further contended that even after the sale of the property under Exhibit A.2, the plaintiff continues to be in possession of the suit schedule properties. The plaintiff alone has put up the construction in the suit schedule property by getting a plan approval under Exhibit A.4, dated, 24.03.2000. He further contended that the plaintiff is continuing to pay house tax in his name and the receipts have been marked as Exhibits A.5 to A.7. Hence, according to the plaintiff, a combine reading of the recitals in Exhibit A.2 and Exhibits A.4 to A.7 will clearly indicate that the defendant has not purchased the building standing over the property sold under Exhibit A.2. It is also evident that the defendant has not taken possession of the building.

11. The learned counsel for the appellant further contended that the Courts below have not properly appreciated Exhibit A.2-sale deed and the interpretation of the Courts below is erroneous. He further contended that the Courts below have erred in ignoring the tax assessment and the receipts for the payment of tax. When the plaintiff has established his possession over the suit schedule properties, automatically he is entitled to a decree for permanent injunction. Hence, he prayed for allowing the second appeal.

12. Though the respondent has been served, there is no representation on the side of the respondent.

13. I have carefully considered the submission made on the side of the appellant.

14. It is admitted a fact that the plaintiff was the owner of the 10 cents of land of suit schedule properties as per Exhibit A.1-sale deed, dated, 05.05.1999. The plaintiff has executed a registered sale deed in favour of the defendant under Exhibit A.2 on 04.09.2002. As per the recitals in the said sale deed, possession has been handed over to the defendant for an extent of 3 cents. According to the learned counsel for the appellant, the schedule of property just mentions that a vacant site of 3 cents is being conveyed under the document. There is no reference about any building in the schedule of properties.

15. The learned counsel for the appellant had contended that since the building has not been specifically mentioned under Exhibit

A.2-sale deed, the Court has to presume that the building was not at all conveyed under Exhibit A.2-sale deed. Section 8 of the Transfer of Property Act as reads as follows:

> *"Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is them capable of passing in the property and in the legal incidents thereof.*
>
> *Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;*
>
> *and, where the property is machinery attached to the earth, the movable parts thereof;*
>
> *and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;*
>
> *and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;*
>
> *and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."*

16. In view of the provisions of Section 8 of the Transfer of Property Act, when the land property is transferred, the easement, rents and profits and all the things attached will get transferred forthwith to the transferee. In the present case, no contrary intention could be gathered from the Exhibit A.2-sale deed that the building is not transferred. When there is an expressed or implied term in Exhibit A.2-sale deed, excluding the building, the contention of the plaintiff that the building was excluded, is not legally sustainable. Once the land is sold, anything that is attached to the earth and which is conveyed by the transferor gets automatically transferred in favour of the transferee. In the present case, admittedly the building is located over the land conveyed under Exhibit A.2-sale deed. Hence, even if the existence of the building is not reflected in Exhibit A.2-sale deed, in view of the provisions of Section 8 of the Transfer of Property Act, the building being attached to earth is also deemed to have been conveyed by the plaintff in favour of the defendant. Hence, the contention of the learned counsel for the appellant is not legally sustainable.

17. The learned counsel for the appellant further contended that the plaintiff continues to be in possession of the building. That apart, the assessment for property tax stands in her name and she is regularly paying the property tax in his name. The building has been constructed by the plaintiff in the year 2000, after obtaining plan approval under Exhibit A.4. Only 2 years thereafter, the said property has been sold by the plaintiff to the defendant under Exhibit A.2. Hence, necessarily, the property tax assessment will only be in the name of the plaintiff. The only fault on the part of the defendant is that she has not chosen to get the assessment transfer in her name. In fact Exhibits A.6 and A.7 tax receipts are few days prior to the filing of the suit. The property tax assessment or payment of property tax will not prove that the plaintiff that the plaintiff is in possession of the suit schedule property, especially she being the vendor of the property.

18. The plaintiff has sought for permanent injunction on the ground that she is in possession of the suit schedule property. As per Section 38 of the Specific Relief Act, for granting a decree for permanent injunction, the plaintiff has to establish that the defendant invades or threatens to invade the plaintiff's right to enjoyment of the property. Hence, mere possession of the plaintiff is not enough to grant a decree for injunction, unless the plaintiff proves his legal right to be in possession of the suit schedule properties. In the present case, the plaintiff has sold away the property to the defendant on 04.09.2002 along with the building. The recitals under Exhibit A.2-sale deed clearly disclose that the plaintiff has handed over the possession of the suit schedule property on 04.09.2002 itself. Hence, the contention of the plaintiff that she has only handed over the possession of the site and not the building standing over the site is not legally sustainable. The plaintiff has not established his legal right to be in possession either of the site or of the building and hence, the plaintiff is not entitled to get a decree for permanent injunction.

19. The Courts below after careful analysis of the oral and documentary evidence, have arrived at a correct finding. There is no illegality or perversity in the findings of the Courts below. There are no question of law much less a substantial question of law arising for consideration in the above second appeal. The Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The I Additional Subordinate Judge,
   Nagercoil.

2. The II Additional District Munsif,
   Nagercoil.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-8469[F] dated 24/02/2022)

Judgment made in
S.A(MD)No.206 of 2019
23.02.2022

KS(CO)
GC(08.03.2022) 6P 6C