



S.A.No.85 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.85 of 2018
and C.M.P.No.1815 of 2018

R.Kasi

...Appellant

Vs.

The Commissioner, Kanchipuram Municipality,
Nellukara Street,
Kanchipuram

...Respondent

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 11.07.2017 made in A.S.No.49 of 2011 on the file of Hon'ble Subordinate Court, Kanchipuram, reversing the Judgment and Decree dated 30.06.2010, made in O.S.No.141 of 2005 on the file of the Hon'ble District Munsif Court, Kanchipuram.

For Appellant : Mr.T.Sathiyamoorthy

For Respondent : No appearance



S.A.No.85 of 2018

constrained to file the suit for mandatory injunction as mentioned above.

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3. The respondent Municipality filed the written statement and denied the averment of the appellant as if the suit property belonged to CSI Polio Rehabilitation Centre and he had been in possession and enjoyment of the same from 1983. It was specifically averred by the respondent that the appellant was failed to trace his title over the suit property and hence, he could not maintain a suit for mandatory injunction against the respondent Municipality. It was further averred by the respondent that the suit property was situated within the Municipal Bus stand of the Municipality and neither the appellant nor the CSI Polio Rehabilitation Centre had any title over the same. It was also stated by the respondent that the appellant was planning to encroach the suit property and in order to facilitate the same, he had come up with this suit. On these pleadings, the respondent sought for dismissal of the suit.

4. Before the Trial Court, the appellant was examined as P.W.1 and yet another witness was examined as P.W.2. On behalf of the appellant, 3 documents were marked as Ex.A1 to Ex.A3. On behalf of the respondent



S.A.No.85 of 2018

Municipality, no oral or documentary evidence was let in.

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5. The Trial Court, on appreciation of oral and documentary evidence available on record came to the conclusion that the suit property belonged to CSI Polio Rehabilitation Centre and as the appellant was in possession of the suit property prior to filing of the suit, he was entitled to mandatory injunction as prayed for. Aggrieved by the same, the respondent Municipality preferred an appeal in A.S.No. 49 of 2011 on the file of Subordinate Court, Kancheepuram. The First Appellate Court reversed the findings of the Trial Court on the ground that when the appellant failed to prove his title over the suit property, he was not entitled to maintain a suit for mandatory injunction. Consequently, allowed the appeal and dismissed the suit. Aggrieved by the same, the appellant is before this Court.

6. The learned counsel appearing for the appellant submitted that the appellant, who was in possession of the property eight months prior to the suit, is entitled to maintain a suit for recovery of possession within 12 years from the date of his dispossession. Therefore, the First Appellate Court committed an error of law in dismissing the suit on the ground that the appellant failed to establish his title over the suit property.



S.A.No.85 of 2018

WEB COPY

7. In the plaint, the appellant claimed that he had been in possession and enjoyment of the suit property from 1983 onwards and he was dispossessed by the respondent Municipality 8 months prior to filing of the suit. He also admitted that the suit property belonged to CSI Polio Rehabilitation Centre. From the averments found in the plaint, it is clear that the appellant is not claiming title over the suit property. However, he filed the suit for mandatory injunction directing the respondent Municipality to vacate the suit property and handover the vacant possession.

8. The suit was valued at Rs.1000/- under Section 27(c) of Tamil Nadu Court Fees and Suits Valuation Act, 1955. Therefore, it is clear that the suit filed by the appellant is not the one for recovery of possession based on his previous possession. In case, the appellant filed the suit for recovery of possession based on previous possession, he should have valued the suit property on the market value and paid *ad valorem* Court fee for the relief of recovery of possession. Therefore, it is not open to the appellant to say that



S.A.No.85 of 2018

the suit is laid for recovery of possession based on his previous possession (Possessory title) and hence, the First Appellate Court ought not to have dismissed the suit on the ground that he was not entitled to maintain the suit without proving title. The appellant/plaintiff seeks mandatory injunction. In order to maintain prayer for mandatory injunction, the appellant must prove his title to the suit property, even as per the admitted case of the appellant he is not title holder of the suit property. In such circumstances, he is not entitled to maintain a suit for mandatory injunction directing the respondent Municipality to hand over the vacant possession to him, as rightly found by the First Appellate Court.

9. The appellant herein claimed in his plaint averment that he was dispossessed by the respondent Municipality just 8 months prior to filing of the suit. The said averment was denied by the respondent in it's written statement. According to the appellant, he was running a Laundry shop and Egg Mart in the suit site. The First Appellate Court came to the conclusion that the appellant failed to prove his possession 8 months prior to filing of the suit. Therefore, even assuming the suit is laid for recovery of possession based on previous possession (Possessory title), unless the plaintiff proves his



S.A.No.85 of 2018

previous possession within 12 years immediately proceeding the presentation of the plaint, he is not entitled to recovery of possession. The appellant has not produced any acceptable evidence to prove his alleged previous possession. Ex.A1 was a notice sent to CSI Polio Rehabilitation Centre. It will not prove possession of appellant. Ex.A2 is the legal notice by appellant to defendant. Ex.A3 is postal Acknowledgement card. Hence, as rightly found by the First Appellate Court, absolutely there is no evidence to prove possession of appellant within twelve years immediately proceeding presentation of plaint.

10. In the case on hand, the appellant has not filed the suit based on previous possession (Possessory title), he simply filed the suit for mandatory injunction. In order to maintain prayer for mandatory injunction, he has no title over the suit property even as per his admitted case. In such circumstances, the First Appellate Court rightly came to the conclusion that prayer for mandatory injunction made by the appellant/plaintiff was not maintainable and dismissed the suit. Hence, I do not find any perversity in the findings of facts rendered by the First Appellate Court.



S.A.No.85 of 2018

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11. Accordingly, the second appeal stands dismissed;

a) by affirming the judgment and decree dated 11.07.2017, passed in A.S.No.49 of 2011 on the file of the Subordinate Court, Kanchipuram, reversing the judgment and decree dated 30.06.2010 passed in O.S.No.141 of 2005 on the file of the District Munsif Court, Kanchipuram.

b) In view of the above facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.11.2023

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S.A.No.85 of 2018

To

1. The Subordinate Court, Kanchipuram.
2. The District Munsif Court, Kanchipuram.



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S.A.No.85 of 2018

S.SOUNTHAR, J.

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S.A.No. 85 of 2018

28.11.2023