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S.A.No.2294 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.01.2024

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THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.2294 of 2004
and C.M.P.Nos.20524 of 2004
and 222 & 223 of 2007

Mohammed Sultan

...Appellant

Vs

Mohammed Zackaria

...Respondent

PRAYER: Second Appeal is filed under section 100 of the Civil Procedure Code, as against the Judgment and Decree of Additional Subordinate Judge's Court, Mayiladuthurai dated 22.07.2004 made in A.S.No.86 of 2003 confirming judgment and decree of Principal District Munsif, Mayiladuthurai dated 05.03.2003 made in O.S.No.517 of 2000.

For Appellant : Mr.B.Jawahar
For Respondent : No appearance

J U D G M E N T

This Second Appeal has been filed by the plaintiff as against the decree and judgment dated 22.07.2004 made in A.S.No.86 of 2003 on the file of the Additional Subordinate Judge's Court, Mayiladuthurai, confirming judgment



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and decree dated 05.03.2003 made in O.S.No.517 of 2000 on the file of the Principal District Munsif, Mayiladuthurai.

2. It is the case of the plaintiff that the suit property lies adjacent to his house and the owner of the said suit property viz., Mohammed Ilyas is the resident of Singapore. Therefore, the plaintiff being the adjacent house owner, was allowed to enjoy the suit property as a permissive occupant. It is the case of the plaintiff that the defendant sought to interfere in the peaceful possession and enjoyment and therefore, filed the suit for bare injunction.

3. The defendant has filed a written statement controverting the plea of the plaintiff stating that Mohammed Ilyas who is a resident of Singapore has nominated the defendant as power agent to look after the affairs of the suit property and based on the power of attorney deed in Ex.B1 dated 18.11.1999, he was in possession and enjoyment of the property. Therefore, the plaintiff has no locus to maintain the suit and sought for dismissal of the suit.

4. Before the trial Court, the plaintiff examined himself as P.W.1 but has not filed any documents. The defendant has examined himself as D.W.1 and further examined two other witnesses D.W.2 and 3 and marked Ex.B1/power of attorney deed dated 18.11.1999.

5. After analysing the evidences and documents, the trial Court



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dismissed the suit. Aggrieved by the same, the plaintiff filed the appeal and the lower Appellate Court also by appraising the evidence, dismissed the appeal. Challenging the same, the plaintiff is before this Court on appeal.

6. The above Second Appeal was admitted on 05.01.2005 on the following substantial question of law:

a) Whether the judgment of lower appellate Court is vitiated in its failure to frame proper points for consideration as mandated by order 41 Rule 31 of C.P.C?

b) Whether the findings of Courts below that general power of attorney will automatically transfer possession of specific piece of property belonged to Principal in favour of agent in the absence of direct and specific evidence for surrender of possession?

7. The learned counsel appearing for the appellant submitted that the plaintiff who is the adjacent owner of the suit property is a permissive occupant who has been authorized by the lawful owner, who is the resident of Singapore, but the plaintiff has not filed any documents to substantiate the claim that he was permitted by the lawful owner and was in possession and enjoyment of the property.

8. The learned counsel for the appellant further submitted that the sole respondent in the appeal died. Therefore, they have filed petition in



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C.M.P.Nos.222 & 223 of 2007, to set aside the abatement and to bring the legal heirs on record. At this juncture, it is relevant to point out that it was admitted case, the defendant is the power agent of the original owner and when once the power agent died, the power of attorney deed executed by the lawful owner in favour of the defendant automatically gets terminated and the petitions to file to substitute the legal heirs may not be relevant in the present circumstance of the case, as no cause of action would survive and the legal heirs of the defendant is only a power agent of Mohammed Iliyas/original owner. If at all, the plaintiff has to make any claim, it can be only as against the lawful owner.

9. In such circumstances, the appellant/plaintiff having not been able to prove his case of possession and also there is no cause of action surviving as against the legal heirs ought to be impleaded in the place of defendant, no substantial questions of law would arise to answer in this second appeal. Accordingly, this Second Appeal is dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Speaking order/non-speaking order
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To

1. The Additional Subordinate Judge's Court, Mayiladuthurai.
2. The Principal District Munsif, Mayiladuthurai



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G.ARUL MURUGAN, J.,

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