



S.A.No. 172 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2024

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.172 of 2014
and M.P.No.1 of 2014

M.Subramaniam

... Appellant / Plaintiff

Vs.

1. S.Sivalingam
2. P.Kalaimani
3. N.Vijayan

... Respondents / Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree of the learned IV Additional Judge, City Civil Court, Chennai, dated 28.08.2012 and passed in A.S.No.494 of 2101 reversing the findings and decision rendered in the judgment and decree dated 21.12.2009 passed by the learned XI Assistant Judge, City Civil Court, Chennai in O.S.No.769 of 2001.

For Appellant : Mr.V.Antony Elangovan

For Respondents : Mr.S.Sadasharam



S.A.No. 172 of 2014

JUDGMENT

WEB COPY The appellant is the plaintiff who had filed a suit for bare injunction and the trial court decreed the same. The appeal preferred by the defendants, was allowed by the first appellate Court by reversing the judgment of the trial Court. Now the plaintiff has filed this second appeal.

2. The short facts in the plaint are as follows:

The plaintiff is the owner of the property and he is residing in the property for more than 45 years and he is in enjoyment of the property. The plaintiff got electricity connection and he was growing trees there. When the plaintiff was out of station on 27.01.2001, the defendants attempted to trespass it by claiming title. After the plaintiff came back to his place, he preferred a complaint before the Police Station on 29.01.2001. Since no action has been taken against the defendants and the plaintiff has filed the suit for permanent injunction.

3. The defendants have filed a written statement stating that the plaintiff is not the owner of the suit property and he has no title over the same. The plaintiff originally filed a suit in O.S.No.3369/1993 for declaration and injunction and the same was dismissed for default and the



S.A.No. 172 of 2014

plaintiff has not filed any petition to restore the same. The defendant claims that Advaita Baktha Sabha is the owner of the property and the defendants conduct a school in the suit property with the permission of the Sabha. As the plaintiff himself is not in legal possession the suit filed by him has to be dismissed.

4. On the basis of the above pleadings, the trial Court has framed the following issues:

- i) வாதி தாவாவில் கோரிய நிரந்தர உறத்துக் கட்டளை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா ?
- ii) வாதிக்கு வேறு என்ன பரிகாரம் ?

5. During the course of trial on the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A17 were marked. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and Exs.B1 to B10 were marked. At the conclusion of the trial, the trial Court decreed the suit and the appeal filed by the defendants was allowed by dismissing the suit. Aggrieved over the same, the plaintiff has filed the present Second Appeal.



S.A.No. 172 of 2014

6. Mr.V.Antony Elangovan, the learned counsel for the appellant / plaintiff, admits that Advaita Baktha Sabha is the original owner of the suit property; Advaita Baktha Sabha filed an ejection suit against the plaintiff claiming that the plaintiff is in wrongful possession of the suit property. When the ejectment suit was pending, the plaintiff filed a petition in M.P.No.499/1996 under Section 9 of City Tenants Protection Act, in which an order was passed on 05.08.1988 and the Advaita Baktha Sabha was directed to execute a sale deed in favour of the plaintiff and the same was executed on 28.10.2003 which is marked as Ex.A17.

6.1 In the year 1988 itself the Court directed to execute the sale deed in favour of the plaintiff and in the year 1995, the Advaita Baktha Sabha admitted that the plaintiff is in possession of the property. The only one document filed by the defendants to prove that the defendant was allowed to run the school is Ex.B3. However, the trial Court had observed that no document has been produced to show that the defendants are running a school with the permission of the Government.

7. Mr.S.Sadasharam, the learned counsel for the respondents / defendants, submitted that pending suit the plaintiff had sold the property in



S.A.No. 172 of 2014

favour of one Natarajan vide sale deed dated 12.07.2004. In the sale deed the plaintiff has clearly stated that the possession has been handed over to the purchaser, Natarajan. The suit property has been sold in favour of Natarajan during the pendency of the proceedings and that has been admitted by P.W.2. The plaintiff submitted that he was very much in possession of the suit property at the time when the suit was filed. Hence the subsequent sale of the suit property in favour of Natarajan will not take away his right to maintain the suit.

7.1 The subsequent purchaser of the plaintiff ought to have been impleaded as a party to the proceedings. Neither the plaintiff nor the purchaser had filed any application to implead the purchaser as party to the proceedings. The suit is only in respect of bare injunction which revolves around possession and not title. Even according to the plaintiff he had lost both the title and possession of the suit property by passing them in favour of one Natarajan. In such circumstances, it is right for the respondents / defendants to submit that the cause of action does not survive as against the plaintiff and hence the suit should be closed as infructuous.



S.A.No. 172 of 2014

8. So far as the subsequent purchaser is concerned, he is not before this Court to continue the cause of action as pleaded by the plaintiff by placing himself in the shoes of the plaintiff. If the third party purchaser feels that his possession is being disturbed by the defendants it is up to him to file a suit to seek appropriate remedy on the basic cause of action he might get against the defendants.

9. The learned counsel for the respondents / defendants submitted that P.W.2 had stated that the suit property has been sold by the plaintiff to one Natarajan. The plaintiff did not choose to treat P.W.2 hostile and cross examine. Hence, the plaintiff cannot plead that no weightage can be given to the evidence of P.W.2 or that the evidence of P.W.2 cannot be treated as the evidence on the side of the plaintiff.

10. It is further submitted that the plaintiff himself had questioned the alleged transaction in favour of Natarajan by stating that it is a fraudulent transaction. Natarajan had filed a suit for mandatory injunction against the plaintiff to hand over the title deeds of the suit property and that is being contested by the plaintiff. As the sale deed in favour of Natarajan stands against the plaintiff and causes cloud on his title and that the defendants



S.A.No. 172 of 2014

have also taken it an evidence shifting preponderance in their favour, the plaintiff ought to have amended the suit at least for the relief of declaration by impleading Natarajan as a party to the proceedings.

11. As of now there is no cause of action and the cause of action for the suit got frustrated. Hence, it is for the plaintiff to contest the other suit which is said to have been filed by Natarajan and get appropriate relief and he is at liberty to file a fresh suit depending upon its result, against the defendants on the same cause of action.

12. In view the above observation, the Second Appeal is disposed. No costs. Connected miscellaneous petition is closed.

03.12.2024

Index: Yes/No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

bkn



WEB COPY



S.A.No. 172 of 2014

R.N.MANJULA, J.

bkn

To:

1. The IV Additional Judge,
City Civil Court,
Chennai.
2. The XI Assistant Judge,
City Civil Court,
Chennai.
3. The Section Officer,
V.R.Records,
Madras High Court.

S.A. No.172 of 2014

03.12.2024