



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.02.2018
CORAM
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.244 of 2017

Sril John @ John

... Appellant/1st Respondent/
Plaintiff

Vs.

1. Sril Rajamani

... 1st Respondent/Appellant/
2nd Defendant

2. Narayanan Potri

... 2nd Respondent/2nd Respondent/
1st Defendant

Prayer: Second Appeal is filed under Section 100 of C.P.C., against the Judgment and Decree passed by the learned Sub Judge, Padmanabhapuram, in A.S.No.118 of 2006, dated 03.10.2007, reversing the Judgment and Decree(partly allowed) passed by the learned Additional District Munsif, Padmanabhapuram, in O.S.No.390 of 2000, dated 31.03.2006.

For Appellant : Mr.V.Illanchezian
For R-1 : Mr.B.Brijesh Kishore
For R-2 : Mr.G.Cenil

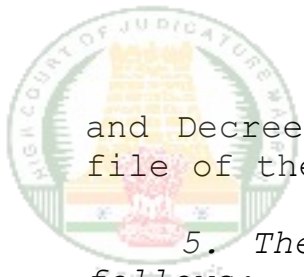
JUDGMENT

This Second Appeal is filed against the Judgment and Decree passed by the learned Sub Judge, Padmanabhapuram, in A.S.No.118 of 2006, dated 03.10.2007, reversing the Judgment and Decree(partly allowed) passed by the learned Additional District Munsif, Padmanabhapuram, in O.S.No.390 of 2000, dated 31.03.2006.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

3.The plaintiff in O.S.No.390 of 2000 on the file of the Additional District Munsif Court, Padmanabhapuram, is the appellant in this Second Appeal.

4. The plaintiff filed a Suit in O.S.No.390 of 2000 for the relief of declaration of title and for consequential injunction against the defendants from interfering with his peaceful possession and enjoyment of the plaint "A" schedule property. The plaintiff further prayed for a Decree to set aside the Judgment




and Decree passed in O.S.No.32 of 1990, dated 02.05.1990, on the file of the Sub Court, Padmanabhapuram.

5. The case of the plaintiff in the plaint in brief are as follows:-

The plaintiff is the owner of the suit 'A' schedule under a family partition. The plaintiff came to know that a Suit in O.S.No.32 of 1990 on the file of the Sub Court, Padmanabhapuram, had been filed for recovery of money from the plaintiff, which was allegedly due under a Promissory Note. The first defendant as plaintiff filed the said Suit for recovery of money against the plaintiff. The Court passed a Decree in favour of the first respondent for a sum of Rs.18,174.50/-. In execution of a Decree in E.P.No.22 of 1990 in O.S.No.32 of 1990, the entire property of the father of the plaintiff was brought to sale. As such property, an extent of 1 Acre 20 Cents of Re-Survey No.153/1 and 153/6 was brought for sale. However, the plaintiff did not receive any notice either during trial of the suit or in execution. The defendants have defrayed the Court and by mentioning the name of the plaintiff wrongly obtained a Decree fraudulently and hence the Decree in O.S.No.32 of 1990 of Sub Court, Padmanabhapuram and connected execution proceedings are liable to be set aside.

6. It appears that the father of the plaintiff, by name, Ponnumani Nadar died in the year 1969 leaving behind his wife, 4 sons and 4 daughters including the plaintiff. In the execution petition in E.P.No.22 of 1990, one of the brother of the plaintiff, by name, Vargeesh, said to have filed a claim petition in E.A.No.16 of 1991 stating the fact that the plaintiff is entitled to only for 1/12th share and that the plaintiff is entitled to only an extent of 10 Cents. The claim petition was allowed. Therefore, the property that was brought to sale in execution of the Decree in O.S.No.32 of 1990 was only the share of the plaintiff.

7. The second defendant in the Suit is the first respondent herein and who is also the brother of the plaintiff was the successful bidder in the Court Auction. It is stated that after depositing the bid amount, the second respondent took delivery of the property. The delivery was effected on 12.03.1994 as per the Court records. After realization of the amount pursuant to the Court Auction sale, the entire amount was taken by the second respondent to the full satisfaction of the Decree in O.S.No.32 of 1990. It is also stated by the learned counsel for the respondents that the Suit in O.S.No.820 of 1991 on the file of the District Munsif Court, Padmanabhapuram, for partition was allowed. In the said Suit, the name of the appellant herein was deleted from the list of parties, indicating that the property purchased by the first respondent in the Court Auction is the property to be allotted to the second defendant/first respondent. In the said



Suit, it is stated that a Compromise Decree was also passed on 18.07.1996 and the said Compromise Decree has become final. It is only after suppressing all these facts, the present Suit came to be filed by the appellant in O.S.No.390 of 2000 for declaration and for consequential injunction in respect of the suit property apart from the relief to set aside the Judgment and Decree in O.S.No.32 of 1990 on the file of the Sub Court, Padmanabhapuram.

8. The trial Court after recording the facts that the plaintiff has no right in respect of the suit property, dismissed the Suit for declaration of title. The trial Court further held that the appellant has not proved his case that this Suit in O.S.No.32 of 1990 was decreed without serving notice on the appellant. However, by recording the fact that the plaintiff is in enjoyment of the property, a Decree for permanent injunction was granted by the trial court. The first respondent, namely, the Court Auction purchaser has preferred an Appeal in A.S.No.118 of 2006 and the said Appeal was allowed.

9. It is pertinent to mention that the plaintiff has not preferred any Appeal against the portion of the Decree by which his right to property was negatived by refusing to grant the relief of declaration. Hence, the Judgment of the trial Court negating the title of the plaintiff was confirmed in the Appeal filed by the first respondent in A.S.No.118 of 2006. The lower Appellate Court allowed the Appeal and the Judgment and Decree of the trial Court granting permanent injunction was reversed. The Suit in O.S.No.390 of 2000 was dismissed in entirety. When the trial Court has found that the plaintiff is not the owner of the property and refused to grant the relief of declaration or to set aside the Decree and execution proceedings in O.S.No.32 of 1990 the trial Court ought to have dismissed the Suit for injunction. Merely because a person is in possession, he is not entitled to get a Decree for permanent injunction restraining the defendants from interfering with his possession. Strangely, the trial Court applying principles for grant of temporary injunction pending Suit observed that the plaintiff has established a *prima facie* case and that the balance of convenience is in favour of the plaintiff. Hence, the lower Appellate Court has rightly reversed the Decree of the trial Court in so far as the Decree for injunction granted by the trial Court.

10. Having regard to the other circumstances pointed out by the respondents even on merits, the appellant has not established his right. Since the Judgment and Decree of the trial Court with regard to title has become final as against the plaintiff, he is not entitled any relief in the Suit. The Judgment and Decree in O.S.No.32 of 1990 was held to be valid. However, the plaintiff has preferred a second Appeal only on the basis that the trial court has given a finding as to the plaintiff's enjoyment. Mere possession and enjoyment of the suit property will not confer any



right to the appellant. Having regard to the fact that all issues have been decided against the appellant in several litigations the appellant cannot maintain this appeal.

11. It appears that the first respondent herein has filed a Suit in O.S.No.172 of 2006 for possession and the same was also decreed along with mesne profits at the rate of Rs.500/- per month. It is also stated that the execution petition in E.P.No.28 of 2014 is pending. The Appeal filed by the appellant in A.S.No.70 of 2012 against the Judgment and Decree in O.S.No.172 of 2006 was also dismissed on 12.11.2013. It is also brought to the notice of this Court that another Suit in O.S.No.162 of 2006 has been filed by the plaintiff to set aside the compromise decree in O.S.No.820 of 1991. The said Suit was also dismissed by the trial Court. The appeal filed by the appellant in A.S.No.71 of 2012 was also dismissed.

12. From the facts narrated by the learned counsel for the first respondent, this Court is of the clear view that the appellant is not entitled to any relief. Having regard to the fact that this Appeal was argued without disclosing the subsequent development, this Court is inclined to dismiss this Appeal with costs.

13. As a result, this Second Appeal is dismissed with costs throughout and the Judgment and Decree passed by the learned Sub Judge, Padmanabhapuram, in A.S.No.118 of 2006, dated 03.10.2007, reversing the Judgment and Decree passed by the learned Additional District Munsif, Padmanabhapuram, in O.S.No.390 of 2000, dated 31.03.2006 is affirmed. The dismissal of the Suit in entirety is upheld.

Sd/
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1. The Sub Judge,
Padmanabhapuram.
 2. The Additional District Munsif,
Padmanabhapuram.
 3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)
- +1cc to Mr.V.ILLANCHEZIAN, Advocate, SR.No.52086
+1cc to Mr.G.CENIL, Advocate, SR.No.51887

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