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Court : Chennai

Decided On : Dec-16-2016

Judge : T. Ravindran

Appeal No. : S. A. No. 270 of 2011

Appellant : V. Krishnan

Respondent : V. Rajagopal

Judgement :

(Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 19.04.2010 made in Appeal Suit No.16 of 2009 on the file of the Court of the Principal Subordinate Judge, Krishnagiri confirming the judgment and decree, dated 20.01.2009 made in O.S.No.119 of 2006 on the file of the Court of the District Munsif at Krishnagiri.)

1. The plaintiff has preferred this second appeal challenging the judgment and decree dated 19.04.2010 made in A.S.No.16 of 2009 on the file of the Principal Subordinate Court, Krishnagiri, confirming the judgment and decree dated 20.01.2009 made in O.S.No.119 of 2006 on the file of the District Munsif Court, Krishnagiri.

2. The suit has been laid for declaration, possession and mesne profits.

3. The case of the plaintiff, in brief, is as follows.

The plaintiff, the defendant, Peddhodi @ Venkataraman, and Venugopal are brothers. As per the sale deed dated 26.08.1967, the defendant, Peddhodi @ Venkataraman and Venugopal sold the suit property to the plaintiff for a sum of Rs.500/- and since then the plaintiff is in possession and enjoyment of the same. Suppressing the same, the defendant herein filed a suit for partition in O.S.No.538 of 1990 alleging that the suit property jointly belonged to him and the plaintiff herein. When the plaintiff had filed his written statement claiming that he is the absolute owner of the suit property as per the sale deed dated 26.08.1967, the defendant herein left the above suit to be dismissed for default. The plaintiff's tenant vacated the suit property and the suit property was locked and the key was kept by the plaintiff. However, the defendant, during the absence of the plaintiff, unlawfully trespassed into the suit property and occupied the same and refused to vacate the premises and thus, the defendant is liable to pay mesne profits to the plaintiff at the rate of Rs.300/-. The defendant has denied the title of the plaintiff. Hence, the suit.

4. The case of the defendant, in brief, is as follows:

The suit is not maintainable either in law or on facts. It is true that the plaintiff, the defendant, Peddhodi @ Venkataraman and Venugopal are brothers. It is true that the defendant and others had executed a sale deed dated 26.08.1967 conveying the suit property to the plaintiff. It is true that the defendant had filed a suit in O.S.No.538 of 1990 for partition. However, due to his health condition, the above suit was not prosecuted and consequently, it was dismissed for default. It is false to state that the defendant unlawfully occupied the suit property, after the plaintiff's tenant vacated the suit property. The defendant has been suffering from Leprosy and when he went to Krishnagiri for taking treatment, the plaintiff wanted partition of the suit property and he asked the defendant to sign in the document of partition in the registrar office and believing his words, the plaintiff had signed in the document. The defendant is an illiterate person and the plaintiff had cheated him and registered the document and after the treatment, the defendant, on his return, found that the suit property was in a dilapidated condition and started residing there by putting up thatched house and therefore, the question of mesne profits does not arise. There is no cause of action to lay the suit and the same is liable to

be dismissed.

5. In support of the plaintiff's case, PWs 1 and 2 were examined and Exs.A1 to 7 were marked. On the side of the defendant, DWs1 and 2 were examined and no document has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to dismiss the suit. The plaintiff preferred the first appeal and the said appeal also came to be dismissed. Now, challenging the same, the plaintiff has preferred this second appeal.

8. Admittedly, the plaintiff, the defendant, Peddhodi @ Venkataraman and Venugopal are brothers and the suit property belongs to the four brothers. Now, the plaintiff claims absolute title to the suit property on the footing that his three brothers including the defendant had sold the suit property to him under the sale deed dated 26.08.1967, which has been marked as Ex.A1. Though the defendant in the written statement has, at one place, admitted the execution of the above said sale deed, he would only contend that he was affected with leprosy and while he was proceeding for treatment to Krishnagiri, the plaintiff demanded partition and accordingly, requested the defendant to sign in the partition deed and the defendant being a person affected by leprosy, believing the words of the plaintiff, signed in the document and according to the defendant, he has been cheated by the plaintiff and after his treatment, he has been residing in the suit property by putting up thatched house and therefore, it is contended that the plaintiff is not entitled to seek the relief sought for.

9. The plaintiff's counsel mainly stressed upon the admission made by the defendant in the written statement about the execution of the sale deed. However, a reading of the written statement in toto would go to show that the defendant has not admitted the execution of the alleged sale deed. It could be seen that the defendant has taken a plea that under the guise of executing the partition deed, the plaintiff had asked him to put his signature in the partition document and believing his words, the defendant being a person affected by leprosy had signed in the document. However, according to the defendant, the plaintiff has no right to claim absolute title in the suit property but entitled to claim only his share in the

suit property.

10. In such view of the defence taken by the defendant, as rightly found by the courts below, the plaintiff has to establish that the defendant had executed the sale deed in favour of the plaintiff dated 26.08.1967 along with the other two brothers. The sale deed has been marked as Ex.A1. As found by the courts below the other two brothers viz., Peddhodi @ Venkataraman and Venugopal have alone put their left thumb impression in the sale deed, as regards the defendant, it is found that there is a mention of a keeral in the sale deed. Therefore, it could be seen that the defendant has neither subscribed his signature or LTI in the sale deed Ex.A1. Even on the reverse side of page 1 of the sale deed, it is found that only the other two brothers have affixed their LTI, but the LTI of the defendant has not been obtained on the same. No valid reason has been given for the same by the plaintiff. However, it is stated that on account of the defendant suffering from Leprosy, his Thumb impression could not be obtained in the document. Therefore, as rightly found by the courts below, if really, the sale deed had been executed by the defendant out of his free will, consent and own volition and in that, set of mind, he had appeared before the sub registrar to execute the document and on account of afflictment of leprosy, he was unable to affix his LTI on the document, the sub registrar would have made necessary endorsement in the sale deed with regard to the ailment of the defendant as suffering from leprosy and on that account, he was unable to affix LTI on the document. However, the document is conspicuous with reference to absence of such endorsement by the sub registrar concerned. Therefore, it could be seen that the courts below have rightly found that if for one reason or the other, one of the parties to the document was unable to either consent or affix his LTI and had actually appeared before the sub registrar and informed his position about his inability, the sub registrar would have made necessary endorsement in the document but the document Ex.A1 did not contain such endorsement by the authority concerned. It could thus be seen that when there is nothing to indicate that the defendant had executed the sale deed with full consent and out of his own volition, it has to be held that the alleged sale deed has not been executed by the defendant. Therefore, it could be seen that the defendant, admittedly, being one of the co-owners, having found to have not executed the sale deed in favour of the plaintiff, it is clear that the plaintiff is not

entitled to claim the relief of declaration as the absolute owner of the suit property.

11. That apart, the courts below have also analysed the evidence adduced on behalf of the plaintiff and found that the plaintiff himself has admitted that Ex.A1 does not contain the LTI of the defendant and on account of his ailment and bandage in his hands, he was unable to put LTI and necessary endorsement with reference to the same has not been made in the document and it is true that the defendant is afflicted with leprosy. Further, the other brother Venugopal examined as PW2 has also admitted that the defendant is a person affected with leprosy and inasmuch as the defendant had his hands completely bandaged, he did not affix his LTI in the document and therefore, it could be seen that the evidence on the side of the plaintiff is very clear that the defendant has not subscribed to the sale deed Ex.A1 in any manner before the authority concerned and accordingly, the authority has also not made any endorsement about the inability of the defendant to subscribe or put his LTI in the document on account of the leprosy or other ailment. The plaintiff has not cared to examine the other persons viz., attestors or scribe of the document to prove the valid execution of the sale deed. None has been summoned from the sub registrar office to establish that the document has been duly executed and registered in the manner known to law.

12. One of the attestors to Ex.A1 has been examined as DW2. Even DW2's evidence, as rightly found by courts below, is not useful to sustain the case of the plaintiff. He has also deposed that he is not aware of the contents of Ex.A1 and such being his evidence, as rightly found by the courts below, the plaintiff has miserably failed to establish the truth and validity of Ex.A1.

13. In the above said circumstances, it could be seen that the plaintiff and the defendant being co-owners of the suit property, the suit laid by the plaintiff for seeking declaratory relief cannot be granted. Equally, the plaintiff has also failed to establish his case that the defendant had unlawfully trespassed into the suit property and occupied the same. On the other hand, it could be seen that being one of the co-owners, the defendant is entitled to be in the suit property and therefore, as rightly found by the court below, the question of claiming mesne profits from the defendant would not arise as per law.

14. The plaintiff counsel also fervently argued that the defendant has laid a suit for partition in O.S.No.538 of 1990 and after the plaintiff put forth his case of purchase of the suit property under Ex.A1 in the written statement, the defendant did not prosecute the suit further and therefore, the defendant is estopped from denying the title of the plaintiff under Ex.A1.

15. Per contra, according to the defendant, on account of his ailments and treatment to the same, he has not prosecuted the said suit. In such circumstances, when the plaintiff has failed to establish that the defendant had also joined in the execution of Ex.A1 along with the other co-owners as per law, it could be seen that the dismissal of the suit for partition in O.S.No.538/1990 would not in any manner, dis-entitle the defendant from claiming a share in the same or would estop or prevent the defendant from contesting the present lis instituted by the plaintiff.

16. The plaintiff has failed to establish the truth and validity of Ex.A1 sale deed. In such circumstances, the plaintiff, at the most, would be entitled to claim only his share in the suit property. If, according to the plaintiff, his other brothers had conveyed the suit property to him, he can work out his remedy in the manner known to law in respect of the shares alleged to have been conveyed to him by his other two brothers. As rightly found by the courts below, for the same, the plaintiff has to work out his remedy by filing a suit for partition.

17. For the reasons aforestated, as rightly argued, the decision relied on by the appellant counsel reported in (2000) 7 Supreme Court Cases 120 (Uttam Singh Duggal and Co. Ltd., V. United Bank of India and others) would not be applicable to the facts and circumstances of the case at hand.

In the light of the above discussion, I find no substantial question of law is involved in this second appeal and accordingly, the second appeal is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed, if any.