

Pankajakshy Vs. Devaki Ramakrishnan

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Court : Kerala

Decided On : Sep-09-2010

Reported in : ILR2010(4)Ker207

Judge : S.S.Satheesachandran

Acts : [Transfer of Property Act 1882](#)

Appeal No. : RSA.No. 835 of 2010()

Appellant : Pankajakshy

Respondent : Devaki Ramakrishnan

Judgement :

1. Plaintiff is the appellant. Concurrent decision rendered by the two courts below non-suited the plaintiff/appellant negating her claim for declaration of possession and injunction over the suit property is challenged in the appeal. Plaintiff had claimed possession over two items of properties. So far as item No.1 property, it was her case that she obtained possession thereof by way of an oral sale from one Narayanan, the title holder. Item No.2 property was claimed by virtue of a registered sale deed. Both properties are lying contiguously was her case for seeking a declaration of possession in common over such items with a further relief of prohibitory injunction against the defendants alleging threat of trespass. Consideration of Rs.3,000/- was paid to the above said Narayanan to purchase item No.1 property by an oral sale was the case of the plaintiff. The defendants

resisted the suit contending that she is entitled to item No.2 property alone and the claim set up over item No.1 by way of an oral sale is unworthy of any value. So the real controversy involved in the suit was the claim of possession raised by the plaintiff over item No.1 property. Both the courts, after considering the pleadings and also the materials placed, found no merit in the case of transfer of item No.1 property claimed by the plaintiff in her favour and, consequently, the decree for declaration of possession and also injunction, sought for, was negative.

2. I heard the learned counsel for the appellant/plaintiff on the admissibility of the appeal. Sufficient evidence has been let in to show that she was in settled possession of the properties, item Nos.1 and 2, and the reliefs sought for being only for a declaration of possession both the courts below went wrong in non-suiting the plaint, is the submission of the counsel. Reliance is placed by the counsel on *Rame Gowda (Dead) by Lrs. v. M.Varadappa Naidu (Dead) by Lrs.* and another ((2004) 1 SCC 769) to contend that an occupant in settled possession is entitled to claim injunction. Even if his possession was canvassed on the basis of his title, failure to establish his title will not be a bar to claim a decree of injunction in case he is able to prove his possession, submits the counsel. What has been claimed in the suit being only for a declaration of possession, where the materials produced showed that the plaintiff has settled possession over item Nos.1 and 2 properties, according to the counsel, a decree should have been granted in her favour. I find that the decision relied by the counsel has no application to the facts of the case. A declaration of possession is quite different from applying for an injunction on the basis of settled possession. The law recognizes only two modes of transfer of sale, one by registered instrument and the other by delivery of possession, in respect of immovable properties. Section 54 of the Transfer of Property Act, 1882 lays down the law with respect to sale of immovable properties. That section allows the simpler alternative of delivery of possession only in case of tangible immovable property of a value less than Rs.100/-. In all other cases, sale of immovable property can be made only under a registered instrument. In the present suit, the appellant/plaintiff has set forth a claim over item No.1 property alleging that there was a transfer of that property in her favour by an oral sale for Rs.3,000/-. She has claimed her possession on the basis of an oral sale which can never be recognised under law. So much so, no

such transfer by way of an oral sale over item No.1 property, the consideration of which admittedly exceeded Rs.100/- even on the case of the plaintiff, can be recognized. In the suit, possession having been raised on the basis of title by oral sale, and the decree of declaration of possession was claimed on that basis, it goes without saying that the plaintiff was not entitled to the declaration even assuming there is some evidence to show that she is in possession of item No.1 property. Both the courts below have found that she has failed to prove her possession also over item No.1 property after having scrutiny of the materials tendered in the case. There is no merit in the appeal, and it is dismissed.

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