

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.785 of 2009

G.Padmini

...Appellant/Plaintiff

Vs.

Ramalingam

...Respondent/Defendant

Prayer:- Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 26.04.2006 made in A.S.No.20 of 2006 on the file of the Subordinate Judge, Madurantakam, confirming the judgment and decree dated 02.06.2005 made in O.S.No.191 of 1998 on the file of the District Munsif, Madurantakam.

For Appellant : Mr.K.Govi Ganesan

For Respondent : Mr.M.V.Nicholas

J U D G M E N T

The plaintiff aggrieved by the unanimous decision of the Courts below, has preferred the above Second Appeal.

2. The plaintiff had filed the suit for permanent injunction, restraining the defendant from interfering with her peaceful possession of the suit property .

3. The plaintiff claims to have purchased the property on 27.05.1998 under Ex.A.1 and she claims to be in possession of the property from the date of her purchase. As the defendant interfered, the suit was filed.

4. The suit was resisted by the defendant contending that the suit property was Gramanatham and he has been living with his family continuously for more than twenty years, without

any interruption. The title of the defendant was also confirmed in O.S.No.187 of 1998 which was filed against the vendor of the plaintiff.

5. In the above circumstances, whether the plaintiff is entitled to the decree of injunction as prayed for ?

6. The plaintiff has filed Ex.A.1-Sale deed from one Sakunthala Ammal, Ex.A.2-patta issued in the name of one Rajakanthammal and Exs.A3 and A4 the House tax receipts. When admittedly, the suit property is a vacant site and also on the date of purchase the property was vacant, the production of Ex.A3 and Ex.A4-house tax receipts have given rise to the suspicion in the minds of the court below. Hence, the said documents were rejected. The other documents in Ex.A5 and A6 which are extract of 'A' Register and certificate issued by the Tahsildar respectively, are all documents created after filing of the suit and the above said documents cannot be looked into. That apart the suit O.S.No.187 of 1998 filed by the defendant herein against Rajakantham, the vendor of the plaintiff, was decreed against the said Rajakantham, and the same is also said to be confirmed in appeal.

7. From the above, it is clear that the vendor of the plaintiff does not have any right over the suit property. The plaintiff also has not produced any other documents viz., the assignment in favour of the plaintiff's vendor etc.,

8. On the other hand, the defendant has produced the patta in his name, obtained subsequent to the filing of the suit. However, the plaintiff has to fall or succeed on his own case and cannot take advantage of the case of defendant. The plaintiff had specifically alleged that her vendor was assigned the suit property by the Government but the same was not substantiated by acceptable evidence. The plaintiff had failed to establish the validity of Exs.A1 and A2. The patta issued by the Tahsildar in the name of Rajakantham, cannot be taken advantage by the plaintiff. The courts below have also doubted the validity of Exs.A.5 and A6 as the same have been obtained by the plaintiff when the matter was pending before the Civil Court.

9. In such circumstances, the courts below have rightly come to the conclusion that the plaintiff neither got the title of the suit property nor the possession over the same.

10. In the absence of any evidence to substantiate the possession of the plaintiff, the suit was rightly dismissed by the Courts below. In the above factual matrix, there is no question of law that arises for consideration in the above Second Appeal and the Second Appeal is dismissed as devoid of merits. No costs

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Subordinate Judge,
Madurantakam.

2. The District Munsif,
Madurantakam.

3. The Section Officer,
V.R. Section,
High Court, Madras - 104.

1 CC to Mr.M.V.Nicholas, Advocate SR.No. 50633

1 CC to the Government Pleader, SR.No. 50860

सत्यमेव जयते

S.A.No.785 of 2009

MSM (CO)
PSI (20.10.2015)

WEB COPY