

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.756 of 2015

Chandran

... Appellant

Vs.

Patel

... Respondent

Prayer:- This Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 25.09.2014 made in A.S.No.3 of 2013 on the file of the Sub Court, Gudiyattam, Vellore District, confirming the judgment and decree dated 21.11.2012 made in O.S.No.206 of 2003 on the file of the District Munsif Court, Gudiyattam, Vellore District.

For Appellant : Mr.T.Dhanyakumar

For Respondent : Mr.G.Vindothkumar

J U D G M E N T

The plaintiff, who is the appellant herein, has filed the above Second Appeal aggrieved by the unanimous decisions of the Courts below.

2. Heard the learned counsel for the appellant and Mr.G.Vinodhkumar, learned counsel appearing for the caveator.

3. The suit is filed for declaration and injunction. The dispute is only with respect to the second item of the suit property. The plaintiff has based his claim on Exs.A1 and A2, settlement deeds. The settlement deeds were not filed before the Courts below, as plaintiff had only produced the certified copies of the same and the originals have not been filed. The reason assigned by the plaintiff is that the originals were under mortgage. However, the respondent/defendant had produced Exs.B2 and B3 to show that the mortgage was discharged long back. Therefore, an adverse inference had been drawn by the lower appellate Court. Even, otherwise, the suit property does not find a mention in Exs.A1 and A2. Though the plaintiff contended that the second item of the suit property devolved on him from his grandmother and that he has perfect title by adverse possession, the same had not been pleaded and proved.

4. The Commissioner in his report has stated that the defendant does not have an access to the second item of the suit property in his house. Hence, it was argued by the learned counsel for the appellant / plaintiff that when the defendant did not have any access, even to the second item, it should be presumed that the plaintiff is in possession of the property. However, as per Ex.A6, it is admitted that the defendant has got an access in the second item of the suit property. Other than Exs.A1 and A2, the plaintiff has not produced any other document relating to the second item of the suit property. Having failed to establish that the property on the North of the plaintiff's house belonged to the plaintiff by virtue of any document, the plaintiff is not entitled to any relief as sought for.

5. In fact, the appellant/plaintiff had filed an I.A.No.14 of 2010 to amend the plaint, as per which, he has claimed perfect title by adverse possession over the suit property. If such amendment is allowed, then the plaintiff has to admit the title of the defendant. The plaintiff, having denied the title of the defendant, cannot set up title by adverse possession. Having not established that the appellant is entitled to the suit property, the Courts below have concurrently held that the plaintiff is not entitled to any relief. In such circumstances when there is no substantial question of law arising for consideration, there is no justifiable reason to interfere with the concurrent findings of the Courts below.

6. In the result, the Second Appeal is dismissed, confirming the judgments and decrees of the Courts below. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

srn

To

1.The Subordinate Judge, Gudiyattam

2.The District Munsif Court,
Gudiyattam, Vellore District.

+1cc to M/s. T. Dhanyakumar, Advocate, S.R.No.49204

+1cc to G. Vinodh Kumar, Advocate S.R.No.49096

ALA(CO)
EU(24/11/2015)

S.A.No.756 of 2015



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