



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2016

CORAM:

THE HONOURABLE Ms. JUSTICE R.MALA

S.A. (MD) No. 237 of 2016

and

C.M.P. (MD) No. 3376 of 2016

Velladurai Pandian

... Appellant/Appellant/Plaintiff

Vs.

1. Muthiah Thevar

2. Veluthevar

3. Gopal

4. Muthathal

5. Sekar

6. Lakshmi

7. Mani

8. Kasthuri

9. Rajendran

10. Murugan

11. Udayasooriyan

12. Samuthiram

13. Selvi

14. Thangam

15. Chellathai

... Respondents/Respondents/Defendants

Prayer: The Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree of the learned Subordinate Judge, Sankarankovil, dated 15.04.2010 in A.S.No.12 of 2005, confirming the decree and judgment of the learned Additional District Munsif, Sankarankovil, dated 11.10.2004 in O.S.No.15 of 1999.

For Appellant

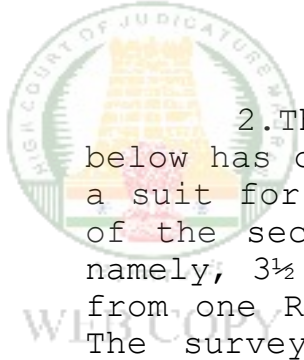
: Mr.M.S.Jawharlal

For Respondents

: Mr.F.X.Eugene for R1, 3 to 15

JUDGMENT

The Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 15.04.2010 in A.S.No.12 of 2005 passed by the learned Subordinate Judge, Sankarankovil, confirming the decree and judgment dated 11.10.2004 in O.S.No.15 of 1999 passed by the learned Additional District Munsif, Sankarankovil.

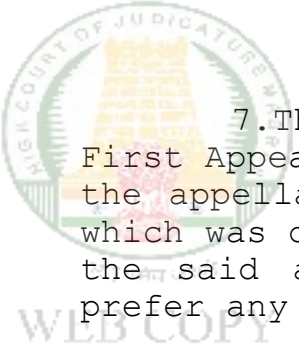


2.The plaintiff, who lost the legal battle before the Courts below has come forward with this Second Appeal. The plaintiff filed a suit for declaration of title and also for injunction in respect of the second item of suit property, stating that the first item namely, 3½ cents has been purchased by him under Ex.A1 on 19.08.1974 from one Raja @ Udaya Devar, who got the property by inheritance. The survey number for the suit property has been mentioned as 324/13A instead of 324/13B. In the 1st schedule, one cent land has been purchased by the plaintiff from one Udayar Devar on 27.06.1994. In that also it was wrongly mentioned as 324/13A instead of 324/13B. Hence, the plaintiff executed a rectification deed on 07.10.1998. Since the defendants attempted to interfere with possession, the plaintiff was constrained to file the suit for declaration of title and injunction.

3.Resisting the same, the defendants filed a detailed written statement, stating that plaintiff was having title only in Survey No.324/13A and not in Survey No.324/13B. Patta was never granted to him. The property in Survey No.134/13B was belonging to one Madasamy Devar. He was having a brother by name Arokiya Devar. From the said Madasamy Devar, one Muthammal has purchased 2½ cents along with a thatched house under Ex.B1 on 07.01.1946 for Rs.50/- and from the date on which, she is in possession and enjoyment of the same. Thereafter, the said Muthammal sold the property to one Subbammal on 06.11.1950 and from the date onwards, the said Subbammal was enjoying the property. On 14.11.1952, the defendants' father namely, Velliyappa Devar purchased the property from the said Subbammal and from the day onwards, he is in possession and enjoyment of the property. Therefore, the plaintiff is never in possession of the property and they are not interested in Survey No.324/13B. Hence, they prayed for the dismissal of the suit.

4.The Trial Court after considering the averments both in the plaint and written statement and on hearing the arguments, has framed necessary issues. After considering the oral and documentary evidence, dismissed the suit, stating that the plaintiff has failed to prove that he is interested in Survey No.324/13B and the defendants have filed documents Exs.B.1 to B3 much from 07.01.1946 onwards. Against which, the plaintiff preferred an appeal in A.S.No.12 of 2005 before the learned Subordinate Judge, Sankarankovil.

5.The First Appellate Court by judgment dated 15.04.2010 dismissed the Appeal Suit, confirming the judgment and decree dated 11.10.2004 passed by the Additional District Munsif, Sankarankovil. Now, the plaintiff has come forward with this Second Appeal.



7.The appellant has stated that at the time of filing of the First Appeal, he filed an application under Order 41 Rule 27 to hear the appellant for receiving additional evidence along with appeal, which was dismissed. But he has not filed any document to show that the said application was dismissed. Against which, he did not prefer any revision during the pendency of the appeal.

8.On perusal of orders of both the Courts below, the respondents herein have proved their case by filing the documents Exs.B1 to B3 from the year 1946 onwards. The predecessor in title was having the right over the property in Survey No.324/13B, whereas, the plaintiff in the year 1974 under Ex.A1 has purchased only the property in Survey No.324/13A. Subsequently, he purchased one cent in the year 1994. In that the survey number has been categorically stated as 324/13A. As per Ex.A3, in the year 1998, he has obtained a rectification deed. Immediately, he filed a suit for declaration, which shows his ulterior motive to drag the respondents to the Court.

9.In such circumstances, I am of the view that there is no substantial question of law arise in this Second Appeal. Hence, this Second Appeal is dismissed at the stage of admission. No costs. Consequently, connected C.M.P.is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Subordinate Judge, Sankarankovil.
- 2.The Additional District Munsif, Sankarankovil.

+ 1 CC TO MR.M.S.JAWHARLAL, ADVOCATE IN SR No. 31523
+ 1 CC TO MR.F.X.EUGENE, ADVOCATE IN SR No. 31385

NBJ

TE/AAL-MPA/SAR-III : 11/07/2016 : 3P/5C

S.A.(MD)No.237 of 2016
and
C.M.P.(MD)No.3376 of 2016
20.06.2016