



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

S.A(MD).No.684 of 2016 and
CMP(MD).No.10473 of 2016

1. Muthu
2. Bose : Appellants/Appellents/Plaintiffs

Vs.

1. Vellaichamy
2. Angammal
3. Rajkumar : Respondents/Respondents/Defendants

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 25.04.2016 passed in A.S.No.25 of 2014 on the file of the Sub Court, Devakottai, pursuant to the Judgment and decree dated 09.06.2014 in O.S.No.48 of 2011 on the file of the District Munsif Court, Devakottai.

For Appellants : Mr.H. Thayumanaswamy
For Respondents : Mrs. Rajeshwaran

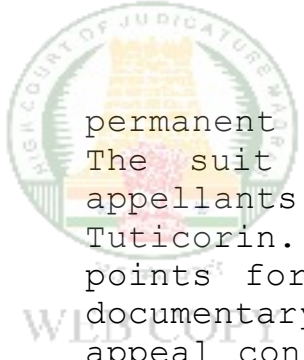
JUDGEMENT

The Second Appeal is filed as against the Judgment and decree, dated 25.04.2016 passed in A.S.No.25 of 2014 on the file of the Sub Court, Devakottai and the Judgment and decree, dated 09.06.2014 in O.S.No.48 of 2011 on the file of the District Munsif Court, Devakottai.

2. The appellants are the plaintiff who succeed before Courts below partly and lost for remaining extent.

3. The appellants filed O.S.No.48 of 2011 on the file of District Munsif, Devakottai for declaration that the suit properties belong to the plaintiffs and for seeking permanent injunction so as not to disturb the peaceful possession and enjoyment of the plaintiffs in the suit properties by defendants and for costs.

4. The appellants claimed title, based on two sale deeds dated 21.03.1977 and 07.02.1990. The respondents resisted the claim of the appellants before the trial Court. Based on the pleadings, the trial Court framed necessary issues. Before the trial Court, first appellant examined himself as PW.1 and one Arunachalam was examined as PW.2 and marked 25 documents as Exs.A1 to A25. The third respondent was examined as DW.1 and defendants 5 and 8 were examined as DW.2 and DW.4 and one Mahalingam was examined as DW.2 and marked 25 documents as Exs.B1 to B25. The trial Court considering the pleadings oral and documentary evidence and arguments of the counsel for the parties decreed the suit as to the extent of 48 cents in S.No.35/1B and 32 cents in S.No.36/1 and



permanent injunction is granted in respect of that extent alone. The suit was dismissed with regard to other extent. The appellants filed A.S.No. 25 of 2014 on the file of the Sub Court, Tuticorin. The learned First Appellate Court framed necessary points for consideration and considering the pleadings oral and documentary evidence and judgment of the trial Court dismissed the appeal confirming the judgment of the trial Court. Against that, the present Second Appeal is filed.

5. The learned counsel for the appellants submitted that the Courts below erred in partly dismissing the suit while the appellants have proved the title to the entire suit property by documentary and oral evidence. The learned Judge erred in law in not properly appreciating Exs.A7, A8 and A10 and the Courts below failed to see that as per the documents filed by the appellants, they are entitled to entire suit property and originally patta was granted in the name of the appellants. The respondents have fraudulently got patta and the patta granted in favour of the appellants has been cancelled and hence, the appellants have filed the appeal against the such cancellation.

6. The learned counsel appearing for caveator submitted that Courts below have properly considered and appreciated both oral and documentary evidence and dismissed the part of the claim of the appellants. The claim of appellants is based on two sale deeds and one mortgage deed marked as Exs.A7, A8 and A10. The documents produced by the appellants do not prove that appellants are owners of the entire extent claimed by them. He further submitted that no substantial questions of law arises in the second appeal.

7. I have heard the learned counsel appearing for the appellants and the caveator and perused the materials available on record.

8. The claim of the appellant is based on sale deeds and mortgage deed marked as Ex.A7, A8 and A10. According to the appellants, the Courts below have not properly considered these exhibits and rejected the part of the claim of the appellants. From the judgments of the Courts below, it is seen that the Courts considered these documents in proper perspective and had given valid reason for rejecting part of the claim of the appellants. There is no error in the said finding. No question of law much less substantial question of law arises in the second appeal.

9. In the result the Second Appeal is dismissed confirming the Judgment and decree dated 25.04.2016 passed in A.S.No.25 of 2014 on the file of the Sub Court, Devakottai, pursuant to the Judgment and decree dated 09.06.2014 passed in O.S.No.48 of 2011 on the file of the District Munsif Court, Devakottai. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar[Writs]



To

- 1.The Sub Court, Devakottai,
 - 2.The District Munsif Court, Devakottai.
- +1cc to Mr.A.Thangamanasamy,Advocate,SR.69122.
+1cc to Mr.K.Rajeswaran,Advocate,SR.69362.

Trp

kk/vmvj/9.1.2017/3P/5C

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