

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.267 of 2017
and
C.M.P.No.6238 of 2017

T.Mayavel

.. Appellant

Vs.

1. K.Mathiazhagan
2. Periyasamy
3. Megala @ Manimegalai

.. Respondent

Second Appeals filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 28.04.2016 in A.S.No.17 of 2015 on the file of the Additional District Sessions Court, Ariyalur, against the judgment and decree dated 31.01.2012 in O.S.No.367 of 2008 on the file of the Principal District Munsif Court, Ariyalur.

For appellant : Mr.R.Sethuvarayar

JUDGMENT

The plaintiff is the appellant and the defendants are the respondents herein. The trial Court decreed the suit, whereas the first appellate Court reversed the findings of the trial Court and dismissed the suit.

2. The learned counsel for the appellant has raised the following substantial questions of law in the memorandum of grounds of appeal:

(i) Whether the sale deed in Document No.2978/2008 executed in favour of the first respondent herein is legally valid one ?

(ii) Whether the second and third respondents are having right to sell 74 Sq.Fts. to the first respondent in Survey No.89/2 ?

(iii) Whether D.W.1, in the sale deed in Document No.2978/2008 dated 14.11.2008 conveyed 74 Sq.Fts. binded on the earlier sale deed in Document No.847/2002 ? and

(iv) Whether the lower appellate Court ascertained the total extent of the second and third respondents ?

3. The sum and substance of the issue on hand is that the trial Court accepted the contention of the plaintiff that he is entitled to the property, but the first appellate Court held that the contention that the second and third respondents (D2 and D3) have no remaining property to sell to the first respondent/D1 except 74 Sq.Ft., is contrary to the evidence on record. It is contended by the appellant/plaintiff that the entire property had been sold out by the second and third respondents/D2 and D3 to the appellant/plaintiff through Ex.A-1 sale deed, dated 17.05.2002. The first appellate Court rightly relied on various decisions of this Court and taking into consideration the fact that the issue involved in the case is limited, as the other undisputed area also has been taken into consideration in deciding the suit, held in paragraph 14 that it is settled law that patta, though is a record for possession, yet it does not confer any title to a party, as held by the Supreme Court in catena of decisions. Thus, the first appellate Court rejected the contentions with regard to Ex.A-2 patta. Moreover, in paragraph 15, the first appellate Court held that the evidence of P.W.1 VAO, who deposed that the dispute is with regard to only 74 Sq.Ft. and as he also deposed with regard to the entire extent of suit property, his evidence will not in any way help the plaintiff. It further held that the first defendant purchased the property excepting 74 Sq.Ft. The first appellate Court held that P.W.2 in his evidence deposed that the way leading to the property, is only through the place where the said 74 Sq.Ft. exist. The first appellate Court further relied on Ex.C-2 sketch and Ex.C-1 report of the Advocate Commissioner and held that the plaintiff purchased the property from defendants 2 and 3 excepting 74 Sq.Ft., in Ex.A-1 sale deed, dated 17.05.2002.

4. On an analysis of the evidence available on record, this Court finds no question of law, much less substantial question of law arising for consideration in the Second Appeal. There being no merits, the Second Appeal is dismissed. No costs. C.M.P. is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

CS

Copy to

1. The Additional District Judge,
Ariyalur.
2. The Principal District Munsif,
Ariyalur.

+1cc to Mr.R.Sethuvarayar, Advocate, S.R.No.22578

S.A.No.267 of 2017

SS (CO)
RS (17/05/2017)



WEB COPY