IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9.8.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

S.A.No.518 of 2017
and
C.M.P.No.12445 of 2017

Pappathi ... Appellant/Plaintiff

Vs.

1. Mumthaj Begum
2. Kandan ... Respondents/Defendants

Second appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree of the Sub Judge, Dharmapuri, dated 09.06.2017 made in A.S.No.14 of 2014 confirming the Judgment and Decree of the District Munsif, Dharmapuri, dated 29.1.2014 made in O.S.No.175 of 2006.

For Appellants : Mr.C.Prabarakan

JUDGMENT

The brief facts of the case as follows:

The appellant/plaintiff has filed a suit in O.S.No.175 of 2006 for declaration and permanent injunction. According to the plaintiff, the suit property belongs to one T.S.Anwar Babu and she purchased the suit property on 21.8.2000 from Anwar Basha for sale consideration. The suit property absolutely belongs to the plaintiff by way of Ex.A1 to A6 and she is in possession and enjoyment of the suit property. Plaintiff was examined as P.W.1 and sale deed, dated 21.8.2000 was marked as Ex.A1. Patta Pass book was marked as Ex.A2. P.W.1 produced the computerized patta, Ex.A3, dated 1.12.2004 stands in the name of the plaintiff wherein the survey number is mentioned as 303/3B. Chitta also produced under Ex.A4 and the same is also stands in the name of the first defendant. The names of the plaintiff as well as the first defendant were found in Ex.A6, Proceedings of the Tahsildar, Dharmapuri, dated 27.3.2001. The defendants have filed written statement and contended that the suit property belongs to the first defendant by way of the registered Gift settlement deed, dated 7.9.1986 which was marked as Ex.B1. As per Ex.B1, the first defendant's mother executed a Gift settlement deed in favour of the first defendant and handed over the possession of the suit property in S.No.302. According to the defendant, Ex.B2 Patta Proceedings, dated 30.11.1999, issued by the Tahsildar, Dharmapuri, S.No.302/3 was sub divided into S.No.302/3A and 302/3B. S.No.302/3A was allotted to one Saraswathi. S.No.302/3B was allotted to the first defendant. The first defendant also produced patta No.1676 for S.No.302/3B, stands in her name. Kist receipts were also produced and marked as Ex.B4. The first defendant was examined as D.W.1. Patta pass book for S.No.294/1B and 302/3B issued in the year 2000 has been marked as Ex.B5. Subsequently, the order passed by the Tahsildar, Dharmapuri under Ex.A6, dated 27.3.2001 was cancelled by the Revenue Divisional Officer, Dharmapuri under Ex.B7 order, dated 29.12.2005. The trial court after considering the oral and documentary evidence, dismissed the suit. Challenging the judgment and decree passed by the trial Court, the plaintiff/ appellant has filed an appeal before the Sub Court, Dharmapuri in A.S.No.14 of 2014. The Appellate court also confirmed the judgment and decree passed by the trial court and dismissed the appeal. Challenging the judgment and decree passed by the Courts below, the plaintiff/appellant has filed the present Second Appeal.

2 The learned counsel for the appellant submitted that the vendor of the plaintiff and the first defendant are brother-in-law and sister-in-law. Therefore, very gift deed itself does not have any sanctity in the eye of law and the same is not binding the vendors of the plaintiff. Originally, patta stands in the name of Anwar Basha and thereafter, without any notice to the patta holder, the revenue records were mutated in favour of the first defendant. The Tahsildar, Dharmapuri passed detailed order under Ex.A6 granting joint patta in favour of the plaintiff. Without considering the same, Courts below recorded a finding against the plaintiff/ appellant. Courts below miserably failed to note that Ex.B3 to B12 were came into force subsequent to filing of the suit. Further, the learned counsel for the appellant would submit that to substantiate the validity of the gift deed, the defendants/respondents has not even proved Ex.B1 by examining the scribe and attesting witness of Ex.B1. Revenue records are also reveals that the appellant/ plaintiff is in possession of the suit property. Therefore, findings given by the Courts below are perverse, illegal and the same is liable to be set aside.

3 Heard the learned counsel for the appellant and perused the materials available on record.

4 On 17.5.2001, Tahsildar, Dharmapuri passed order under Ex.A6, issued joint patta in favour of the plaintiff and the first defendant. The Revenue Divisional Officer, Dharmapuri, set aside Ex.A6, by Proceedings dated 29.12.2005, Ex.B7, thereafter, the suit was filed on 23.8.2006 by the plaintiff, after nearly eight months. Subsequently, plaintiff has filed revision before the District Revenue Officer and the District Revenue Officer passed an order under Ex.B6, dated 11.2.2011 wherein it was held that S.No.302/3B absolutely belongs to the first defendant. The first defendant had filed O.S.No.222 of 2000 for declaration and injunction in the aforesaid suit and exparte decree was passed on 30.7.2001. The plaintiff filed I.A.No.264 of 2002 in O.S.No.222 of 2000 to set aside the exparte decree, and the same was dismissed. Suppressing all the above facts, the plaintiff has filed the suit in O.S.No.175 of 2006. The plaintiff has also filed W.P.No.18242 of 2011, which was also dismissed by this Court. Under these circumstances, considering the oral and documentary evidence, the trial Court dismissed the suit. Challenging the judgment and decree of the trial Court, the plaintiff/appellant has filed A.S.No.14 of 2014.

5 Considering the fact, the revenue authorities granted patta Ex.B1 to B14, for the property situate in S.No.302/3B in favour of the first defendant, the trial Court came to the conclusion that the suit property absolutely belongs to the first defendant and the plaintiff has no right over the suit property. Further, it is also discussed by the trial Court that in respect of the very same property situate in S.No.302/3B, the revenue officials issued patta in favour of the plaintiff. On the basis of patta issued in favour of the plaintiff in respect of the property situate in S.No.302/3B, plaintiff/appellant has filed suit in O.S.No.175 of 2006. Admittedly, the said document has been marked by the plaintiff/appellant before the trial Court to prove the possession and title of the suit property. Subsequent to the said document, the Revenue Divisional officer and the District Revenue officer have confirmed the title and right in favour of the defendant in respect of S.No.302/3B. Further, it has been held by the trial Court that the suit in O.S.No.222 of 2000 has been filed for declaration and the consequential injunction filed by the first defendant, the said suit was decreed and it becomes final. The plaintiff/appellant filed the present suit without producing any documentary evidence to substantiate his claim made in the suit and without disclosing the fact that the suit filed by the first defendant in O.S.No.222 of 2000 was decreed in favour of the first defendant. The Appellate court considering the documents under Ex.B4, B5, B6 and B7 and also decree passed in O.S.No.222 of 2000 dismissed the Appeal suit

filed by the appellant/plaintiff and confirmed the judgment and decree passed by the trial Court.

6 The documents under Ex.A6 passed by the Tahsildar was set aside by the Appellate authority viz., Revenue Divisional officer and the same was confirmed by the District Revenue officer. There was no other record placed before the trial court to substantiate his claim made in the suit and on the other hand, the suit filed by the first defendant in O.S.No.222 of 2000, exparte decree has been passed for declaration and injunction and subsequent application filed by the appellant/plaintiff in I.A.No.346 of 2003 to set aside the exparte decree in O.S.No.222 of 2000 was also dismissed. Thus, the exparte decree has become final. Further, the plaintiff/appellant has not furnished any documentary evdience before the Revenue Divisional Officer to claim his title in respect of the suit property, before passing Ex.B6 order. Both the courts below had concurrently held that the plaintiff/ appellant is not entitled for the relief as prayed for in the suit. Therefore, there is no error or illegality in the judgment and decree passed by the both Courts.

There is no question of law involved to entertain the Second appeal and accordingly the Second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vaan

To

1 The Subordinate Judge,
Dharmapuri.

2 The District Munsif,
Dharmapuri.

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

+1cc to Mr.C.Prabakaran, Advocate Sr. 57811

S.A.No.518 of 2017

VD(CO)
VR(30/10/2017)