



Reserved on: 30.01.2017

Delivered on: 06.02.2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY**S.A. (MD) No.61 of 2011**

Maruthiah (died)

1.M.Parvathi

2.M.Saravanan

3.M.Malathi

.. Appellants/Appellants

Vs.

Pushpam

.. Respondent/Respondent/2nd Defendant

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Principal Subordinate Court, Tirunelveli in A.S.No.9 of 2008, dated 23.10.2009 confirming the judgment and decree of I Additional District Munsif Court, Tirunelveli in O.S.No.54 of 1992, dated 30.11.2007.

For Appellants

: Mr.V.Kannan

For Respondent

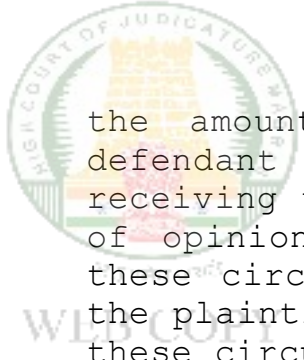
: Mr.H.Arumugam

JUDGMENT

The above Second Appeal arises against the Judgment and Decree passed in A.S.No.9 of 2008, on the file of the Principal Subordinate Court, Tirunelveli, confirming the judgment and decree passed in O.S.No.54 of 1992, on the file of I Additional District Munsif Court, Tirunelveli.

2. The appellants 1 to 3 are the legal representatives of the deceased plaintiff Maruthaiah. The plaintiff filed the suit in O.S.No.54 of 1992 for declaration and permanent injunction. The case of the plaintiff is as follows:

According to the plaintiff, the suit property was allotted to his father by the Harijan Welfare Department and that he was in possession and enjoyment of the same till his death. After his death, the plaintiff is in possession and enjoyment of the same. The patta was also issued in favour of the plaintiff. The first defendant has no manner of right, title or possession over the suit property. The first defendant was conducting a chit and the plaintiff was subscriber to the chit. The plaintiff has paid all



the amount due to the first defendant. However, the first defendant has not returned the document obtained at the time of receiving the price amount. Due to this, there is some difference of opinion between the plaintiff and the first defendant. In these circumstances, the first defendant tried to interfere with the plaintiff's possession and enjoyment of the suit property. In these circumstances, the plaintiff filed the suit.

3. The brief case of the first defendant is as follows:

According to the first defendant, the plaintiff has no right, interest or possession over the suit property. On 20.01.1985, the plaintiff executed a sale deed in his favour for a valuable consideration and he had also given physical and actual possession of the suit property. Since the date of purchase, the first defendant is in possession and enjoyment of the suit property as the absolute owner. The sale deed was executed in the presence of the attestors. The documents produced by the plaintiff are fabricated documents. Since the first defendant is in possession and enjoyment of the suit property, there is no question to interfere with the plaintiff's possession and enjoyment of the same. The plaintiff is not in possession of the suit property. In these circumstances, the first defendant prayed for dismissal of the suit.

4. The brief case of the second defendant is as follows:

In the written statement, the second defendant had reiterated the averments stated in the written statement filed by the first defendant. Further she has stated that since the first defendant is in possession and enjoyment of the suit property, the plaintiff should have asked for recovery of possession. In these circumstances, the second defendant also prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, two witnesses were examined and one document viz., Ex.A.1 was marked and on the side of the defendants, three witnesses were examined and two documents viz., Exs.B.1 and B.2 were marked. The trial Court, after taking into consideration the case of both sides dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal in A.S.No.9 of 2008 and the lower Appellate Court also confirmed the judgment and decree of the trial Court and dismissed the appeal. Aggrieved over the concurrent findings of the Courts below, the legal representatives of the deceased plaintiff have filed the above Second Appeal.

6. Heard Mr.V.Kannan, learned Counsel appearing for the appellants and Mr.H.Arumugam, learned Counsel appearing for the respondent.

<https://hcservices.ecourts.gov.in/hcservices> At the time of admission of the above Second Appeal, the following Substantial Questions of Law arose for consideration:



"1. Whether the Courts below have committed an error in relying on an unregistered sale deed marked as Ex.B.1 to negative the plea for declaration of title made by the original plaintiff, when the prior title of the original plaintiff is not disputed?

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2. Whether the findings of the Courts below that the suit property was not proved to be in the possession of the original plaintiff and on the other hand it was proved to be in the hands of the original defendant on the date of suit is perverse?"

8. In the case on hand, admittedly the sale deed which was marked as Ex.B.2, dated 20.01.1985 is an unregistered document. The said document was executed by the plaintiff in favour of the first defendant, however it remained unregistered. So far as the execution of Ex.B.2 - sale deed is concerned, the plaintiff admitted the execution of the same. Since the document remained unregistered, no title will pass on under the said document. On the side of the plaintiff, he has marked Ex.A.1 - patta. It is settled position that a patta is not a document of title. Except marking the patta, the plaintiff has not established his title over the suit property. Since the plaintiff has filed the suit for declaration and permanent injunction, the plaintiff should have established his title by documentary evidence. By producing the patta, no declaration can be granted in favour of the plaintiff. Since the burden of proof lies on the plaintiff, he should have established his case by adducing proper evidence. In the case on hand, the plaintiff had miserably failed to prove his case by oral and documentary evidences. Since the plaintiff has not proved his case by oral and documentary evidences, the Courts below have rightly dismissed the suit.

9. In these circumstances, I do not find any ground, much less any substantial question of law, to interfere with the concurrent findings of the Courts below. The Second Appeal is liable to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Tirunelveli
2. The I Additional District Munsif, Tirunelveli.
- +1 CC to M/s.H.ARUMUGAM, Advocate, SR No.6744
- +1 CC to M/s.V.KANNAN , Advocate, SR No. 6228

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