

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.Nos.608 of 2008

and

M.P.No.1 of 2008

1.Umadevi

2.Vijayarani

3.Minor Usha Rani

4.Minor Kokila

[Minors 3 and 4th rep. by mother and guardian Mageswari]

..Appellants/Plaintiffs

Vs.

Sambandam

..Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of Principal sub court, Mayiladuthurai, dated 05.02.2008 made in A.S.No.63 of 2007 confirming Judgment and decree of Principal District Munsif Court, Mayiladuthurai dated 13.06.2007 made in OS.No.135 of 2006.

For Appellants : Ms.S.Lavanya

For Respondent : Served - No appearance

J U D G M E N T

The plaintiffs in OS.No.135 of 2006 are the appellants. The notice of admission was ordered on 22.04.2008. Though served the respondent has not chosen to enter appearance.

2. I have heard Ms.S.Lavanya, learned counsel appearing for the appellants.

3. The suit in OS.No.135 of 2006 was filed by the plaintiffs seeking a decree for permanent injunction restraining the defendant from interfering with their possession, contending that the suit property was purchased by their mother on 09.03.1992 from one Subburayon for a valuable consideration and she inturn settled the property in favour of the plaintiffs who are her daughters on 06.05.2005. According to the plaintiffs, right from the date of purchase by the mother they have been in continuous possession of the property.

4. The defendant resisted the suit contending that the suit property does not belong to the plaintiffs and also point out that one Boopathy had filed a suit against the plaintiff's father in OS.No.768 of 1992 and the said suit has been decreed granting declaration and injunction in favour of the said Boopathy. During the pendency of the suit an advocate commissioner was appointed who had visited the suit property twice and filed a report which has been marked as Exs.C1 and C2.

5. The plaintiffs despite denial of their title in the written statement have not chosen to seek declaration of their title. The plaintiffs have also not chosen to produce the sale deed dated 09.03.1992 under which it is claimed that the mother of the plaintiff Maheswari had purchased the suit property.

6. The courts below on appreciation of the Commissioner's Report found that the defendant/ respondent herein was also in possession of a portion of the property and the plaintiffs had not identified the property properly. It is also the finding of the court below that the settlement deed dated 06.05.2005 has not been proved in accordance with law. On the aforesaid findings the courts below have dismissed the suit.

7. Though the learned counsel appearing for the appellants would make a valiant attempt to project the question of law in order to enable this Court to entertain the appeal under Section 100 of the Code of Civil Procedure, I do not find any question of law much less a substantial question of law, in order to enable this court to entertain this appeal.

8. The courts below have analyzed the evidence and have come to the conclusion that the plaintiffs should have sought for declaration of title and that the plaintiffs have not established title by producing antecedent title deed prior to 1992 in favour of Subbarayon from whom the plaintiff's mother has purchased the property. The settlement deed dated 06.05.2005 having emanated just prior to the filing of the suit cannot be taken as conclusive evidence of title of the plaintiffs. The courts below also held that the plaintiffs have not established exclusive possession of the suit property, however the commissioner's report shows that the defendants were also in possession of the property. Yet another reason to dismiss the suit is that the plaintiffs have not established the exact area in their possession inasmuch as the settlement deed shows that each one of the plaintiffs are entitled to 3 ½ cents in the entire suit property measuring about 14 cents and property was not demarcated.

9. I do not find any illegality or irregularity in the findings of the court below which could be termed as perverse. The appeal fails and the same is dismissed without being

admitted. However, there will be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sub Judge, Mayiladuthurai.
 2. The Principal District Munsif, Mayiladuthurai.
- +1cc to Mr.S.Sounthar, Advocate sr.no.62262

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nr 22/10/2018



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