

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE Ms.JUSTICE P.T.ASHA

S.A.No.720 of 2018

P.Chinnaraj

.. Appellant / Petitioner

/Vs/

P.Munusamy (died)

1. Alemeluammal
2. Srinivasan
3. Kala

.. Respondents/Defendants

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree passed in A.S.No.33 of 2015 dated 15.03.2018 on the file of the learned Principal Subordinate Judge, Vellore, in confirming the Judgment and Decree passed in O.S.No.548 of 2009 dated 04.03.2015 on the file of the learned Additional District Munsif, Vellore.

For Appellant : Ms.R.T.Sundari

JUDGMENT

This Second Appeal arises against the Decree and Judgment passed by the learned Principal Subordinate Judge, Vellore in A.S.No.33 of 2015 dated 15.03.2018 in and by which the learned Judge has confirmed the Judgment and Decree passed by the learned Additional District Munsif, Vellore in O.S.No.548 of 2009 dated 04.03.2015.

2. The plaintiff is the appellant before this Court. The suit is filed for declaration of title and recovery of possession. It is the case of the plaintiff that the properties belong to the joint family of Pattu Naidu. Pattu Naidu had two sons Chinna Raj (Plaintiff herein) and Munusamy (the deceased sole defendant). The second defendant is the wife of Munusamy and the third and fourth defendants are his children, who had been impleaded as defendants, after his death. On 05.05.1978, there was a partition between the plaintiff, the first defendant and Pattu Naidu in which the property was divided into three

shares. Survey No.33/2 measure an extent of 2.32 cents, after the death of Pattu Naidu and his wife, the plaintiff and the defendant were each entitled to an extent of 16 ½ cents each. The plaintiff was entitled to the Western half and the first defendant was entitled to the Eastern half. From 1987, the plaintiff has been cultivating the half share of the first defendant as the first defendant is permanently residing at Bangalore.

3. In the year 2000, the plaintiff had applied for sub dividing the suit property and the suit schedule was sub-divided as 33/2A on the western side and 33/2C on the Eastern side. However, by mistake in the Revenue Records, 33/2C was allotted to the share of the plaintiff and 33/2A was allotted to the share of the first defendant. It is the case of the plaintiff that necessary rectification was made to the Tashildar to rectify this defects and the same was also rectified. It was the case that the defendant had filed a suit O.S.No.77 of 2006 on the file of the learned Principal District Munsif, Vellore for an injunction contending that he is in possession of Survey No.33/2A. The suit was decreed in his favour. However, no finding was arrived as to ownership in the said suit. Since the dispute has arisen the plaintiff has come forward with the instant suit.

4. The defendants have resisted the above suit by Inter alia contending that S.No.33/2A is the property that has been allotted to them and infact, the plaintiff had filed a suit O.S.No.873 of 2005 for a declaration that he was a cultivating tenant under the first defendant in respect of S.No.33/2A and suppressing all these, the plaintiff have managed to get the change of Revenue Records done without notice to the first respondent and therefore, the order of the Tashildar will not clothe the plaintiff with any right. The defendant therefore sought for a dismissal of the suit.

5. The suit was partly decreed in respect of Item 2 and the counter claim made by the defendants with reference to the Item No.1 was allowed and the plaintiff's claim was negated. Challenging the said Judgment and decree, the plaintiff has filed A.S.No.33/2015 on the file of the Principal Subordinate Judge, Vellore. The learned Subordinate Judge also concurrent with the finding of the trial Court and confirm the Judgment and decree of the trial court, which is the subject matter of challenge in the present appeal.

6. Heard, Ms.R.P.Sundari, learned counsel for the appellant, the main ground of challenge in the second appeal is that under the Partition Deed Ex.A, the plaintiff had been granted the suit property and also Ex.A3 the entry in the pass book (subsequent to the review of the original grant of patta) would also show the title of the plaintiff to the suit property.

7. The learned Subordinate Judge has relied upon the admission of the appellant in his cross examination that he was not in enjoyment of the suit property after the partition and it is only the respondent who was in enjoyment and possession of the same. The learned Subordinate Judge has also held that the appellant had got the change of patta done without giving notice to the defendants and a chance to the defendants to be heard and therefore, the order of the Tashildar is not binding on the defendants and the Court had also held that Ex.A3 is not valid in the eye of law. The learned Judge also took note of the suit OS.No.873.12, wherein the appellant has clearly admitted the title of the defendant to the suit property. In these circumstances, I find no infirmity in the order passed by the Court.

8. In the result, this Second Appeal is dismissed and the decree and Judgment passed by the learned Principal Subordinate Judge, Vellore in A.S.No.33 of 2015 dated 15.03.2018 is confirmed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vkr

To

1.The Principal Subordinate Judge, Vellore.

2.The Additional District Munsif Court, Vellore.

+1 cc to Mr.Kadhiresan, Advocate, S.R.No.83017

S.A.No.720 of 2018

MG(CO)
SSM(11/01/2019)