



S.A.No.1594 of 2003

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2022

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.1594 of 2003

Rasu @ Subburaju ... Appellant/Respondent/Defendant

Vs

Kandiah @ Kandasamy ... Respondent/Appellant/Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 07.02.2003 made in A.S.No.76 of 2001 on the file of the Principal District Court, Pudukottai reversing the judgment and decree dated 30.03.2001 made in O.S.No.502 of 1995 on the file of the Additional District Munsif Court, Pudukottai.

For Appellant : Mr.Srinivasan
for Mr.Madhavan

For Respondent : Mr.I.Vel Pradeep

J U D G M E N T

The defendant in the suit is the appellant in the second appeal. The respondent herein filed a suit for declaration of title, for recovery of



S.A.No.1594 of 2003

possession, for damages and for use and occupation. The suit was dismissed by the trial Court and on appeal filed by the respondent/plaintiff, it was decreed. Aggrieved by the same, the defendant is before this Court.

2. According to the respondent/plaintiff, the suit property was purchased under Ex.A.2-registered sale deed dated 11.06.1979 from one Subbiah. After purchase, the plaintiff put up a house thereon. The appellant herein entered the suit property as a tenant in the year 1990 agreeing to pay a sum of Rs.100/- as monthly rent. It was specifically averred by the respondent/plaintiff that the appellant/defendant had committed default in payment of rent from August, 1992. It was further averred that the building in the suit property is in a dilapidated condition and the respondent required the same for his own use. It was also stated that on 10.08.1995, the respondent/plaintiff issued a lawyer's notice asking the appellant/defendant to surrender possession of the suit property by terminating the tenancy. The appellant came up with a reply denying the tenancy arrangement and hence, the respondent was constrained to file the present suit for the aforesaid reliefs.



S.A.No.1594 of 2003

WEB COPY

3. The appellant herein filed a written statement denying the landlord tenant relationship between the appellant and the respondent. The appellant also denied the title of the respondent specifically. The appellant had set up an independent title in himself. It was alleged by him that he purchased the suit property from a Sri Lankan refugee through an oral sale in the year 1990 and since then he had been in possession and enjoyment of the suit property as an owner. The appellant also filed an additional written statement raising a plea that the plaintiff, who had presented the present suit through his Power Agent, is a fictitious person.

4. On these pleadings, the parties went to the trial and the Power Agent of the plaintiff was examined as P.W.1. The respondent/plaintiff marked 9 documents viz., Ex.A.1 to Ex.A.9. On behalf of the appellant/defendant, the defendant was examined as D.W.1 and one more witness was examined as D.W.2. On behalf of the appellant/defendant, three documents were marked as Ex.B.1 to Ex.B.3.



S.A.No.1594 of 2003

WEB COPY

5. On consideration of the oral and documentary evidence available on record, the trial Court held that though the respondent produced his title document, failed to prove that he enjoyed the property from the date of purchase and it also found that the power deed executed by the plaintiff to enable his agent to present the plaint on his behalf was not proved by examining the principal viz., the plaintiff. On these findings, the trial Court dismissed the suit and aggrieved by the same, the respondent filed an appeal in A.S.No.76 of 2001 on the file of the Principal District Court, Pudukottai. The first appellate Court held that the respondent proved his title over the suit property and the appellant though pleaded independent title in himself, failed to substantiate the same by leading any evidence and consequently, set aside the findings of the trial Court and allowed the appeal. Aggrieved by the same, the appellant/defendant is before this Court.

6. Heard the arguments of the learned counsel for the appellant and the learned counsel for the respondent and perused the records and typed set of papers.



S.A.No.1594 of 2003

WEB COPY

7. The learned counsel for the appellant tried to assail the judgment of the first appellate Court on the ground that the power deed executed by the respondent on behalf of his Power Agent, Parvathy was not at all proved and hence, the first appellate Court ought not to have granted a decree in favour of the respondent. He further submitted that the plaintiff purchased the suit property from a Sri Lankan refugee and as per the scheme of the Government, the properties allotted to Sri Lankan refugee are inalienable and hence, the plaintiff is not entitled to seek declaration of title on the basis of Ex.A.2.

8. The learned counsel for the respondent, on his part, submitted that the respondent/plaintiff proved his title by producing Ex.A.2, a registered sale deed in his favour. On the other hand, the appellant/defendant though claimed title over the suit property under an oral sale, failed to substantiate the same by leading any evidence and consequently, the finding of the appellate Court upholding title of the respondent requires no interference.



S.A.No.1594 of 2003

WEB COPY

9. At the time of admitting the appeal, this Court framed the following substantial questions of law:

- “(i) Whether the Lower Appellate Court was right in decreeing the suit even after finding that one Panneerselvam is the owner of the suit property? and*
- (ii) Whether the lower appellate Court was right in accepting A7 and A8, which are subsequent to the suit?”*

10. The respondent filed a suit for declaration of title and for recovery of possession and profits. It is settled law, in a suit for title, the plaintiff has to win or lose on the basis of his own strength. If the plaintiff succeeds in proving his title, then unless the defendant lead evidence to prove his better title, the plaintiff is entitled to recovery of possession as a necessary consequence of his title. In the present case, the plaintiff proved his title by producing registered sale deed in his favour as Ex.A.2. The appellant has not produced any contra evidence to prove his better title. Though the learned counsel for the appellant submitted that the respondent/plaintiff



S.A.No.1594 of 2003

purchased the suit property from a Sri Lankan refugee, who had no right of alienation, the perusal of Ex.A.2 would suggest that the plaintiff was described as a Sri Lankan refugee and his vendor was not described so. Therefore, the contention made by the learned counsel for the appellant that the plaintiff purchased the property from a Sri Lankan refugee cannot be accepted. Further, there is no material placed before the Court to suggest that Sri Lankan refugees are barred from alienating their properties. Though the appellant tried to set up independent title in himself, he cannot succeed in his attempt on the face of his own pleadings. The appellant/defendant in his written statement claimed that he purchased the suit property orally from one Subbiah. The appellant has not let in any evidence in support of his alleged oral sale. Further, it is settled law, in case of immovable properties there cannot be an oral sale if the value of the property exceeds Rs.100/-. Therefore, in the light of weak pleading and also dearth of evidences on the part of the appellant to prove his better title, the respondent is entitled to succeed in support of his prayer for declaration of title. Once it is held that the respondent/plaintiff is entitled to declaration of title, as a necessary consequence, the respondent is entitled to recover possession from the



S.A.No.1594 of 2003

appellant, unless the appellant pleads and proves his entitlement to retain possession in one capacity or the other.

11. So far as the contention raised by the learned counsel for the appellant that the respondent failed to prove the power deed executed by him in favour of his Power Agent Parvathy to enable her to present the present suit is concerned, the power deed executed by the plaintiff in favour of his Power Agent is marked as Ex.A.1. It is a registered power deed and the same was marked through the Power Agent of the plaintiff viz., Parvathy. Therefore, it has been properly proved to receive it in evidence. Though the appellant/defendant in his additional written statement had pleaded that the principal mentioned in Ex.A.1 power deed viz., the plaintiff herein is a fictitious person created by the said Parvathy for the purpose of the present suit, he has not chosen to lead any evidence regarding the said plea. Neither the appellant as D.W.1, nor the other witness examined by the appellant as D.W.2 had spoken about the said plea of the appellant in his additional written statement. When the respondent's witness viz., the Power Agent Parvathy was examined as P.W.1, a suggestion was put to her as if her



S.A.No.1594 of 2003

principal was no more and the said suggestion was stoutly denied by her. In these circumstances, this Court cannot ignore the registered power deed produced by the respondent in the absence of any evidence on behalf of the appellant to discredit the same.

12. In view of the discussions made earlier, the contentions raised by the learned counsel for the appellant are not acceptable to this Court and the substantial questions of law, framed at the time of admission of this second appeal, are answered against the appellant and consequently, the second appeal is dismissed.

13. In nutshell, (i) the second appeal is dismissed by confirming the judgment and decree dated 07.02.2003 passed in A.S.No.76 of 2001 on the file of the Principal District Court, Pudukottai; and (ii) there is no order as to costs.

14.12.2022

Internet: Yes
Index: Yes/No
abr



WEB COPY



S.A.No.1594 of 2003

S.SOUNTHAR, J.

abr

To

- 1.The Principal District Judge,
Pudukottai.
- 2.The Additional District Munsif,
Pudukottai.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

S.A.No.1594 of 2003

14.12.2022