

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.609 of 2008

Balasubramanian

... Appellant/ Respondents/Defendant

versus

1. Silambarasan

2. Minor.Ashok Kumar

(2nd respondent declared as Major
his Guardian Vijaya discharged from
the Guardianship Vide Order of Court
dated 21.02.2019 made in
C.M.P.No.14909 of 2018 in
S.A.No.609 of 2008 (NSKJ).

.... Respondents/ Appellants/Plaintiff

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 22.01.2008 in A.S.No.61 of 2007 on the file of the Principal Subordinate Court, Salem, reversing the decree and judgment dated 02.01.2007 in O.S.No.573 of 2005, on the file of the Principal District Munsif Court, Salem.

For Appellant : Ms.R.Meenal

For Respondents: Mr.T.Gowthaman

JUDGMENT

The defendant, who tasted the success before the trial Court but experienced a reversal in fortunes before the First Appellate Court in a suit for recovery of possession of the suit property, has come forward with this appeal.

2. The appeal is not yet admitted but has been posted after 13 years to consider its merit for admission.

3.1 The minimum facts that are necessary to dispose of the case are that: The plaintiffs have laid a suit for recovery of a house property measuring about 2,000 Sq.ft., According to the

plaintiffs, it originally belonged to their paternal grand mother Govindammal, and that on 14.12.2004 Vide Ext.A2 she had settled the property in their favour. Govindammal had a brother namely Sarkarai, who she permitted to occupy the house, and on whose demise the defendant, her nephew (son of her another brother Rajaram) came into occupation. As he refused to vacate, the suit was laid.

3.2 Denying Govindammal's title candidly in the written statement, the defendant has pleaded that the suit property originally belonged to his paternal grand father (i.e.,) Govindammal's father Perumal who had obtained the property based on an assignment by the Government, that it was not Govindammal's property, nor had she let Sarkarai to occupy the property, that the defendant himself has been in continuous possession of the property for over 40 years and that the plaintiffs are not entitled to recover the suit property from him.

4.1 The matter went for trial and both sides produced oral and documentary evidence. To prove the case, plaintiffs produced Ext.A2 Settlement Deed in his favour, the plaintiffs have examined its attester PW2. The trial Court held that (a) The plaintiff who claims title to the property based on the assignment by the Government had not produced the same. (b) It was not proved that Govindammal who was alive on the day Ext.A2 settlement deed was executed.

4.2 The plaintiffs challenged this decree in the First Appeal, and the first Appellate Court reversed the decree of the trial Court and decreed the suit. Hence the defendant is now before this Court.

5. The learned counsel for the appellant / defendant made a valiant effort to persuade the Court to hold that there existed substantial question of law available for consideration. He essentially, harped on the line of reasoning which the trial Court has adopted.

6. This Court, however, is not convinced. The oral and documentary evidence on either side which are either the chitta issued to the plaintiffs, or tax receipts produced by the defendant, are all in the name of Govindammal. If rule of preponderance of probability is the thumb rule in deciding civil disputes, then this rule of probability tilt against the present appellant. Necessarily, this Court does uphold that Govindammal is the real owner of the property. So far as the second leg of his argument touching on Ext.A2 is concerned, nowhere in the written statement he has challenged the execution of Ext.A2 per se but on the contrary has only asserted that Govindammal did not have any title to convey under the Settlement Deed.

Therefore, it is too late in the day for him to create a case that he has not even chosen to plea in his written statement.

7. In the result, this Court does not find any merit in this Second Appeal and the same is dismissed and the judgment and decree dated 22.01.2008 in A.S.No.61 of 2007 on the file of the Principal Subordinate Court, Salem, reversing the decree and judgment dated

02.01.2007 in O.S.No.573 of 2005, on the file of the Principal District Munsif Court, Salem is confirmed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssn

To :

1. The Principal Subordinate Court,
Salem.

2. The Principal District Munsif Court,
Salem.

+1cc to Mrs.R.Meenal , Advocate SR.No. 49884

+1cc to Mr.T.Gowthaman , Advocate SR.No. 50730

S.A.No.609 of 2008

A.SK(11/09/2020)

सत्यमेव जयते

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