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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2019

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

S.A. 466 of 2019

S.Srinivasan .. Appellant/Plaintiff in Trial Court

Vs.

1. K. Arumuga Mazhavarayar
2. N.Maruthamuthu
3. N.Vaidyanathasamy

.. Respondents/Defendants 1 to 3 in Trial Court

PRAYER :- This Second Appeal has been filed under Sec.100 of C.P.C. against the Judgement and decree dated 10.04.2001 passed in A.S.No.99 of 2000 on the file of the Principal Subordinate Judge, Mayiladuthurai rejecting the appeal and confirming the Judgement and decree passed in O.S.NO.314 of 1986 dated 25.04.2000 on the file of learned District Munsif Court, Sirkali.

For Appellant : Mr.S.Sadasharam

For Respondents : Mr.S.Sounthar for R3

JUDGMENT

The plaintiff is the appellant herein. He has filed a suit for recovery of possession of the suit schedule property from the defendants. The Trial Court dismissed the suit and the appeal filed by the appellant/plaintiff is also dismissed by the lower appellate court. Now, challenging the concurrent judgement and decree of the courts below, the present Second Appeal has been filed.

2. The case of the plaintiff is that, the suit schedule property is an ancestral property of the plaintiff. Earlier, the plaintiff stood as a surety for one Mr. Subramanian, who has borrowed some amount from one Kakkaya Mazhavarayar, the 1st defendant's father, and he has obtained a decree against the said Subramanian, and the decree amount was also paid in the execution proceedings. The plaintiff has been in possession and enjoyment of the property. In the year 1977, the 1st defendant has illegally trespassed into the suit schedule property and he



is in illegal occupation of the same. In the above circumstances, the present suit has been filed seeking for recovery of possession of the suit schedule property.

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3. The 1st defendant has filed a written statement contending that the plaintiff was never in possession of the suit schedule property and the suit property was sold to the 1st defendant in the execution of the decree in S.C.No.612 of 1955 and from the date of purchase, the 1st defendant was in possession and enjoyment of the suit schedule property. The plaintiff, who has no right or title over the property, and he cannot maintain the suit for recovery of possession.

4. The Trial Court on considering the materials available on record came to a conclusion that the plaintiff claiming title over the property has failed to prove his title over the property, wherein the 1st defendant has established his title by means of sale deed under Ex.B1, and also subsequent patta granted in his favour under Ex.B2, and dismissed the suit. The appeal filed by the plaintiff is also dismissed by the lower appellate court.

5. Against the concurrent judgement and decree, the present Second Appeal has been filed by raising the following substantial question of law :-

- (1) Whether the suit filed by the plaintiff is barred by principles of resjudicata in a case where the earlier suit filed by the plaintiff was not disposed of on merits, but withdrawn with liberty to file a fresh suit?
- (2) When the title of the plaintiff has been admitted by the defendants, whether the plaintiff is bound to establish his title to the suit property?

6. The plaintiff has filed a suit for recovery of possession and the plaintiff is claiming the suit schedule property as an ancestral property and he was in possession and enjoyment of the same. In the year 1977, the 1st defendant has trespassed into the suit property and he is in possession of the suit property illegally. It is the case of the 1st defendant that the suit property has been sold in a court auction in S.C.No.612 of 1955, and in the court auction, the 1st defendant has purchased the property. Thereafter, he has sold the property in favour of defendants 2 and 3. To prove the same, they have filed a sale deed, and also the subsequent patta issued in favour of defendants 2 and 3. With those materials, the defendants 2 and 3 established their title over the suit property, wherein the



plaintiff has miserably failed to prove his title, as absolutely there is no material available on record to establish his title.

7. Both the courts below on considering materials available on record and on fact, have come to a conclusion that the plaintiff has failed to establish his title and dismissed the suit. I have also carefully gone through the materials, I find no infirmity or perversity in the judgement and decree passed by the courts below and no substantial question of law arises for consideration in the present Second Appeal. Accordingly, the present Second Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Mayiladuthurai.

2. The District Munsif, Sirkali

+1cc to Mr.S.Sadasharam, Advocate SR.No.28792

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VG II(CO)
GMY(06/09/2019)