

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	10/12/2019
Delivered on	12/12/2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.777 of 2014 &

M.P.No.1 of 2014 &

C.M.P.No.2149 of 2017

1.Dosinic Sevia (died)

2.Anthony Ammal

3.Pon Basgo

4.Lourumary

5.Shalini

6.Preethi

7.Shiny Lisa

8.Jean Cyril Bert

9.Pavithra

.. Appellants/ Defendants

(Appellants 4 to 9 brought on record
as LRs of the deceased 1st appellant
viz., Domnic Xavier vide order of
Court dated 03.12.2019
made in C.M.P.No.12017 of 2017 in
S.A.No.777 of 2014)

Versus

Magimai Elavarasan

.. Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S.No.114 of 2005, on the file of Principal Subordinate Court, Villupuram, dated 11.04.2014, in confirming the judgment and decree in O.S.No.125 of 2004, on the file of II Additional District Munsif Court, Tirukoilur, dated 04.02.2005.

For Appellants : Mr.V.Raghavachari

For Respondent : Mr.S.Ambigapathi

JUDGMENT

This Second Appeal arises out of the judgment and decree of Principal Sub Court, Villupuram passed in A.S.No.114 of 2005, confirming the judgment decree of the II Additional District Munsif Court, Tirukoilur, made in O.S.No.125 of 2004.

2. The defendants in O.S.No.125 of 2004 are the appellants herein. The respondent, as plaintiff, filed the suit for declaration of title and for recovery of possession. It is the case of the plaintiff that the suit property was assigned in favour of his father under Ex.A1 on 30.12.1985. Thereupon, he put up construction and he was also paying property tax. While so, under Ex.A6, dated 26.08.1991, he settled the property in favour of the plaintiff. The defendants without having any right over the property, attempted to trespass into the suit property on 10.02.1994. Hence, a suit in O.S.No.93 of 1994 was filed against the defendants for permanent injunction and also interim injunction was granted. However, the suit was dismissed for non-prosecution and thereafter, the defendants encroached upon the suit property and hence, the suit.

3. The suit was contested by the defendants on the basis that the plaintiff's father sold the property to the second defendant on 11.06.1991 for valid consideration of Rs.3,000/- under Ex.B29. Since then, the defendants are in possession and enjoyment of the same. It is further stated that the electricity service connection was given in favour of the second defendant. After selling the property to the second defendant on 11.06.1991, the plaintiff's father had no right to execute the settlement deed, dated 26.08.1991.

4. Before the trial Court, in order to prove the case of the plaintiff, P.Ws' 1 and 2 were examined and Exs.A1 to A9 were marked. On the side of the defendants, D.Ws' 1 to 4 gave evidence and Exs.B1 to B29 were produced.

5. The trial Court and appellate Court, on independent appreciation of evidence produced by the parties, came to the conclusion that the plaintiff has proved his title and rejected the case of the appellants / defendants. Hence, this appeal.

6. Mr.V.Raghavachari, learned counsel for the appellants would argue that the plaintiff's father has no authority to deal with the property post the sale on 11.06.1991, and under Ex.B29, the father of the plaintiff divested his right over the property and hence, the suit for declaration is not maintainable. It is further contended that Exs.B1 and B2-family cards and Ex.B3 voters list were not considered by the Courts below.

7. Per contra Mr.S.Ambigapathi, learned counsel for the respondent would submit that admittedly the defendants claim their right under Ex.B29, which is unregistered document and further the defendants have not adduced any evidence to establish their case and hence, the appeal is to be dismissed.

8. Heard the learned counsels on either side and perused the materials available on record.

9. In the matter on hand, it is not disputed that the plaintiff's father got the suit property by way of assignment under Ex.A1. Under Ex.A6, he settled the property in favour of the plaintiff. Ex.A2-electricity card, Ex.A3-electricity bill, Ex.A4-water tax receipt, Ex.A5-house tax receipt in the name of the plaintiff's father (11 series), Ex.A8-patta and Ex.A9-house tax receipt in the name of the plaintiff's father (2 series) were produced to establish possession and enjoyment of the plaintiff. The appellants herein / defendants sought to establish their right through Ex.B29, sale receipt. Both the Courts rejected Ex.B29 as it is an unregistered document, under which the suit property is said to have been conveyed for a sum of Rs.3,000/-. It is further observed that no document was produced by the defendants to prove their possession for the period from 1991 to 2000. Exs.B12 to B26 are subsequent to the suit. It is appropriate to mention that Exs.B1 and B2 were disbelieved by the appellate Court, since address is not tallying. The Courts below, after analyzing the evidence produced by the appellants, rightly rejected their case and decreed the suit in favour of the plaintiff. This Court does not find any illegality or irregularity or perversity in the finding of the Courts below.

10. In that view, the Second Appeal is dismissed as devoid of merits. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

r n s
To

WEB COPY

1. The Principal Subordinate Court,Villupuram.

2.The II Additional District Munsif Court, Tirukoilur.

Copy to:

The Section Officer, VR Section, High Court,Madras.
+lcc to Mr.V.Raghavachari , Advocate SR.No. 103444
+lcc to Mr.S.Ambigapathi , Advocate SR.No. 103939

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