

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2019

PRONOUNCED ON : 31.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.779 of 2019

K.Jayaraman

...Appellant

Vs.

1. M.S.Zeenath
2. M.A.Waheb
3. Md.N.Rasheed
4. Md.N.Nabi

...Respondents

Prayer: Second Appeal filed under order XLII Rule 1 and Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 31.01.2019 passed in A.S.No.44 of 2014 on the file of the I Additional District Judge, Tiruvallur, reversing the judgment and decree dated 09.04.2014 passed in O.S.No.1 of 2011 by the subordinate judge, Tiruttani.

For Appellant : Mr.K.Govindan

JUDGMENT

In this Second Appeal, challenge is made to the judgment and decree dated 31.01.2019 passed in A.S.No.44 of 2014 on the file of the I Additional District Court, Tiruvallur, reversing the judgment and decree dated 09.04.2014 passed in O.S.No.1 of 2011 on the file of the subordinate Court, Tiruttani.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for declaration and permanent injunction.

4. As could be seen from the materials available on record, it is seen that the plaintiff claims title to the suit property based on the sale deed marked as Ex.A1 and his vendor is found to have purchased the suit property from one R. Devi through her power agent by way of the sale deed marked as Ex.A4 and the power of attorney deed executed by R.Devi in favour of her power agent V.Jacob is marked as Ex.A3 and furthermore, when it is

seen that R.Devi had acquired the suit property by way of Ex.A2 sale deed from M/s. Susan Projects Private Limited and when the recitals in Ex.A2 sale deed go to disclose that M/s. Susan Projects Private Limited had acquired the suit property by way of the registered sale deed dated 25.02.2005 executed by the legal heirs of one Mohammed N. Hameed and when the contesting defendants had challenged the entitlement of Mohammed N. Hameed in respect of the suit property, as rightly found by the first appellate court, it is for the plaintiff to establish that his predecessor in title namely Mohammed N. Hameed had a valid title to the suit property and that his legal heirs had the entitlement to convey the same to M/s.Susan Projects Private Limited and thereby the plaintiff had derived the title to the suit property as above pointed out by way of Ex.A1 sale deed.

5. The materials available on record go to disclose that the property comprised in survey No. 4 of an extent of 28 acres of land belonged to the deceased Khader Bi and the same has not been controverted by the plaintiff. It is further seen that there has been a rival claim of title between the deceased Khader Bi and the deceased Mohammed Hameed by way of the civil action and it is seen that the same went up to the High Court and the High Court had confirmed the title of the deceased Khader Bi in respect of the abovesaid 28 acres of land in survey No.4 in the suit village. In such view of the matter, when the High Court has confirmed that only Khader Bi has title to the extent of 28 acres of land in the suit survey number and declined the claim of title to the same by the deceased Mohammed Hameed, it does not stand to reason as to how the legal heirs of Mohammed Hameed would be entitled to convey the property comprised in survey No.4 to the others. In this connection, the only reliance placed upon by the plaintiff is that Khader Bi had cancelled the settlement deeds effected in favour of the defendants 3 and 4. By way of the said plea, it is found that Khader Bi had already settled certain suit properties in survey No.4 in favour of the defendants 3 and 4, her sons. It does not stand to reason as to how after the execution of the settlement deeds in favour of the defendants 3 and 4, Khader Bi would be entitled to cancel the same and even assuming for the sake of arguments that Khader Bi had cancelled the settlement deeds executed in favour of the defendants 3 and 4, by way of the same, it cannot be inferred or held that the deceased Mohammed N.Hameed had acquired a valid claim of title to the suit property as sought to be made out by the plaintiff. Therefore, the projection of the cancellation deeds by the plaintiff marked as Exs.A5 to A9 would not, in any manner, be useful to hold that the deceased Mohammed N. Hameed had acquired a valid title to the suit property when it is found that Khader Bi had left behind 4 sons including Mohammed N. Hameed. In such view of the matter, the deceased Mohammed Hameed cannot claim any exclusive

title to the suit property comprised in survey No. 4 belonging to the deceased Khader Bi and in such view of the matter, the legal heirs of the deceased Mohammed N. Hameed would not be competent to convey the property to the others as put forth by the plaintiff.

6. As abovenoted, the cancellation deeds projected by the plaintiff would only go to show that the property would revert back to the deceased Khader Bi and after her demise, the same would devolve upon the legal heirs as per law. Furthermore, when the plaintiff is found to be not competent to speak about the cancellation deeds projected in the matter as abovenoted, when the plaintiff had failed to establish the title of the deceased Mohammed N.Hameed to the suit property, in such view of the matter, the case projected by the plaintiff that he has acquired a valid title to the suit property and that the defendants are strangers to the suit property and not entitled to enjoy the suit property, cannot at all be countenanced in any manner and as rightly determined and found by the first appellate court, when the suit has come to be laid by the plaintiff based on the title and consequent possession, when the plaintiff has miserably failed to establish the title of his predecessor in interest i.e., the deceased Mohammed N. Hameed as above pointed out, the first appellate court has rightly held that the plaintiff is not entitled to seek and obtain the reliefs as prayed for and resultantly, dismissed the plaintiff's suit by setting aside the judgment and decree of the trial court.

7. The reasonings and conclusions of the first appellate court for non suiting the plaintiff being founded on proper appreciation of the materials available on record, both oral and documentary and the same not suffering from any perversity or irrationality in any manner, in such view of the matter, there is no reason to interfere with the same and accordingly, the second appeal is found to be devoid of merits.

8. For the reasons aforesaid, no substantial question of law is involved in the second appeal and resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Ist Additional District Judge,
Thiruvallur.
2. The Subordinate Judge,
Tiruttani.
3. The Section Officer,
VR Section, Madras High Court,
Madras-104.

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