

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 955 of 2019
and
C.M.P.No. 20345 of 2019

Muruganantham ..Appellant/Plaintiff

Vs.

Kasinathan ..Respondent/Defendant

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the decree and judgment passed in A.S.No. 29 of 2019 dated 10.04.2019 on the file of Sub-Ordinate Judge, Chidambaram, confirming the judgment and decree of the learned District Munsif cum Judicial Magistrate, Kattumannarkoil made in O.S.No.159 of 2010 dated 07.04.2018.

For Appellant : Mr. M.Muthappan

J U D G M E N T

The plaintiff in O.S.No. 159 of 2010 having partially succeeded in the suit for injunction filed by him on the confirmation of the judgment in A.S.No. 29 of 2018 has come forward with this second appeal.

2. According to the plaintiff, his grandmother Annakili Ammal executed a registered settlement deed in respect of the suit property measuring about Ac.1.47 cents in Survey No.120/1B of Srimushnam Village in favour of his mother Nagammal on 04.05.1987. The said Nagammal /mother of the plaintiff executed a registered settlement deed on 27.01.2006 settling the said extent of Ac.1.47 cents in favour of the plaintiff. The revenue records were also mutated in the name of the plaintiff. Since the defendant, who is the adjacent owner attempted to interfere with his possession, the plaintiff had come forward with the above suit seeking permanent injunction.

3. The suit was resisted by the defendant contending that the settlor in the settlement deed dated 04.05.1987 did not have absolute right over the property therefore, the settlement deed executed by Annakili Ammal is not valid. Consequently, it was contended that the settlement deed dated 27.01.2006 is not valid. The defendant also took a plea claiming that Krishnasamy Padayatchi, husband of Annakili Ammal was entitled to only Ac.1.34 cents in Survey No.120/1 and not Ac.1.47 cents as claimed by the plaintiff. The defendant also traced the title and pointed out that under Ex.B3(Sale deed) dated 02.05.1953 Gnanambal sold an extent of Ac.1.34 cents out of Ac.4.33 cents in Survey No.120/1 on the Western side to Krishnasamy Padayachi, grandfather of the plaintiff. The said Gnanambal on 28.04.1954 under Ex.B4 had sold the remaining extent of Ac.2.99 cents on the Eastern side to one Krishnasamy Chettiar. On 09.08.1961, there was exchange by the execution of two sale deeds. Under Ex.B2, Krishnasamy Padayachi had sold the Western end of Ac.1.34 cents purchased by him under Ex.B3 to Krishnasamy Cheattiar. Krishnasamy Chettiar, in turn sold Eastern Ac.1.34 cents to Krishnasamy Padayachi under Ex.B1. Thus, Krishnasamy Padayachi, the predecessor in interest of the plaintiff became the owner of Ac.1.34 cents on the Eastern side. On 10.12.1979, the defendant had purchased Ac.2.99 cents on the Western side from Krishnasamy Chettiar.

4. The Courts below, upon consideration of the evidence on record concluded that the plaintiff's predecessor in interest namely, Krishnasamy Padayachi was entitled to only Ac.1.34 cents and nothing more. Therefore, Annakili Ammal, wife of Krishnasamy Padayachi had no power to settle an extent of Ac.1.47 cents and the revenue records issued on the basis of the said settlement cannot be taken as evidence of possession.

5. On the said findings, the Courts below decreed the suit in respect of the Eastern Ac.1.34 cents in Survey No.120/1B alone while dismissing it in respect of the excess extent namely, 13 cents. The Courts below also pointed out that when an issue regarding title has been raised for the suit for permanent injunction, the plaintiff should have amended the plaint seeking declaration of title on certain extent claimed by him. A perusal of the evidence on record and the judgments of the Courts below including the sale deeds marked as Exs.B1 to B4, makes it clear that the plaintiff's predecessor in interest namely, Annakili Ammal was entitled only to Ac.1.34 cents and nothing more. Both the Courts below confirmed the possession of the plaintiff in respect of the Ac.1.34 cents.

6. Mr.M.Muthappan, learned counsel appearing for the appellant would vehemently contend that this being a suit for injunction, the Courts below must have gone only by the possession and not by title. Since the revenue records namely, the Patta (Ex.A5) and the Village "A" Register extract (Exs.A3 & A4) demonstrate that the plaintiff is in possession of the Ac.1.47 cents, the Courts below were not right in dismissing the suit in respect of the excess extent measuring 13 cents. I am unable to agree with the said contention of the learned counsel appearing for the appellant. No doubt, the said contention appears very attractive but the entire evidence on record demonstrates that the plaintiff's predecessor was only entitled to Ac.1.34 cents. Once the defendant had filed a detailed written statement setting up title in himself in respect of Ac.2.99 cents, denying the claim of Ac.1.47 cents of the plaintiff, as rightly pointed out by the Courts below, the plaintiff should have sought for declaration of his title. In the absence of such prayer, a bare suit for injunction cannot be decreed only on the basis of the revenue records more so, when the title deeds are contrary to the revenue records. I do not find any question of law much less a substantial question of law in order to enable this Court to entertain this appeal. This appeal fails and accordingly dismissed without being admitted. Consequently, connected Civil Miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kkn

To

- 1.The Subordinate Judge,
Chidambaram.
- 2.The District Munsif Cum
Judicial Magistrate,
Kattumannarkoil.
- 3.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M.Muthappan, Advocate SR.80430

S.A.No. 955 of 2019
and
C.M.P.No. 20345 of 2019

SR(CO)
CB(27/02/2020)



WEB COPY