

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.11.2019
CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1085 of 2019
and
C.M.P.No.23660 of 2019

1.N.Selvavinayagam
2.N.Panneerselvam

..Appellants/2nd 4th Defendants

Vs.

1.R.Santhanam
2.N.Kaliyaperumal
3.N.Muthulingam

..1st Respondent/Plaintiff

..2nd & 3rd Respondent/1st & 3rd Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree made in A.S.No.15 of 2013 on the file of the I Additional Subordinate Judge, Cuddalore, dated 29.03.2019 modifying the judgment and decree made in O.S.No.425 of 2009 on the file of the Principal District Munsif, Cuddalore, dated 05.01.2013.

For Appellants : Mr.K.A.Ravindran

J U D G M E N T

The 2nd and 4th defendants in O.S.No.425 of 2009 have come up with this Appeal challenging the judgment and decree of the first appellate court, in and by which, the suit filed by the plaintiff was decreed granting the reliefs of declaration of title and permanent injunction.

2. The suit was filed by the plaintiff claiming that he had purchased the suit property from one Anbazhagan under the sale deed dated 05.03.1988. According to the plaintiff, right from the date of his purchase, he has been in possession and the revenue records have also been mutated in his name. Contending that the defendants attempted to interfere with his possession on 24.09.2009 the plaintiff had come forward with the suit.

3. The suit was resisted by the defendants 2 and 4 while the defendants 1 and 3 remained exparte. The defendants 2 and 4 would contend that they are entitled to an extent of 70 cents in S.No.751/2 and the vendor of the plaintiff did not have title to convey 60 cents of property in the said Survey number. However,

the title of the plaintiff or his vendor with reference to an extent of 67 cents in S.No.751/1 was not denied by the defendants.

4. The trial court on an appreciation of evidence on record concluded that the plaintiff has proved his title in respect of 60 cents of land in S.No.751/2. As regards the land in S.No.751/1, measuring about 67 cents, the trial court took note of the fact that the defendants have admitted the title of the plaintiff as well as his possession. On the above findings, the trial court observed in the judgment that the plaintiff is the absolute owner of the property and he is in possession and enjoyment of the property. The trial court concluded that the plaintiff is entitled to a decree as prayed for.

5. However while drafting the decree, the relief of declaration was omitted and the decree of the trial court read as if the relief of permanent injunction alone has been granted. Aggrieved by the decree granting injunction, the defendants 2 and 4 preferred an appeal in A.S.No15 of 2013. The lower appellate court concurred with the findings of the trial court and dismissed the appeal. The lower appellate court also found that the trial court has decreed the suit in full as prayed for. Aggrieved the defendants 2 and 4 are on appeal.

6. I have heard Mr.K.A.Ravindran, learned counsel appearing for the appellants.

7. Mr.K.A.Ravindran would vehemently contend that in the absence of proof of title of the plaintiff's vendor with reference to 67 cents of land in S.No.751/1, the courts below were not right in granting a decree for declaration in respect of the said property. As regards the admission of title relied upon by the courts below, Mr.K.A.Ravindran, would contend that the admission made in cross examination cannot feed title on the plaintiff.

8. No doubt, the plaintiff has not produced any antecedent title deeds to prove title of his vendor to an extent of 67 cents of land in S.No.751/1. But, the vendor of the plaintiff has been examined as PW2 and he had stated that he has purchased 60 cents in S.No.751/2 from one Jayarama Reddaiar and 67 cents in S.No.751/1 was the property inherited by him from his ancestors.

9. The lower appellate court has also found that there was no specific denial of the title of the plaintiff or his vendor in respect of 67 cents of land in S.No.751/1 in the written statement. Upon purchase by the plaintiff in the year 1988, the

revenue records have also been mutated in his name and patta has been issued to him in respect of the entire extent of 1 acre 27 cents in S.No.751/1 and S.No.751/2. The courts below have considered the entire evidence on record and have come to the conclusion that the plaintiff has established title and possession of the entire extent of 1 acre 27 cents.

10. Mr.K.A.Ravindran, learned counsel would further contend that the lower appellate court was not right in decreeing the suit in full while the trial court decreed the suit only for permanent injunction.

11. I am unable to agree with the said contention, as the trial court has found that the plaintiff is entitled to declaration also. In fact the judgment of the trial court shows that the trial court has gone into the title of the plaintiff in respect of entire extent of 1 acre 27 cents and concluded that the plaintiff has proved his title. A wrong drafting of decree alone cannot be a ground to conclude that the trial court has rejected the relief of declaration. I therefore do not find any question of law much less a substantial question of law in order to enable me to entertain the Second Appeal.

12. Hence, this Second Appeal is dismissed without being admitted. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dsa
To

1. The I Additional Subordinate Judge,
Cuddalore.
2. The Principal District Muinsif,
Cuddalore.

+1cc to Mr.K.A.Ravindran , Advocate SR.No. 92660
+1cc to Mr.R.Muralidharan , Advocate SR.No. 92619

S.A.No.1085 of 2019

A.SK(07/09/2020)