



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A. (MD) No.380 of 2019

and

CMP(MD) No.7379 of 2019

WEB COPY

S.M.Dhakir

... Appellant/Appellant/Plaintiff

Vs.

1.Kamaal
2.Esmathkan
3.Samsudeen
4.Kul Mohamed
5.Paritha
6.Mydeen Pitchai
7.Ragumath
8.Seethrunisha
9.Abdul Khadar
10.Asan Pathima
11.Jannath
12.Abdul Kaseem
13.Paseera
14.Samsudaseen
15.Saburith Beevi

... Respondents/Respondents/
Defendants

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 26.03.2019 passed in A.S.No.53 of 2013 on the file of Principal Sub Judge, Tirunelveli confirming the judgment and decree dated 05.02.2013 passed in O.S.No.27 of 2005 on the file of the Second Additional District Munsif, Tirunelveli.

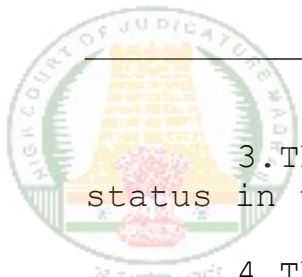
For Appellant

: Mr.T.Selvan

JUDGMENT

The unsuccessful plaintiff before the Courts below, is the appellant in the second appeal. The second appeal has been filed challenging the judgment and decree dated 26.03.2019 passed in A.S.No.53 of 2013 on the file of the learned Principal Subordinate Judge, Tirunelveli.

2.The suit has been filed for the reliefs of declaration and injunction restraining the defendants from interfering with the plaintiff's lawful possession and enjoyment of the suit

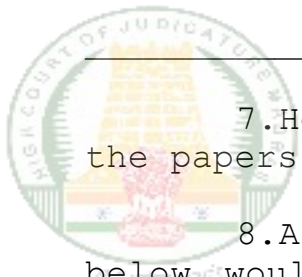


3.The parties are referred to as per their litigating status in the trial Court.

4.The case of the plaintiff is that he had purchased the suit schedule property from one Ameer Sulthan vide sale deed dated 11.11.1996, who in turn, purchased the property from one Shiek Mansoor under the sale deed, dated 19.03.1994. The suit schedule property is a vacant site and after purchase, the plaintiff had put up the wall on the three sides of the property. It is the case of the plaintiff that the defendants are strangers to the suit schedule property and they demolished the said wall on 03.01.2005 and started claiming title to the suit property. The further case of the plaintiff is that an extent of 2 acre 22 cents in the western side of survey No.63/1 had been sold under the auction through REP.No.120/06. The entirety of this extent has been sold. Therefore the defendants 9 to 15 have no right to this extent. Hence, the suit.

5.The defence taken in the above suit by the defendants 9 to 10 is that the total extent in Survey No.63/1 is an extent of 4 acres 44 cents and it was jointly owned by Sahul Hameed and one Abdul Kadar. By a registered partition deed dated 16.08.1919, the two of them partitioned the property and an extent of 2 acre 22 cents in the western side has been allotted to the share of the Abdul Kadar and eastern 2 acre 22 cents has been allotted to the share of the Sahul Hameed. Therefore, neither the Sahul Hameed nor his legal heirs had any right in the western portion. It is also the case of the defendants that the entire extent of 2 acre 22 cents on the eastern side which allotted the share of the Sahul Hameed, had been sold by his legal heirs and they had no longer any interest in the said survey number. The suit property is the western portion which has been allotted to the share of the Abdul Kadar. The plaintiff had purchased the property from the legal heirs of the Sahul Hameed, who had no right or title on the western side. The defendants would also plead that the sale deed executed in favour of the plaintiff is a fraudulent one.

6.The Second Additional District Munsif, Tirunelveli, by her judgment and decree dated 05.02.2013 was pleased to dismiss the said suit by stating that neither the plaintiff nor the predecessor-in-title, has any right or title to the suit property. The said judgment was taken up on appeal before the learned Principal Subordinate Judge, Tirunelveli in A.S.No.53 of 2013 and the learned Principal Subordinate Judge, Tirunelveli has also confirmed the judgment and decree of the learned Second Additional District Munsif, Tirunelveli. Challenging the said judgment and decree, the plaintiff is before this Court.



7. Heard the learned counsel for the appellant and perused the papers.

8. A perusal of the judgments and decrees of the Courts below would indicate that the Courts below have non-suited the appellant/plaintiff on two grounds. One of the grounds is that the document under which the plaintiff claims the right and title, is a document, which has been fraudulently created, in as much as the deed has been registered in Kerala despite the fact that the property is situated at Palayamkottai, Tirunelveli District. The extent of property that is sold in Kerala, is mere extent of half cent. Therefore, both the Courts below have clearly held that the document has been deliberately registered at Kerala, so as to create a non-existent right on the plaintiff.

9. The second ground on which the Courts below non-suited the plaintiff is that the predecessor-in-title of the plaintiff did not have any right to the property, since the property which is sought to be sold was the extent, which has been allotted to the Abdul Kadar and it is situated on the western side. The legal heirs of the Sahul Hameed, the predecessor-in-title of the plaintiff, had sold out the entire extent allotted to Sahul Hameed in the said survey number i.e., S.No.63/1 and they had no mere interest in the said survey number. Therefore, they conveyed the property to which they had no right. The Courts below have looked into Ex.A.2, Ex.B.2, Ex.B.12 as well as Ex.B.5 to come to the above conclusion. Hence, I do not find any infirmity to interfere with the concurrent Judgments and decrees of the Courts below.

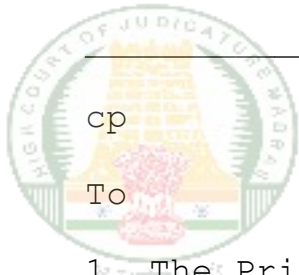
10. I do not find the question of law much less the substantial question of law that arises for consideration in the second appeal. This Second Appeal stands dismissed by confirming the Judgment and Decree dated 26.03.2019 passed in A.S.Nos.53 of 2013 by the learned Principal Subordinate Judge, Tirunelveli and the Judgment and Decree dated 05.02.2013 passed in O.S.No.27 of 2005 on the file of the Second Additional District Munsif, Tirunelveli. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)



1. The Principal Subordinate Judge, Tirunelveli.

2. The Second Additional District Munsif, Tirunelveli.

3. The Section Officer, -2 copies
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.SELVAN, Advocate (SR-85637[F] dated 06/09/2019)

Judgment Made in
S.A. (MD) No.380 of 2019
and
CMP (MD) No.7379 of 2019
06.09.2019

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