



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2019

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A. (MD)No.344 of 2019

Ramu

... Appellant/Appellant/
Plaintiff

Vs.

1.Revathi
2.Saroja

... Respondents/Respondents/
Defendants

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, to set aside the judgment and decree passed by the learned Principal Subordinate Judge, Trichy in A.S.No.4 of 2017, dated 30.01.2019 confirming the judgment and decree passed by the learned II Additional District Munsif, Trichy in O.S.No.1248 of 2000 on 24.11.2016.

For Appellant

:Mr.T.S.R.Venkataramana

JUDGMENT

The plaintiff in the suit in O.S.No.1248 of 2000 on the file of the II Additional District Munsif Court, Trichy, is the appellant in the above second appeal.

2.The appellant herein, as plaintiff, filed the suit in O.S.No.1248 of 2000 for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff. The suit property is described as a property, measuring an extent of 3 cents of vacant site in S.F.No.260/5 in Erangudi Village, Hamlet of Sathurapatti, K.Sathanur, Sri Rengam Taluk, Trichy District.

3.It is the case of the plaintiff that the plaintiff is in possession and enjoyment of the suit property and that no person has got any title or interest over the same. It is the further case of the plaintiff that the suit property originally stood in the name of his father and that the plaintiff is in possession, after the death of his father in the year 1998. Except stating that the plaintiff is in possession of the property and that patta for the property stands in the name of plaintiff's father, the plaintiff has not even pleaded, as to how his father or himself got title to the suit



property. Hence, the plea in the plaint is based on possessory title.

4.The suit was contested by the first defendant by filing a detailed written statement. Though the first defendant admitted the plaintiff's title in respect of 0.00.81 Ares, it is contended by the respondents that the plaintiff's father, who sold an extent of 1 cents by a sale deed, dated 04.10.2000, in favour of one Karuppana Chettiar, is not entitled to the suit property. It is the case of the first defendant that the plaintiff has given boundary description for a property, which is lying in S.No.260/12 and that the suit is, therefore, liable to be dismissed. Though the first defendant has no claim in respect of S.No.260/5, it is pleaded by the first defendant that the suit itself is to grab the property of first defendant. It is also stated by the first defendant that she is in possession and enjoyment of the property, as per patta that was granted to her by putting up a house therein.

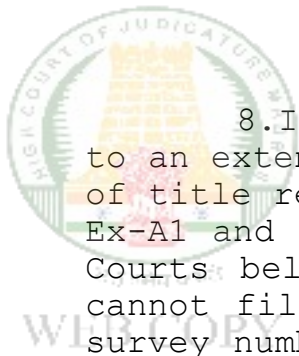
5.The trial Court, after framing necessary issues, dismissed the suit, by holding that the appellant has not established his title nor possession in respect of suit property. The case pleaded by the plaintiff was also pointed by the trial Court and the suit came to be dismissed with a specific finding that the plaintiff has miserably failed to prove his case, as pleaded in the plaint. Aggrieved by the same, the appellant preferred an appeal in A.S.No.4 of 2017 before the Principal Subordinate Court, Trichy. The lower appellate Court also concurred with findings of the trial Court and holding that the plaintiff is not entitled to any relief and dismissed the appeal. Aggrieved by the concurrent findings of Courts below, the above appeal is filed.

6.In the memorandum of appeal, the appellant has framed the following substantial questions of law:

"a)Whether the judgment of the Courts below are perverse in dismissing the suit, even after Ex-A1 and admission of the defendants in the written statement that S.No.260/5 belongs to plaintiff?

b)Can a suit be dismissed based on alleged mistakes in oral evidence by a poor litigant assisted by Legal Aid on the basis of alleged non-existing contradictions in oral evidence?"

7.Going by the findings of the Courts below, the plaintiff's case that he is entitled to 5 cents or 3 cents is not supported by any evidence. Though it is admitted that the plaintiff himself has executed a sale deed in respect of a property in S.No.260/5, measuring an extent of 1 cents, the description of the property in the said document would further clarify the position that the plaintiff had already sold a portion of the property, which is adjacent to the property dealt with in Ex-B7.



8.It is not in dispute that the plaintiff was entitled only to an extent of 2 cents as per Ex-A1, dated 25.08.2000, the document of title relied upon by the plaintiff. The document, Ex-B7 is after Ex-A1 and that the suit came to be filed on 12.10.2000. Hence, the Courts below has specifically given a finding that the plaintiff cannot file a suit in respect of an extent of 3 cents in the suit survey number. The lower Court after considering the pleadings and evidence, given a specific finding that the plaintiff has not produced any document to prove his case and that he is not entitled to claim title for the property, for which the suit came to be filed. It is also found that the plaintiff has miserably failed to prove his possession in respect of the suit property.

9.The appellate after recorded a finding that there is no cause of action for the plaintiff to file a suit against the defendants, as the defendants have not made any claim over any property in respect of suit survey number. The Courts below have considered the document, Ex-A1 and found that the plaintiff had not established the fact that he had executed the sale deed under Ex-B7, after retaining any portion of the suit property. It is true that the defendants have admitted the plaintiff's title in respect of S.No.260/5, on the basis of Ex-A1. That cannot be taken that the defendants have also admitted the title of plaintiff in respect of the property in S.No.260/5 at the time of filing of suit. The documents filed by the plaintiff under Ex-A1 and Ex-B7 marked by the defendant would show that the case of the plaintiff on possessory title is not sustainable.

10.Considering the nature of case pleaded and the evidence that was let in by both parties, this Court is unable to find any question of law or substantial question of law. Accordingly, the second appeal is dismissed and the judgment and decree passed by the learned Principal Subordinate Judge, Trichy in A.S.No.4 of 2017, dated 30.01.2019 confirming the judgment and decree passed by the learned II Additional District Munsif, Trichy in O.S.No.1248 of 2010 on 24.11.2016, is confirmed. No costs.

Sd/-

Assistant Registrar

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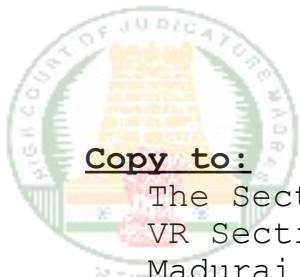
Sub Assistant Registrar(CS)

To

1.The Principal Subordinate Judge, Trichy.

2.The learned II Additional District Munsif, Trichy.

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The Section Officer, (2 Copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to M/s.T.S.R.VENKAT RAMANA, Advocate (SR-79873[F] dated
06/08/2019)

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05.08.2019

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