

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.01.2020

DATE OF VERDICT : 24.01.2020

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

S.A.NO.1428 OF 2005

Auro Food Private Limited,
Rep. by its Manager,
S.M.Patel, Pulichapallam Village,
Vanoor Taluk.

...Appellant/Defendant

Vs.

Edumappan

..Respondent/Plaintiff

Prayer:

Second Appeal filed under Section. 100 of C.P.C. Against the Judgment and Decree in AS.No.116 of 1993 on the file of the Principal Sub Court, Tindivanam, and dated 29.07.2003 in confirming the judgment and decree in O.S.No.278 of 1988 on the file of the District Munsif Court, Tindivanam and dated 28.04.1993.

For Appellant : Mrs.V.Srimathi

For Respondent : Mr.A.M.Packianathan Easter

J U D G M E N T

This second appeal is preferred as against the judgement and decree dated 29.07.2003, passed in A.S.No.116 of 1993 on the file of the Principal Sub Court, Tindivanam, confirming the judgment and decree dated 28.04.1993 passed in O.S.No.278 of 1988 on the file of the District Munsif Court, Tindivanam.

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

3. The case of the plaintiff in brief is as follows:-

3.1.The suit is filed for declaration and injunction. The suit property belongs to the plaintiff. It was originally purchased by his grand father Angan by the registered sale deed

dated 27.11.1919 for the valid sale consideration of Rs.160/- from one Uyyathal and others on 10.09.1931. The property was mortgaged to one Chokkalingam and thereafter redeemed the said property. After his demise his only son one Pachiappan was being the legal heir of the deceased Angan inherited the suit property. Thereafter, the revenue records was also mutated in his name and patta No.603 was issued in his favour. While being so, he died in the year 1971, leaving behind the plaintiff as his legal heir. After death of the said Pachiappan, the plaintiff derived title over the suit property and he is in possession and enjoyment of the same. While being so, the defendant is also claiming suit property, as if he purchased the suit property from one Selvaraju Gounder. Therefore, the plaintiff caused legal notice on 08.09.1987 and on receipt of the same, the defendant replied with false averments. Hence, the suit is filed for declaration and injunction as against the defendant.

4.The defendant resisting the plaintiff's case and filed written statement stating that originally the suit property was owned by Pachiappan. After his demise, as the legal heir of the said Pachiappan, the suit property was allotted to one Selvaraju Gounder. In turn, he sold out the suit schedule property to the defendant by registered sale deed dated 28.06.1982. In fact, the only legal heir of said Pachiappan, namely Pachiammal was in enjoyment of the said suit property and revenue documents were also mutated in her name. Therefore, the defendant is bonafide purchaser for valid sale consideration, without notice of any defect in title. The plaintiff never is in possession and enjoyment of suit property and he has no title over the suit property. Therefore, prayed for dismissal of the suit.

5. On the side of the plaintiff, P.W.1 and P.W.2 were examined and ten documents were marked as Ex.A.1 to Ex.A.10. On the side of the defendant, they examined D.W.1 to D.W.3 and four documents were marked as Ex.B.1 to Ex.B.4. Based on the materials placed on record both the oral and documentary evidences adduced by the respective parties and the submissions made by the learned counsel, the trial Court decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendant filed an Appeal Suit in A.S.No.116 of 1993 and the same was dismissed by confirming the judgement and decree passed by the trial Court in favour of the plaintiff. Aggrieved by the same, the defendant has preferred this second appeal.

6. At the time of admission of this second appeal, the following substantial questions of law were formulated by this Court for consideration:

i) Whether the non production of primary evidence under Exs.A1 and A4 is not fatal to the case of the plaintiff?

ii) Whether the Courts below are right in relying upon Exs.A7 and A8 as proof of the plaintiff's status when none of the documents establishes the plaintiff's claim?

iii) When the possession of the appellant is admitted in respect to the suit property, whether the Courts below are right in decreeing the suit for injunction?

iv) Whether the legal heir certificate issued by the revenue authorities binding upon the Civil Court and whether in the present case, are not the Courts below in error in relying upon Ex.A.8 to uphold the status of the plaintiff as the son of Pachiappan?

7. Heard Mrs.V.Srimathi, learned counsel appearing for the appellant and Mr.A.M.Packianathan Easter, learned counsel appearing for the respondent.

8. The plaintiff claimed the suit property as he is the only legal heir to one Pachiappan. Originally the suit property was purchased by his grand father, one Angan, by registered sale deed dated 27.11.1919 and after his demise his father derived title over the suit property. After the demise of the said Pachiappan, the plaintiff derived title over the property and he is in possession and enjoyment of the suit schedule property. The said Pachiappan died on 11.06.1971, and it was registered on 02.07.1971 which was marked as Ex.A.7. It also revealed that the Pachiappan was working in Chennai Harbour and his wife Nagammal also died in the year 1975. The sale deed dated 27.11.1919, was marked as Ex.A.1. After the death of the said Pachiappan, the plaintiff was issued legal heir ship certificate which was marked as Ex.A.8. To corroborate the said documents, the PW.2 was examined and he categorically deposed that the plaintiff is the son of one Pachiappan and his mother is one Nagammal. Though the defendant raised grounds that the plaintiff is not the legal heir of the said Pachiappan and the Ex.A.8 does not say it was issued to derive the property from the said Pachiappan and also there is no proof to show that Nagammal is the wife of the said Pachiappan, the defendant failed to produce any of the single piece of evidence to disprove the claim of the plaintiff and also no one has disputed about the plaintiff's legal heir ship of the said Pachiappan.

9. Further, the D.W.1 deposed that the vendor of the defendant are very much alive, even then the defendant did not chose to examine any of them to prove that the plaintiff is not the legal heir of the said Pachiappan and the only legal heir is the said Pachiammal. Further from the Ex.A.1 to A.4 marked by the plaintiff also proved that the plaintiff is the legal heir of the said Pachiappan, who derives title from his father one

Angan, who is none other than the grand father of the plaintiff herein. Whereas, on the side of the defendant they marked Ex.B.1 patta issued in favour of Pachiammal. It is seen from the patta book, which was Ex.B.1, clearly revealed that originally it was issued in the name of one Perumal and the patta number was also 419 subsequently, it was corrected as Patta No.605 and name of Pachiammal wife of one Arumugam. In fact, the extent of property and survey number and everything were corrected in the patta pass book for which there is absolutely no explanation by the defendants.

10. Further the legal heir ship certificate which was marked as Ex.A.8 proved that one Nagammal is the wife of the Pachiappan and the plaintiff is alone legal heir to the said Pachiappan. When the defendant denying the same, the defendant ought to have prove that his vendor's vendor namely Pachiammal is the legal heir of the said Pachiappan. But the defendant failed to disprove the case of the plaintiff as well as did not mark any piece of evidence to prove the said Pachiammal is the legal heir of the Pachiappan and also no one was examined to disprove the case of the plaintiff. In fact, the Ex.D.1 is nothing but concocted one. It is even seen from the naked eye, it is deliberately corrected by the name of Pachiammal and not only corrected the name of the patta holder and also corrected the survey number and extent of the property.

11. At the same time, Exs.A.7 and A.8 though disputed by the defendant both the documents are public documents and public records issued by the Competent Authority and both are admissible in evidence unless and otherwise it is proved as not genuine. It is relevant to extract the provision under Section 35 of the Indian Evidence Act as follows:

"Relevancy of entry in public [record or an electronic record] made in performance of duty:- An entry in any public or other official book, register or [record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or [record or an electronic record] is kept, is itself a relevant fact."

12. Here the defendant failed to produce any of the evidence to disprove the case of the plaintiff that the plaintiff is not the legal heir of the said Pachiappan. Therefore, the Exs.A.7 and A.8 are unimpeachable documents and are clearly proved that the plaintiff is the only legal heir of the Pachiappan and the Nagammal is the wife of the said Pachiappan. Therefore, the

plaintiff derives the title over the property from his father Pachiappan. The defendant also failed to prove his vendor's vendor Pachiammal is the legal heir of the said Pachiappan by any piece of evidence.

13. While pending this appeal, the defendant took application to appoint an Advocate Commissioner to inspect the suit property and so as to whether the factory is being run or not. Accordingly, this Court appointed Advocate Commissioner and he also filed report and it revealed that in the suit property there is no factory in existence and it is a vacant agricultural land. Since there is no factory in existence in suit property, the question of factory being run does not arise. In fact, the defendant raised specific ground that subsequent to the suit property purchase by the sale deed dated 28.06.1982 which was marked as Ex.B.2 he had raised structure. It is completely false and incorrect, since the suit property is agricultural property and there is no structure put up by the defendant. When the defendant claims to be the owner of the suit property, he has to prove his ownership as contemplated under Section 110 of Indian Evidence Act:

"110. Burden of proof as to ownership:- When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."

14. It is seen from the Advocate Commissioner's Report and the evidence of the defendant, failed to prove his ownership on the suit schedule property except the sale deed executed in his favour which was marked as Ex.B.2. Whereas, his vendor's vendor had title and right over the suit property to execute sale deed not proved by the defendant.

15. Therefore, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly for upholding the case of the plaintiff. Accordingly, this Court is of the considered opinion that no substantial questions of law are involved in this second appeal. Be that as it may, all the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the plaintiff and as against the defendant.

16. In fine, the second appeal is dismissed with costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Pns

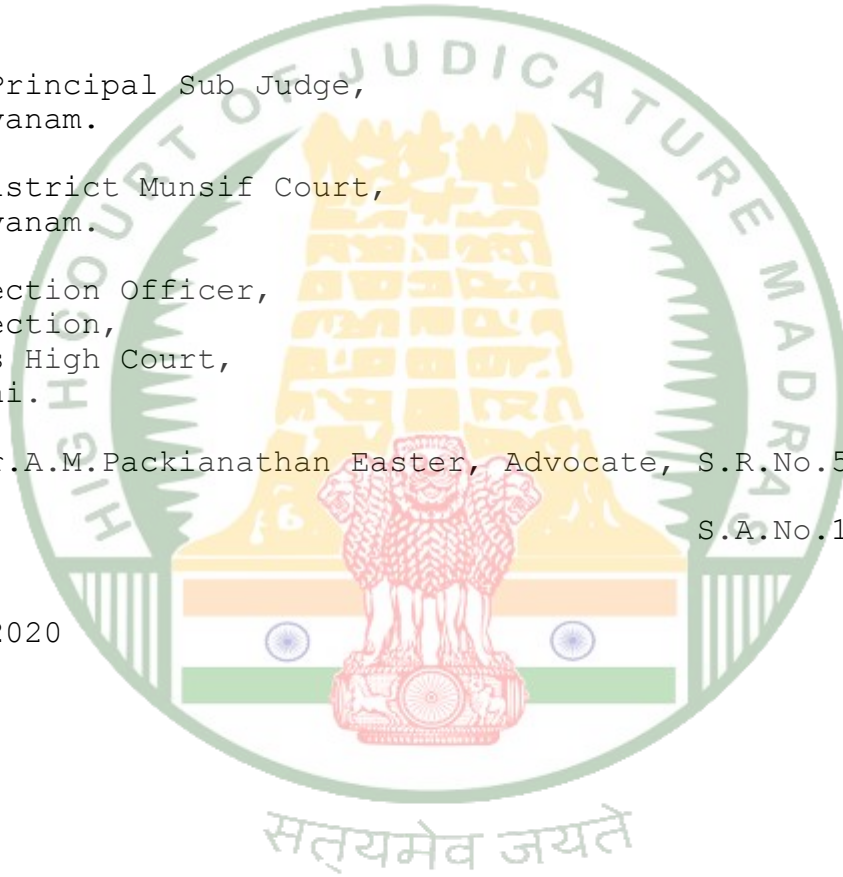
To:-

1. The Principal Sub Judge,
Tindivanam.
2. The District Munsif Court,
Tindivanam.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.A.M.Packianathan Easter, Advocate, S.R.No.5128

S.A.No.1428 of 2005

SPD(CO)
CS/04/12/2020



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