

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.476 of 2020

K.Rishkeshavan

...Appellant/Plaintiff

Vs.

1. S.Perumal

2. P.Ravi

3. P.Kesavan

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 29.03.2019 passed in A.S.No.1 of 2014 on the file of Additional Subordinate Judge, Kanchipuram confirming the judgment and decree dated 15.02.2013, passed in O.S.No.224 of 2009, on the file of Additional District Munsif Court, Kanchipuram.

For Appellant : Ms.S.Subhiksha
for M/s. P.B.Ramanujam

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

The plaintiff whose suit for declaration and injunction in OS No.224 of 2009, was dismissed by the Trial Court upon confirmation of the same in AS No.1 of 2014, has come up with this Second Appeal.

2. The plaintiff sought for declaration on the ground that the suit property measuring a larger extent of 39 cents in Survey No:12/12 belonged to one Ponnukannuammal wife of Devaraj Naicker. Out of the said 39 cents, 18 cents of land was acquired for road widening in the year 1992. The said Ponnukannuammal sold the remaining 21 cents to the plaintiff on 15.11.1994. It is also claimed that patta was granted to the plaintiff. It is the further contention of the plaintiff that

the defendants owned an extent of 21 cents in Survey No.12/9 by virtue of their purchase under a Sale Deed dated 26.02.1976. According to the plaintiff, the sale Deed dated 26.02.1976 gave the Survey number of the property sold as 12/12 instead of 12/9.

Therefore, the sum and substance of the claim of the plaintiff was that though the defendants purchased the land in Survey No.12/9 from Ponnukannammal, there was a mistake in the Sale Deed and the Survey number of the land sold was given as 12/12.

3. The defendants would resist the suit contending that the claim that there was a mistake in the Sale Deed dated 26.02.1976 is false. According to the defendants, they purchased an extent of 21 cents from Ponnukannammal in Survey No.12/12 within specific boundaries as early as on 26.02.1976 and therefore, Ponnukannammal had no right over the land in Survey No.12/12 to convey on the date of the Sale Deed in favour of the plaintiff i.e., on 15.11.1994. The defendants sought to buttress their contention by pointing out that Ponnukannammal, had sold an extent of 21 cents in survey No.12/9 in the year 2008 under Ex.B1 Sale Deed. According to the defendants, the claim of mistake is belied by the execution of Ex.B1 Sale Deed by the vendor of the plaintiff.

4. At trial, the plaintiff was examined as P.W.1 and one Venkatesan was examined as P.W.2 and Exhibits A1 to A15 were marked. The first defendant was examined as D.W.1 and Exhibits B1 and B2 were marked.

5. The Trial Court upon a consideration of the evidence on record concluded that the plea of mistake in the Sale Deed dated 26.02.1976 has not been established. The Trial Court also took note of the fact that the patta was granted to the defendants in the year 2009 under Ex.B2 and the same was cancelled and the patta was issued to the plaintiff during the pendency of the suit. The Trial Court also took note of the fact that the plaintiff was not able to produce kist receipts in order to prove his possession. The fact that Ponnukannammal had sold an extent of 21 cents in Survey No.12/9 under Ex.B1 Sale Deed dated 03.03.2008 was also taken note of by the Trial Court to reject the claim of the plaintiff. On the above conclusions, the Trial Court dismissed the suit. Aggrieved the plaintiff preferred an Appeal in AS No.1 of 2014.

6. The Appellate Court also concurred with the findings of the Trial Court and dismissed the Appeal. It is against his concurrence findings, the plaintiff has come up with this Second Appeal.

7. I have heard Ms. S.Subhiksha, learned counsel appearing for Mr.P.B.Ramanujam for the appellant.

8. The learned counsel appearing for the appellant would vehemently contend that both the Courts below were wrong in concluding that the plaintiff has not established that there is a mistake in the schedule to the Sale Deed dated 26.02.1976 marked as Ex.A13. She would also point out that the Courts below have brushed aside the evidence offered by way of land acquisition proceedings, wherein, compensation was paid to Ponnukannammal for the land in Survey No.12/12 in the year 1992. The learned counsel would also draw my attention to the mutation of Revenue Records in favour of the plaintiff.

9. I have considered the submissions of the learned counsel for the appellant.

10. Both the Courts below have specifically found that the mutation of Revenue Records cannot be taken into account, in this case, since it has happened during the pendency of the suit. There was a cancellation of the patta granted in favour of the defendants during the pendency of the suit and the new patta was granted to the plaintiff. It is fundamental principle of law that the Revenue Records do not afford evidence of title.

The plaintiff will have to prove the title pleaded by him in order to succeed in a suit for declaration of title. Looking at the plea of the title on the side of the plaintiff, it is basically based on a plea of mistake in the Sale Deed dated 26.02.1976 marked as Ex.A13. If the plaintiff is unable to prove the said mistake, it is obvious that Ponnukannammal did not have the title to convey on the date of Ex.A1 Sale Deed dated 15.11.1994.

11. Both the Courts below have found that the plaintiff has not established the plea of mistake. The fact that the plea of mistake is on a very shaky foundation is established by execution of Ex.B1 by Ponnukannammal on 03.03.2008, wherein she had sold an extent of 21 cents in Survey No.12/9 which, according to the plaintiff, was sold to the defendants even in the year 1976.

12. In view of the said factual findings which essentially point out that the plaintiff has singularly failed to prove the

title, I do not think I can entertain the Second Appeal. I do not find any question of law much less substantial question of law in order to enable me to entertain the Second Appeal. The Second Appeal therefore fails and it is accordingly dismissed without being admitted.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

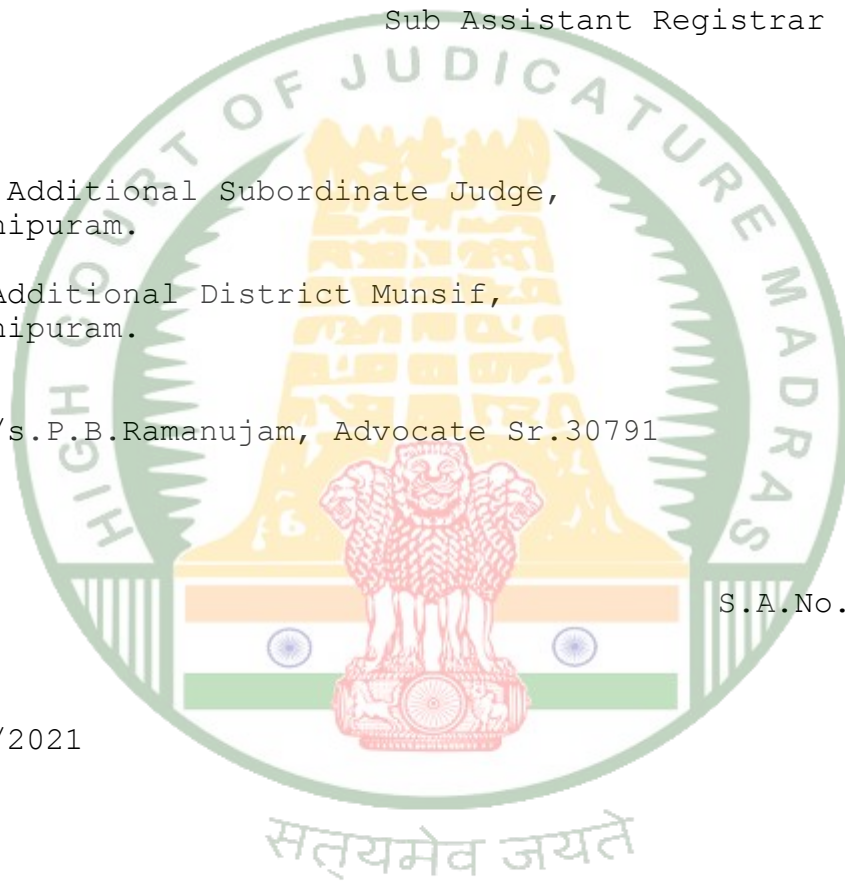
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To

1. The Additional Subordinate Judge,
Kanchipuram.
2. The Additional District Munsif,
Kanchipuram.

+1cc to M/s.P.B.Ramanujam, Advocate Sr.30791

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