IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 490 of 2020
and
C.M.P.No. 10620 of 2020

R.Kasi ...Appellant/Appellant/Plaintiff

Vs.

P.Narayanan ...Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No. 36 of 2018 dated 30.07.2020 on the file of the Sub-Ordinate Judge, Panruti, confirming judgment and decree dated 15.03.2018 made in O.S.No. 86 of 2003 on the file of the District Munsif, Panruti.

For Appellant : Mr.P.R.Krishnaraj for Mr.L.Kannan

J U D G M E N T

The plaintiff in O.S.No. 86 of 2003 has come up with this second appeal, challenging the dismissal of his suit for declaration of title and consequential injunction by the Courts below.

2. According to the plaintiff, his father was in possession of the suit property by constructing a house and paying house tax to the municipality. In recognition of his possession, the Patta was also granted to his father and the same was transferred in his name and therefore, father and son has been in possession for over the statutory period. On the said plea, the plaintiff sought for declaration of his title over the suit property.

3. The defendant would resist the claim contending that the suit property originally belonged to one Elumalai, who sold it to him under sale deed dated 27.08.2002. From the said date, the defendant has been in possession of the property. Earlier

documents namely, the partition deed of the year 1946 and other documents were also produced by the defendant.

4. At trial, the plaintiff examined himself as P.W.1 and one Pazhani was examined as P.W.2. On the side of the defendant, the defendant was exaimined as D.W.1 and two other witnesses were also examined. D.W.2 is the vendor of the defendant namely, Elumalai. Exs. A1 to A16 were marked on the side of the plaintiff. Exs.B1 to B9 were marked on the side of the defendant. The learned District Munsif, Panruti who tried the suit concluded that the plaintiff has singularly failed to prove his plea that he and his father thereafter himself have been in possession of the property for over 40 years. The learned Trial Judge also concluded that the plaintiff has not co-related the house tax receipts, that were produced, to the suit property. It was also pointed out by the Trial Court that though the plaintiff had claimed that he and his father were in possession and the revenue records that stood in the name of his father were transfered in his name,the evidence on record goes to show that the Patta was transferred to the plaintiff's name only during September 2002 that is precisely on 06.09.2002.

5. The Trial Court also found before trasfer the Patta for the suit property stood in the name of wife of Elumalai, who is the vendor of the defendant. It therefore concluded that the plaintiff has not established his long possession and therefore he is not entitled to the reliefs of declaration and injunction. Aggrieved, the the plaintiff preferred an appeal in A.S.No.36 of 2018. The learned Sub-Ordinate Judge, Panruti, on a re-consideration of the evidence on record concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved, the plaintiff has come up with this second appeal.

6. I have heard Mr.P.R.Krishnaraj, learned counsel for the appellant.

7. Mr.P.R.Krishnaraj would vehemently contend that the Courts below were not right in discarding the evidence of possession offered by the house tax receipts, which have been marked as Exs.A3 to A7 and the electricity consumption receipts. According to Mr.P.R.Krishnaraj, the Courts below were not right in ignoring such evidence of possession and concluding against the plaintiff.

8. Both the Courts below have pointed out that these documents have not been co-related to the suit property. The learned Appellate Judge has very clearly stated that the payment of tax to municipality has not been shown to be for the suit property. In fact, the learned Appellate Juge has found that though the plaintiff has pleaded that his father was paying tax

to municipality, no documents connecting his father to such payment of the tax have been filed by the plaintiff.

9. Both the Courts below have taken note of the fact that the transfer of Patta was on 06.09.2002. The Courts below have also found that the defendant's vendor, Elumalai is entitled to the prperty. I am unable to see any perversity in the findings by the Courts below. There is no question of law, much less a substantial questions of law araising in this second appeal so as to enable me to entertain the same. Therefore, this second appeal is dismissed without being admitted. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Kkn
To:

1. The Sub-Ordinate Court, |
   Panruti.
2. The District Munsif Court,
   Panruti.
3. The Section Officer,
   VR Section, High Court, Madras.

+1cc to Mr.L.Kannan, Advocate Sr.31645

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srg 22/04/2021