

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.764 of 2019
and
CMP No.14828 of 2019

R.Manimekalai

..Appellant/Plaintiff

Vs.

1. The Executive Officer,
Town Panchayat,
Chinnasalem Town & Taluk,
Villupuram District.

2. Neduchezhiyan

... Respondents/Defendants

Prayer: The Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree passed in A.S.No.23 of 2013 on the file of the Subordinate Judge, Kallakurichi, dated 03.12.2018 confirming the judgment and decree passed in O.S.No.303 of 2005 on the file of the II Additional District Munsif, Kallakurichi, dated 20.03.2013.

For Appellant : Mr.V.Manohar

For Respondents : Mr.T.Sai Krishnan (for R2)

JUDGMENT

The plaintiff in O.S.No.303 of 2005 which was dismissed by the trial Court, upon affirmation of the same by the lower appellate Court in A.S.No.23 of 2013, has come up with this second appeal.

2. The suit in O.S.No.303 of 2005 was originally filed for a permanent injunction, restraining the 1st defendant/Town Panchayat from transferring the Property Tax Assessment that stood in her name in the name of any other person. Subsequently, the plaintiff impleaded the 2nd defendant and sought for an amendment of plaint, seeking a mandatory injunction, directing the 1st defendant to re-transfer the

Property Tax Assessment that was transferred in the name of the 2nd defendant.

3. According to the plaintiff, she has put up construction in the suit land, after obtaining permission from the Municipality in the year 1983-1984 and has been letting out the same to various persons between 1984 - 1990. The Property Tax Assessment stood in her name and she has been enjoying the building for more than 21 years. She received a notice from the 1st defendant requiring her to appear before the 1st defendant with respect to an enquiry on an application filed by the 2nd defendant seeking transfer of Property Tax Assessment. It is also claimed that the transfer effected on 12.04.2005 is not valid. Since the transfer was effected pending suit, the plaintiff amended the suit and sought for a mandatory injunction.

4. The suit was resisted by the 2nd defendant contending that the suit property originally belonged to his uncle Vasudevan and he had executed a Will on 20.11.1995, bequeathing the suit property to him, requiring him to use it for a trust. Therefore, he had applied for transfer of the Property Tax Assessment in his name as per the Will of the said Vasudevan, dated 20.11.1995.

5. The trial Court framed necessary issues and after considering the evidence that was let in, concluded that the plaintiff ought to have asked for declaration of title in as much as the 2nd defendant had denied the title of the plaintiff to the suit property. The trial Court also found that the plaintiff having admitted the title of Vasudevan and the execution of the Will by Vasudevan, cannot seek the relief of mandatory injunction, directing the 1st defendant to re-transfer the Property Tax Assessment that was transferred from her name to that of the 2nd defendant based on the Will executed by Vasudevan. On the aforesaid findings, the learned trial Judge dismissed the suit.

6. Aggrieved, the plaintiff preferred an appeal in A.S.No.23 of 2013. The learned appellate Judge, who heard the appeal, on a re-appreciation of the evidence concluded that the plaintiff should have asked for declaration of title before seeking a relief of mandatory injunction. The lower appellate Court also found that PW.1 in her cross examination has admitted that the properties belonged to Vasudevan and she had not shown as to how she derived title. In the evidence, the plaintiff had set up a oral gift by Vasudevan. The execution of the Will dated 20.11.1995 was also admitted by the plaintiff in her evidence as PW.1. The lower appellate Court took note of the said evidence to conclude that the plaintiff has not established

her title in order to enable her to obtain the relief of mandatory injunction. The lower appellate Court also faulted the plaintiff for not seeking a relief of declaration of her title. On the above conclusions, the lower appellate Court dismissed the appeal. Aggrieved, the plaintiff has come up with this second appeal.

7. Notice of motion was ordered on 17.07.2019.

8. I have heard Mr.V.Manohar, learned counsel appearing for the appellant.

9. Mr.V.Manohar, learned counsel appearing for the appellant would vehemently contend that the Courts below were not right in going into the question of title in a suit for a simple relief of injunction. According to him, since the Assessment stood in the name of the plaintiff, the transfer of the Assessment in favour of the 2nd defendant is bad and therefore she is entitled to a decree for mandatory injunction. He would also fault the Courts below for going into the question of title in the suit, which according to him, is a simple suit for restoration of the Property Tax Assessment in the name of the plaintiff.

10. I have considered the submissions of Mr.V.Manohar, learned counsel appearing for the appellant. I am unable to accept the said submissions. The plaintiff originally sought for a bare injunction against the 1st defendant alone. The 1st defendant filed a written statement stating that the Property Tax Assessment has been transferred in the name of the 2nd defendant based on documents of title. There upon, the plaintiff choose to amend the plaint, seeking a mandatory injunction for restoration of the Property Tax Assessment in her name. Though the 2nd defendant was impleaded and the 2nd defendant filed a written statement categorically denying the title of the plaintiff, the plaintiff did not choose to seek a relief of declaration. The evidence of P.W.1 which has been considered by the lower appellate Court would very clearly demonstrate that the plaintiff has conceded the title of Vasudevan and the execution of the Will by Vasudevan in favour of the 2nd defendant. In such circumstances, the plaintiff cannot take a technical plea saying that the Courts were not justified in going into the question of title in a suit for mere mandatory injunction.

11. I do not find any perversity in the findings of the appellate Court in relation to the appreciation of evidence. The lower appellate Court has specifically pointed out that the plaintiff has admitted the title of Vasudevan and the execution of the Will by Vasudevan. In such circumstances, I do not think

that the lower appellate Court can be faulted for confirming the Judgment and decree of the trial Court.

12. Mr.V.Manohar, despite his best efforts, is unable to show that the findings of the Courts below could be termed as perverse. I do not see any question of law, much less substantial question of law, to enable me to entertain this second appeal. The appeal therefore fails and it is accordingly dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vum

To:

1. The Subordinate Judge,
Kallakurichi.
2. The II Additional District Munsif,
Kallakurichi
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to Mr.V.Manohar, Advocate, S.R.No. 25595

+1cc to Mr.T.Saikrishnan, Advocate, S.R.No. 25663

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SAI (CO)
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