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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1466 of 1999

Muthiah Pillai

.. Appellant/Appellant/Plaintiff

/versus/

1. Balakrishnan

2. Kannammal (Died)

3. Kasi Ammal .. Respondents/Respondents 1 to 3/Defendants

4. Murugan

5. Seenu

6. Murthi

7. Karpagam

8.Manigandan

.. Respondents

(R4 to R8 brought on record as LR's of the deceased R2 Viz., Kannammal vide Order date 29.01.2020 made in C.M.P.Nos.1408, 1412 & 1415 of 2020 in S.A.No.1466 of 1999).

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree passed on 21.09.1998 in A.S.No. 53 of 1991 on the file of Subordinate Court, Tindivanam confirming the judgment and decree passed on 21.12.1990 in O.S.No.103 of 1985 on the file of the District Munsif, Gingee.

For Appellant : Ms.R.V.Rukmani for P.B.Balaji

For Respondents : No appearance

JUDGMENT

The unsuccessful plaintiff is the appellant herein. For the sake of convenience, parties are referred as per the ranking before the trial Court.

2.The appellant / plaintiff filed the suit for declaration and for permanent injunction on the ground that the



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suit property was purchased by the plaintiff under oral sale and one Mr.Mannangatti is in possession and enjoyment of the suit property and also perfected the title by adverse possession and for consequential relief of injunction.

3.The respondent filed a written statement alleging that based upon the sale deed executed by Gopal and others in favour of Kuppammal and also based upon the sale deed of the LR's of Kuppammal viz., Kasi Ammal., the first defendant is the absolute owner and marked Ex.B1 to B3 to show that they are in possession and enjoyment of the suit property.

4.The trial Court has framed necessary issues and decided that since the alleged oral sale deed is for the amount of Rs.700/-, it is hit Section 54 of the Transfer of Property Act and also stated that the document marked as Ex.A10 does not reflect the possession of the plaintiff. Accordingly, the suit has been dismissed and the said finding has been confirmed by the Lower Appellate Court in A.S.No.53 of 1991 and hence, the Second Appeal. The Above Second Appeal is admitted on the following substantial questions of law;

" (i) The Lower Court, having held that the Appellant has established his case as stated in the plaint by both documentary and oral evidences which by necessary implication accept the case of the Appellant's possession for over 20 years, from the date of oral sale and possession in 1967 till the date of suit in 1985 and therefore ought to have held tat the Appellant is entitled to decree for declaration in respect of 3 1/3 cents.

(ii) Once it is held that the Appellant has perfected title by adverse possession in respect of 31/4 cents even as against the true owner Mannangatti Pillai, any sale by the heirs of the Mannangatti Pillai (widow 3d Respondent and his son) will not pass a valid title and therefore, Ex.B2 is not a valid Sale Deed and on this ground, the lower Appellate Court ought to have rejected the case of the respondents and decreed the suit of the Appellant as prayed.

(iii) In view of the above, the appreciation to evidences both documentary and oral, the Lower Appellate Court is improper, illegal and perverse and the same requires re-assessment and re appreciation in the proper perspective."



5. Heard Ms.R.V.Rukmani for P.B.Balaji learned counsel for the appellant.

6.The learned counsel for the appellant would draw my attention to provisions and also the evidence of PW1 and Ex.P9. The learned counsel has vehemently argued that after the purchase of 3 ¼ cents from the wife of the 3rd respondent, son of Mannangatti Pillai, on 26.06.1984, the appellant/plaintiff has perfected the title and also contended that since the appellant is there for over 16 years from the date of the sale and his possession from the year 1967, they have perfected the title by adverse possession also.

7.This Court has considered the contentions raised by the learned counsel for the appellant / Plaintiff. On perusal of the pleadings and evidence of PW1, it is seen that it is a specific case that he is alleged to have purchased the suit property for a sum of Rs.700/-. As per Section 54 of the Transfer of Property Act, sale of immovable property can be made by a registered document only when the sale consideration is more than Rs.100. When the alleged oral sale in favour of the plaintiff is more than Rs.100/-, the same cannot be legally sustainable as it requires a document that too a registered document. In the absence of any documentary evidence, declaration of title, based upon the oral sale for a consideration more than Rs.100 is not sustainable. Hence, I find that the finding rendered by the both Courts below are perfectly valid in law and hence, I find that the major contention put forward by the learned counsel for the appellant does not stand for legal reasoning in view of the specific provision, under Section 54 of the Transfer of Property Act coupled with Section 9.

8.The next point is with regard to adverse possession. It is evident from the records, nowhere he claims that he is in possession of the property for more than 16 years. The sale deed is in favour of the defendant herein. It is a specific case of the appellant / plaintiff that even before Ex.B.2, the plaintiff has preferred the title by adverse possession as against the vendor of the defendant and relied upon Ex.A1 to Ex.A8.

9.As observed by both Courts below, it is only a oral sale and his name has also not been mentioned in the patta and



the submission that the payment made is also not proved as observed by the trial Court,

which are found to be adverse in the case of the appellant. Furthermore,

on the point of Ex.A10 patta pass book, the learned Judge has specifically observed that there is a material alteration. The Lower Appellate Court at Para 13 has specifically stated that the name of the pattadhar in S.No.8 has been deleted and the names of the Mannangatti and the vendor of the defendants appear to be corrected assume significance and hence, taking note of discrepancy found in Ex.A10 patta pass book, both the Courts below has rightly come to the conclusion that Ex.A10 is not a valid document.

10.In the absence of any positive legal evidence to show that the appellant is in possession of the suit property even before the sale of the property in favour of the defendant and instead, he has failed to show adverse possession and by legally acceptable documents, both the Courts below have rightly come to the conclusion that the plea of adverse possession has not been proved in the manner known to law.

11.Accordingly both the Courts rejected the contentions of the plaintiff and after going through the reasons assigned by the lower Courts, I do not find any merit in this case. The substantial questions of law framed does not arise for consideration and in this view of the matter, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

kmm



To

1. The subordinate Judge,
The Subordinate Court, Tindivanam.

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2. The District Munsif, Gingee.

Copy to

The Section Officer, VR Section, High Court, Madras.

S.A.No.1466 of 1999

BR(CO)

B.VC (13/09/2021)