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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1588 of 2000

Asraf Ali

...Appellant/Plaintiff

...Vs...

Rahmadhunnissa

(Died)

2. Fathima Jinna

[R2 brought on record as L.R of the deceased sole

respondent vide Court order dated 31.01.2019

made in C.M.P.no.5948 to 5950/2018 in

S.A.No.1588/2000(CVKJ)] ...Respondent/LRs' of the Defendant

Prayer:- Appeals filed under Section 100 of the Civil Procedure Code against the Decree and Judgment dated 15.06.1999 made in A.S.No.82 of 1998 on the file of the Additional Sub-Court, Mayiladuthurai reversing the Decree and Judgment dated 14.10.97 made in O.S.No.527/95 on the file of the Additional District Munsif Court, Mayiladuthurai.

For Appellant : Mr.S.Sounthar

For R1 : Died

For R2 : No appearance - set exparte

J U D G M E N T

The plaintiff is the appellant herein.

2. For the sake of convenience the parties are referred as per ranking before the trial Court.

3. The appellant/plaintiff has filed the suit in O.S.No.527/1995 on the file of the District Munsif Court, Mayiladuthurai for the relief of declaration of title and for Permanent Injunction. The said suit was decreed. However, appeal in A.S.No.82/98 on the file of the Additional Sub-Court,



Mayiladuthurai, was allowed. Consequently, the suit stood dismissed and hence, the Second Appeal by the plaintiff.

4. The above Second Appeal was admitted on 12.10.2000, the following Substantial Questions of Law:

(a) Whether the Lower Appellate Court is erred in law in stating that the respondent has got title to the suit property under Ex.B1, when the vendor in Ex.B1 is not absolute owner of the suit property as exhibited by Ex.A1? and

(b) Whether the Lower Appellate Court, as a final court of facts, erred in not advertng to the oral evidence of D.W.1 and D.W.2 as mandated by Order 41, Rule 31, C.P.C?

5. The plaintiff seeks the relief of title to the property based upon Ex.A1 Sale Deed dated 24.12.1947 executed in favour of his father - Abdul Rahman and his wife - Jennath Beevi and according to the plaintiff, the said property was sold under Ex.A2 and suit property is lying on the side of the plaintiff's property, as the defendant is trying to trespass into possession and hence, he filed a suit.

6. The defendant in his written statement denied the title and possession of the plaintiff and inter-alia contended that pursuant to Ex.B1 Sale Deed in his favour executed by the father of the plaintiff, they are in possession and enjoyment of the suit property, which was sold under Ex.A2 which has been taken possession by the said purchaser.

7. Exs.A3 to Ex.A7 are all photographs. However the same were not produced through acceptable evidence, namely Advocate Commissioner. For the reasons best known, no Advocate Commissioner has been appointed to note down the physical features of the property nor any photograph through Advocate Commissioner was marked. To substantiate the alleged Exs.A3 to Ex.A7, the lower Appellate Court has rightly come to the conclusion that they are all Certified Documents which cannot be relied upon. The lower Appellate Court has placed reliance upon Ex.B2 Sale Deed dated 09.05.1979 executed by none other than the father of the plaintiff in favour of the appellant herein, assumes significance. The Sale Deed is of the year 1979. The suit is filed only in the year 1997 almost 18 years, after the alleged Sale Deed, the plaintiff appears to



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have filed the suit. In the absence of any positive evidence to show that the title, the lower Appellate Court has rightly come to the conclusion that the plaintiff has failed to prove his case.

8. On the contrary, the lower Appellate Court has given a categorical finding that Ex.B1 is a Registered document which has to be taken to be proved, until positive evidence is produced to nullify the document. Furthermore, it remains to be stated that the Sale Deed Ex.B1 was not at all challenged by the plaintiff, except alleging that he is the only son to succeed the property after the father. However during the cross-examination, P.W.1 has admitted that his father had two wives. Through the first wife, the plaintiff is the son and through the second wife, his father had two daughters. Furthermore, the defendant is none other than the sister of the second wife and hence, in the absence of any positive evidence to show the tracing of title upon the plaintiff being established and coupled with fact that in view of Ex.B1 and also that as per the legal maxim, possession follows title. In view of Ex.B1, the lower Appellate Court has rightly come to the conclusion that the defendant possession was established under Ex.B1 and he is in possession from 1979. Suit is filed only in the year 1995 and that the plaintiff is not in possession of the suit property and furthermore, in the absence of any pleadings as to how he has obtained the property, besides, there is no whisper either in the pleadings or in his evidence, to substantiate his title and hence for want of positive evidence, the lower Appellate Court has rightly rejected the claim of the plaintiff.

9. Further, I find that in view of Ex.B1 the defendant is in possession of the property for more than 18 years and contra evidence has not been let in by the plaintiff/appellant. The substantial questions of law are answered in negation against the plaintiff.

10. Hence, I find that the finding rendered by lower Appellate Court on the plea of title and possession of the plaintiff, has not been established in the manner known to law, does not suffer from any irregularity or illegality warranting interference under Section 100 of C.P.C.



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11. In this view of the matter, this Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS-CCC)

// True Copy //

Sub Assistant Registrar

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To

1. The Additional Sub-Judge, Mayiladuthurai
2. The Additional District Munsif, Mayiladuthurai.

Copy to

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

+1CC to Mr.S.Sounthar, Advocate, SR.No.8662

S.A.No.1588 of 2000

PA(CO)

B.VC (16/09/2021)