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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

THE HONOURABLE MR. JUSTICE T. RAVINDRAN

S.A.No. 1400 of 2008
and
M.P. No.1 of 2008

1. Thevayal
W/o. late Pattappan
2. Easwaramoorthy
S/o. late Pattappan
3. Sasikala
D/o. late Pattappan

... Appellants/Appellants/Plaintiffs

Vs.

1. State of Tamilnadu
represented by its
District Collector
Erode District.
2. District Revenue Officer
Erode District
3. Tahsildar
Tahsildar Officer
Sathyamangalam
Erode District.

... Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against judgment and decree passed by the Principal Subordinate Judge, Gobichettipalayam in A.S. No.22/2007 dated 12.02.2008 who had confirmed the judgment and decree passed in O.S.No.402 of 2004 dated 28.04.2006 passed by District Munsif, Sathyamangalam, Erode District.

For Appellants : Mr. S. Parthasarathy
For Respondents : Mr. N. Manikandan
Government Advocate (CS)



JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 12.02.2008 passed in A.S. No.22/2007 on the file of the Principal Subordinate Court, Gobichettipalayam, confirming the judgment and decree dated 28.04.2006 passed in O.S. No.402 of 2004 on the file of the District Munsif Court, Sathyamangalam, Erode District.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The plaintiffs in O.S. No.402 of 2004 are the appellants in the second appeal.

4. Suit for declaration and permanent injunction.

5. Briefly stated, according to the plaintiffs, the suit property belonging to the Government was originally assigned in favour of one Gopal, son of Venkatrama Chettiar, by the Government, on 10.08.1973 under conditions, particularly, that he should not alienate the property assigned to him within 10 years of the date of assignment.

6. According to the plaintiffs, after the expiry of 10 years, Gopal had alienated the suit property in favour of one Madian on 19.11.1983. Subsequent thereto, the first plaintiff's husband and the father of the plaintiffs 2 and 3 Pattappan has purchased the suit property from Madian on 24.01.1985 and enjoying the same. While so, the third defendant had cancelled the assignment, vide the proceedings dated 19.07.1996, on the footing that the conditions while granting the assignment of the suit property had been breached. Challenging the same, the first plaintiff had preferred an appeal before the second defendant. Till date, the appeal has not been disposed of. However, it is only the plaintiffs who had been in the possession and enjoyment of the suit property. Whilesso, the defendants, without any right or interest over the suit property, are attempting to interfere with the plaintiffs' possession and enjoyment of the suit property and hence, according to the plaintiffs, they had been necessitated to lay the suit against the defendants for appropriate reliefs.

7. The defendants resisted the suit contending that the suit laid by the plaintiffs is not maintainable either in law or on facts. They have admitted that the suit property had been originally assigned in favour of Gopal on 10.08.1973 on conditions. However, according to them, in violation of the abovesaid conditions, Gopal had alienated the assigned property



orally in favour of one Madian. The same had been detected and following the same, the assignment had been cancelled by the authority concerned. The same had been duly conveyed to the concerned persons. Therefore, the claim of the plaintiffs that they had acquired the title to the suit property from Madian, cannot at all be countenanced in any manner. The suit property had been taken over by the Government as the conditions of the assignment had been breached by Gopal and therefore, the claim of the plaintiffs that they have purchased the suit property from the alleged purchaser of Gopal after the cancellation of the assignment does not merit acceptance and therefore, contended that the suit has been laid by the plaintiffs without any cause of action and the suit is liable to be dismissed.

8. In support of the plaintiffs' case, P.Ws. 1 and 2 were examined, Exs. A1 to A10 were marked. On the side of the defendants D.W.1 was examined and Exs. B1 and B2 were marked.

9. The courts below, on an appreciation of the materials placed on record and the submissions put forth by the respective parties, was pleased to dismiss the plaintiffs' suit. Impugning the same, the present second appeal has been preferred.

10. It is not in dispute that the suit property belonging to the Government had been originally assigned in favour of Gopal on 10.08.1973 on conditions. Inasmuch as Gopal had breached the condition and alienated the property assigned to him to Madian orally and on detecting the same, it is noted that the assignment granted in favour of Gopal had been cancelled by the defendants vide the proceedings dated 27.04.1986. Now according to the plaintiffs, even prior to the same they had purchased the suit property from Madian on 24.01.1985. However, when it is noted that the assignment granted in favour of Gopal had been cancelled on account of the breach of the assignment conditions and furthermore, when it is also the case of the plaintiffs that an appeal had been preferred challenging the same and the appeal is stated to be still pending, in such view of the matter, the claim of the plaintiffs that they had purchased the suit property from Madian cannot at all be countenanced in the eyes of law. When the Government had taken over the suit property by way of the proceedings dated 27.04.1986 and also duly intimated the same to the parties concerned, the claim of title of the plaintiffs by virtue of the sale deed dated 24.01.1985, as such, cannot be upheld in the eyes of law. Furthermore, the claim of the plaintiffs that they are in the lawful possession and enjoyment of the suit property based on the abovesaid sale deed also cannot be countenanced in any manner. When the plaintiffs' vendor Madian is found to be not the lawful owner of the suit property in any manner, the contention of the plaintiffs that



they had acquired the title to the suit property by way of purchase on 24.01.1985 cannot be accepted and therefore, the courts below have rightly proceeded to dismiss the plaintiffs suit.

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11. On a perusal of the judgment and decree of the courts below, it is noted that the courts below have rightly assessed the pleas put forth by the respective parties and the materials projected in the matter correctly, both on the factual matrix as well as on the point of law, and rightly come to the conclusion that the plaintiffs are not entitled to seek the reliefs as prayed for. In such view of the matter, no substantial question of law is found to be involved in the second appeal. Resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principal Subordinate Judge,
Gobichettipalayam

2. The District Munsif,
Sathyamangalam, Erode District.

Copy to:

The Section Officer,
VR Section,
High Court, Madras

+1CC to Mr.S.Parthasarathy, Advocate, Sr.No.3305

+1CC to Special Government Pleader, Sr.No.2887

S.A.No.1400 of 2008

SV (CO)

K.RK. (28.10.2021)