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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.NO.1070 OF 2007

Paramasivam

... Appellant/
Plaintiff

Vs.

1. P.Velayutham

2. P.Vadivelu

3. Bombai @ C.Anbu

... Respondents/
Defendants

Prayer :

Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 16.10.2006 passed in A.S. No.24 of 2005, on the file of the Additional District Judge, Fast Track Court III, Poonamallee, confirming the decree and judgment dated 29.10.2004 passed in O.S. No.787 of 1994, on the file of the District Munsif, Poonamallee.

For Appellant : Mr.M.Ganesh Kumar
for Mr.Ramanlal

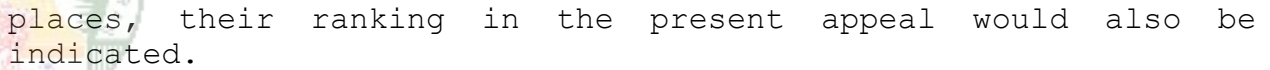
R1 & R2 : No appearance

R3 : Mr.M.Chidambaram

JUDGMENT

The unsuccessful plaintiff before both the courts below has filed the present second appeal.

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



7. The Plaintiff's suit for bare injunction was dismissed by both the courts below on the ground that the plaintiff did not adduce sufficient oral and documentary evidence to prove his possession. The suit property, as described in the plaint, is a Grama natham land and a house situate in Survey No.426 of Palanjur Village, Perumandur Taluk, Chengalpattu District, measuring 17 cents including palm trees, mango trees, velikathan trees within the boundaries stated therein.



8. Mr.M.Ganesh Kumar, learned counsel appearing for the appellant contended that both the Courts below did not advert their attention to the various documents adduced by the plaintiff. It is his submission that a copy of the mortgage deed Ex.A28 would go to show that the possession of the suit property was handed over to the father of the plaintiff even during the year 1977. His specific contention is that though the plaintiff filed house tax receipts and electricity bills pertaining to the suit property, the same had not been considered by both the Courts below.

9. Ex.A28 is an unregistered usufructuary mortgage deed dated 15.08.1977 executed by one D.Parthasarathy Pillai in favour of V.Kuppan (P.W.2). The period of mortgage is indicated as three years. Though the survey number is indicated as 426 of Palanjur Village in Ex.A28, the Survey number is written in different ink. Thiru. Kuppan (P.W.2), in whose favour the mortgage deed was executed, could not state the Survey number of the property mortgaged to him. Ex.A24 is a registered mortgage deed dated 05.09.1994 executed by the plaintiff in favour of one Kannan. At this juncture, it is relevant to point out that the plaintiff filed the suit on 22.09.1994 and Ex.A24 is just 18 days prior to the filing of the suit by the plaintiff. Hence, based on Ex.A24 and Ex.A28 it cannot be held that the plaintiff is in possession of the suit property. There is nothing to show that electricity bills Ex.A1 to Ex.A20 relate to the suit property. The house tax receipts Ex.A23, Ex.A24, Ex.A25, Ex.A26, Ex.A29 & Ex.A30 are also subsequent to the filing of the suit. The plaintiff, as P.W.1, has deposed that the door number of his house is 5 and this has not been indicated in the plaint schedule. In any event this door number is not mentioned in any of the above tax receipts. The plaintiff has filed a certificate dated 19.08.1994 (Ex.A22) issued by Village Administrative Officer, Mevalurkuppam, Sriperambudur Taluk, which states that the plaintiff is the owner of 18 cents in Survey Number 426 of Palanjur Village. No credence can be attached to this particular certificate since the Village Administrative Officer who issued the certificate was not examined by the plaintiff in the trial Court to prove the contents thereon. This is also subsequent to the filing of the suit. Thus, the plaintiff has not adduced any acceptable oral/documentary evidence to prove his possession over the suit property. Both the Courts below had concurrently held that the plaintiff has not proved his possession over the suit property and I do not find any reason to interfere with the same in view of the reasons stated by me. There is also no substantial question of law involved in this case.



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10. In the result,

i. the second appeal is dismissed. No costs.

ii. the decree and judgment of both the courts below are upheld with costs.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Additional District Judge,
Fast Track, Court III, Poonamallee,
2. The District Munsif, Poonamallee
3. The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.47954

+1cc to Mr.Ramanlal, Advocate, S.R.No.48004

S.A.No.1070 of 2007

GP(CO)
CS/18/10/2021