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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2021

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

S.A.NO.1177 OF 2009
AND M.P.NO.1 OF 2009

Munusamy

...Appellant/Plaintiff

Vs.

Subramani

...Respondent/Defendant

Prayer: This Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgement and decree of the learned Principal Sub Judge, Chengalpattu in A.S.No.77 of 2007 dated 15.04.2009 in reversing the judgement and decree of the learned District Munsif Judge, Chengalpattu in O.S.No.63 of 2000 dated 12.02.2007.

For Appellant : Mr.V.Raghavachari
For Respondent : No appearance

JUDGEMENT

(Heard through video conferencing)

This Second Appeal has been preferred against the judgement and decree dated 15.04.2009 passed by the learned Principal Sub Judge, Chengalpattu in A.S.No.77 of 2007 in reversing the judgement and decree dated 12.02.2007 passed by the learned District Munsif Judge, Chengalpattu in O.S.No.63 of 2000.

2. The appellant was the plaintiff who filed the suit for declaration, recovery of possession and permanent injunction in respect of the suit property.

3. The averments of the parties in brief:-

The plaintiff has purchased the suit property by virtue of a registered sale deed dated 15.10.1982 and he is in possession and enjoyment of the same. The 'A' schedule property comprises 6 cents and out of which, a portion of 3 cents which is



described under 'B' schedule is in dispute. It is submitted that the defendant who does not have any title but owes his property to the west of the suit property, had illegally trespassed into the 'B' schedule property. After issuing pre-suit notice and filing a criminal complaint for trespass, the plaintiff has filed the suit for the relief of declaration, recovery of possession along with permanent injunction. The defendant has stated that the vendor of the plaintiff is no one else than his brother Krishnan. His brother Krishnan is not entitled to execute the sale deed in favour of the plaintiff all alone without the division of the property between himself and Krishnan by metes and bounds. The plaintiff is not a bonafide purchaser and the sale deed is a sham and nominal one.

4. Basing on the pleadings, the trial Court has framed the following issues:-

1. Whether the plaintiff and his vendor were in possession of the suit property?
2. Whether the sale deed EXA1 is binding upon the defendant?
3. Whether the plaintiff is entitle for declaration and possession of the suit property?
4. Whether the judgment and decree dated 12.02.07 passed in O.S.No.63/2000 are liable to be set aside?

5. During the course of the trial, on the side of the plaintiff, two witnesses were examined as P.W.1 & P.W.2 and Exs.A1 to A5 were marked. On the side of the defendant, one witness was examined as D.W.1 and Exs.B1 to B10 were marked.

6. At the conclusion of the trial, the learned trial Court has decreed the suit as prayed for. Aggrieved over that, the defendant has preferred the first appeal before the First Appellate Court. The First Appellate Court reversed the judgement of the trial Court and dismissed the suit by allowing the appeal. Subsequently, the defendant has preferred this Second Appeal and the Second Appeal has been admitted on the following substantial questions of law:-

- a) Whether the lower appellate court is justified in rendering a finding as against admitted facts and whether its order is not opposed to Section 58 of Evidence Act?
- b) When the title of the appellant's vendor is admitted by DW1, is the lower appellate court right in concluding that title of appellant was not established?
- c) Whether the lower appellate court is right in merely extracting the citations and concluding that it does not



apply to the facts of the case even without discussing its relevancy to the subject matter?

7. Mr.V.Raghavachari, learned counsel for the appellant submitted that despite the trial Court has rendered a clear finding as to the title of the appellant/plaintiff, the First Appellate Court has refused to give effect to Section 58 of the Indian Evidence Act, 1872 and proceeded to record that the plaintiff does not have any valid title. It is the further submission of the learned counsel that Ex.A1 - sale deed dated 15.10.1982 has not been challenged by the defendant at any point of time and hence, he cannot deny the title of the plaintiff.

8. On perusal of the records, it is seen that the plaintiff claims his title to the suit property by virtue of his sale deed dated 15.10.1982. It is not in dispute that the vendor of the plaintiff viz., Krishnan, is the brother of the defendant. Despite Ex.A1 - sale deed mentions about the alleged assignment given in favour of Krishnan in respect of the suit property, the said assignment is not produced before this Court.

9. The one and only contention of the respondent/defendant is that he himself and his brother Krishnan are the joint owners of the suit property and hence, Krishnan has got no individual right to pass the entire title in respect of the suit property.

10. The learned counsel for the appellant relies on the admission given by the defendant during his cross examination, where he has stated that the Government issued patta in the year 1973 to his brother Krishnan to the extent of 10 cents and thus 'A' schedule property was acquired by his brother. Admittedly, 'A' schedule property comprises of 6 cents and not 10 cents. Despite the respondent has stated in his evidence about the issuance of patta in favour of his brother Krishnan, from his admission, it cannot be known whether the property involved in the said patta relates to the suit property.

11. The appellant who is the plaintiff has got the burden to prove before the Court that his vendor has got the complete title to convey the same in his favour. He neither produced the assignment given in favour of his vendor Krishnan nor has he called upon any witness from the Revenue Department to speak on this. Admittedly, the respondent/defendant is in possession of 'B' schedule property, on the footing that he has been in joint possession of the same along with his brother Krishnan. Hence, the appellant/plaintiff cannot claim any exclusive title on the same basing on the sale deed alone. Without producing the assignment of his vendor, which is the parent document the appellant cannot claim title in entirety.



12. In this suit filed by the plaintiff, the Government is not a party, despite the parties are said to have been in enjoyment of the Government lands and thereafter, they got the patta conferred on them. Though admission of the adverse party is the best evidence, if it does not correlate to the primary evidence like the documentary evidence produced by the party to the suit, no reliance can be attached to it. In that context, the learned First Appellate Judge had opted not to rely on the admission given by the defendant. This point has been clearly discussed with citations referred therein. Only when the plaintiff proves his case, especially his origin of title and the right of his vendor to execute the title deed in his favour, the onus will shift on the defendant to rebut the same.

13. It is a settled position of law that the plaintiff has to prove his case. The case of the plaintiff should stand on its own strength and not on the weakness of the defendant's case. In the absence of production of any anterior document to Ex.A1 - sale deed, the claim of the plaintiff as to the relief of declaration, cannot succeed. Hence, the substantial questions of law are answered against the appellant. However, it is open to the parties to work out their remedies by way of filing a partition suit, if any.

In the result, this Second Appeal is dismissed and the judgement and decree dated 15.04.2009 passed by the learned Principal Sub Judge is confirmed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

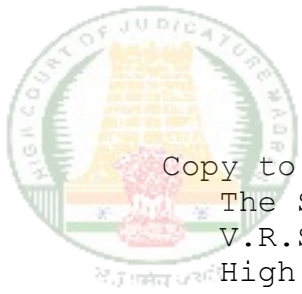
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Sub Assistant Registrar

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To

1. The Principal Sub Judge,
Chengalpattu.
2. The District Munsif Judge,
Chengalpattu.



Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

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+1CC to Mr.V.Raghavachari, Advocate, Sr.No.49989

S.A.No.1177 of 2009

VSN-II (CO)

K.RK. (25.11.2021)