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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.708 of 2009

Shanmugam

... Appellant/Respondent/Plaintiff

Vs

1.Srinivasan

2.Kannammal

... Respondents/Appellants/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 30.12.2008 passed in A.S.No.82 of 2007 on the file of the Principal Subordinate Judge, Cuddalore, reversing the Judgement and Decree dated 17.09.2007 passed in O.S.No.500 of 1999 on the file of the Principal District Munsif, Cuddalore.

For Appellant : Mr.S.Kingston Jerold

For Respondents : Mr.R.Gururaj

J U D G E M E N T

The plaintiff is before this Court challenging the Judgement and Decree of the Principal Subordinate Court, Cuddalore in A.S.No.82 of 2007 reversing the Judgement and Decree of the Principal District Munsif, Cuddalore in O.S.No.500 of 1999. The brief facts which are essential for disposing of the above Second Appeal are as follows. The parties are referred to in the same array as in the suit.

2.The plaintiff had instituted a suit for declaration and for recovery of possession in respect of the property compromised in S.Nos.459/4 and 459/5 (which was subsequently amended as S.Nos.450 / 4 and 450/5) measuring an extent of 56 cents in Karaikadu Village, Cuddalore Taluk, which was in respect of the remaining extent after the sale of 56 cents.

3.The case of the plaintiff is that his father was given patta for an extent of 0.44.5 Hectares and out of this he had sold an extent of 56 cents to one Gopalakrishnan and the remaining extent which is the suit property was retained and



enjoyed by the plaintiff's father till his death. The plaintiff's father died in the year 1982 and from then the plaintiff has been in possession and enjoyment of the suit property. The 1st and the 2nd defendants are husband and wife, who are the owners of the land situate in the east. In October 1999 they had trespassed into the property and therefore the suit.

4. The written statement and the additional written statement filed by the 1st defendant was to the effect that the description of the property is vague since the suit property has not been identified with boundaries. The 1st defendant would further submit that the lands never belonged to the plaintiff's father. The 1st defendant would further submit that they had nothing to do with S.No.450 / 4. As regards S.No.450 / 5 measuring an extent of 1.05 acres the same originally belonged to one Pichaikaran who sold the property to minor Dhanalakshmi under a sale deed dated 22.12.1975. The minor was represented by her father and guardian Chidambaram Chettiar. Thereafter, by sale deed dated 10.01.1979, the said Chidambaram Chettiar as guardian of the minor had sold the property to the 2nd defendant.

5. On the minor attending majority the sale was challenged by her in the suit O.S.No.331 of 1990 on the file of the Subordinate Court, Cuddalore. The said suit was decreed in favour of the plaintiff and the appeal filed against the same also went against the 2nd defendant. Thereafter, the 2nd defendant had filed a suit in O.S.No.221 of 1997 on the file of the Subordinate Court, Cuddalore claiming damages. The suit was decreed in favour of the 2nd defendant. Therefore, the defendants would contend that the property did not belong to them and that the plaintiff had not impleaded original owner.

6. The Trial Court namely, the Principal District Munsif, Cuddalore decreed the suit as the description of the property in O.S.No.221 of 1997 had shown the property of the plaintiff's father as the western boundary and also on the ground that the defendants were in possession of the property.

7. Aggrieved by the said Judgement and Decree the defendants had filed A.S.No.82 of 2007 on the file of the Principal Subordinate Judge, Cuddalore. The learned Subordinate Judge, Cuddalore reversed the Judgement of the Trial Court and allowed the appeal. Challenging the said Judgement the appellant is before this Court.

8. The above Second Appeal is admitted on the following Substantial Question of Law:

"Is not the Judgement and Decree of the Lower Appellate Court vitiated by its failure to consider the admissions of the



first and second defendants both in the previous proceedings as well as in the proceedings with regard to title of the predecessors in interest of the plaintiff?"

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9. Heard the counsel and perused the records.

10. The plaintiff has come forward with a case that the suit property is the portion remaining after the sale of 56 cents to Gopalakrishnan. The schedule of property would describe the suit property as the portion north of the property that was sold out. The plaintiff would rest his title on Ex.A.1 patta. A perusal of Ex.A.1 patta would show the extent of the property situate in S.No.450 / 4 and 450 / 5 as measuring 0.44 acres i.e., an extent of 44 cents.

11. The next document to be examined is Ex.B.1 sale deed under which the property was sold by the plaintiff's father Periasamy to Gopalakrishnan. If the case of the plaintiff is to be believed then the southern boundary of the property sold to Gopalakrishnan should be the property of Periasamy, namely, the remaining portion after the sale.

12. However, a perusal of Ex.B.1 would show that the property sold is within the following boundary, namely, West by Mottaypa Padayachi's land, East by Srinivan's land, North by Kuppusamy's land and South by channel. The extent sold measures 56 cents. Therefore, it very clear that the plaintiff's father did not have any portion abutting the property that was sold to Gopalakrishnan. That apart, from Ex.B.3, Ex.B.4 and Ex.B.5 it is clearly evident that the property comprised in S.No.450 / 5 belongs to Dhanalakshmi. The plaintiff has not chosen to implead her as a party to the proceedings. The plaintiff has therefore failed to prove his title and possession of the property.

13. In the light of the documentary and the oral evidence the plaintiff who contends that Ex.A.1 is the patta for the entire extent of 1.05 acres has not been able to establish the said fact since the patta itself has been given only for an extent of 0.44 acres. Therefore, the Substantial Question of law is answered against the plaintiff. The Second Appeal is dismissed. No costs .

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Cuddalore.
2. The Principal District Munsif,
Cuddalore.

S.A.No.708 of 2009

GPL (CO)
GMY (24/09/2021)