



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1026 of 2012
and M.P.No.1 of 2012

Narayanan ... Appellant/Plaintiff
Vs.
Jayaraman ... Respondent/Defendant

PRAYER: This Second Appeal has been filed under Section 100 of CPC against the judgment and decree made in A.S.No.76 of 2010 dated 30.09.2011 on the file of the Sub Court, Kallakurichi, confirming the judgment and decree dated 19.08.2010 in O.S.No.365 of 2005 on the file of the II Additional District Munsif's Court, Kallakurichi.

For Appellant : Mrs. R.Meenal

For Respondent : Mr.R.Syed Mustafa

JUDGMENT

The unsuccessful plaintiff is the appellant herein.

2.This Second Appeal has been filed against the judgment and decree dated 30.09.2011, passed by the learned Subordinate Judge, Kallakurich, in A.S.No.76 of 2010, wherein, the learned Judge has confirmed the order passed by the learned II Additional District Munsif Court, Kallakurichi, in O.S.No.365 of 2005, dated 19.08.2010.

3.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4.The plaintiff has filed a suit in O.S.No.365 of 2005 before the learned II Additional District Munsif's Court, Kallakurichi, seeking for the relief of declaration of tittle and for permanent injunction to restrain the defendant from interfering with the peaceful possession and enjoyment of the suit property.



5. Per contra, the learned counsel for the respondent/defendant filed a written statement, by relying upon Ex.B1(Sale deed), Patta, Chitta and Property tax Ex.B2, Ex.B3 and Ex.B4 and the communication from the Revenue Department Ex.B5 and B6 and also the Judgment of the Munsif Court in O.A.No.871 of 1994 as Ex.B7 and partition document marked as Ex.B8 dated 04.05.1982.

6. After considering the oral and documentary evidence, both the Courts below have come to the conclusion that the plaintiff has not filed any ancient document to show that the property belongs to the ancestors and in view of the attempt made by the P.W.1 that the defendant alone is in enjoyment of the suit property and hence the second appeal.

7. This Court ordered notice to the respondent on 19.11.2012 and respondent is being represented by a counsel. The following questions were raised as substantial questions of law in the second appeal:

"1.Whether in law the Courts below are right in rejecting Exs.A1 and A2 which are ancient documents attracting presumption under Section 90 of the Evidence Act?

2. Whether in law the Courts below are right in ignoring the possession of DW1 and DW2 regarding the possession of the suit property by the appellants mother? ."

8.This Court heard the rival submissions made by the learned counsel on either side and perused the materials placed on record.

9. Though Ex.A1, said to have been executed by the parents of the plaintiff, which has been executed in their favour by their grandparents by way of a settlement deed, they have not entered into the witness box to said about the said document. In the absence of the parental document or any ancient document of title, both the Courts below have rightly rendered a finding to that effect.

10. In respect of sale deed dated 12.09.1988, the defendant has exercised all the right to show that he is the owner of the portion of the property mentioned therein and they are having the patta, property tax receipt and kist receipts as could be seen from Ex.B2, Ex.B3 and Ex.B4 besides Ex.B7 and Ex.B8, which go to show that the certified copy of a decree in O.S.No.871 of 1994 and certified copy of partition deed dated



04.05.1982 respectively and in view of the placing of the title by the defendant, both the Courts below have concurrently held that the defendant has proved the possession of the suit property with the above said document.

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11. Further, the learned counsel for the appellant would contend that Ex.A1 is 30 years old document, it does not need any parental document to prove it. During the course of cross-examination of P.W.1, he had admitted that there is no necessity for the parent document showing that the grant parents of the plaintiff's parents have executed a settlement deed in favour of the plaintiff's parents in respect of Ex.A1. Hence, the above substantial question of law does not arise on the facts and circumstances of the case.

12. In the facts and circumstances of the case, this Court find that both the Courts below have rightly held that Ex.A1 and Ex.A2 are in conflict with Section 122 of the Transfer and Property Act and rejection of Ex.A1 is not on the ground of want of necessary document or ancient document. Since the parent document was not proved, there arises a doubt as to the title of the documents and on the factual position also, the above two substantial questions of law do not arise for consideration. The concurrent finding by the Courts below on the point that title and possession of the document appears to be doubtful is justified and the same does not need any interference by this Court.

13. In the result, this Second Appeal stands dismissed and the judgment and decree dated 30.09.2011 passed by the learned Subordinate Judge, Kallakurichi, in A.S.No.76 of 2010, confirming the judgment and decree dated 19.08.2010 passed by the learned II Additional District Munsif Court, Kallakurichi, are hereby confirmed. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Kallakurichi.



2.The II Additional District Munsif Court,
Kallakurichi.

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

+1cc to Mr.R.Meenal, Advocate SR.No.68184

+1cc to Mr.R.Syed Mustapa, Advocate SR.No.68024

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SPD(CO)
GN(07/02/2022)