



WEB COPY



S.A.No.579 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.579 of 2012
and M.P.No.1 of 2012

J.Rajan Babu

... Appellant

Vs.

1. Ponnusamy
2. Pankajam

... Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 30.03.2011 in A.S.No.19 of 2010 on the file of the learned Subordinate Judge, Ranipet, reversing the Judgment and Decree, dated 31.03.2009 in O.S.No.5 of 2008 on the file of the District Munsif cum Magistrate, Arcot.

For Appellant : No appearance

For Respondents : Ms.R.T.Sundari

J U D G M E N T

The plaintiff in O.S.No.5 of 2008, on the file of the learned District Munsif cum Magistrate, Arcot, whose suit for declaration of title and



S.A.No.579 of 2012

consequential injunction was decreed by the trial Court, upon its reversal by the appellate Court in A.S.No.19 of 2010, has come up with this second appeal.

2. The appellant/plaintiff filed a suit for declaration of title and injunction. According to him, his vendors namely Mohanraj and Leela Selvamani were assigned with the property by virtue of an assignment order issued by the Tahsildar, Walajah Taluk, Walaja, dated 27.07.1998. From then, the assignees were in possession and enjoyment of the same and thereafter they sold the property to the plaintiff on 06.09.2007 for valid consideration. After purchase of the property, the plaintiff was in possession and enjoyment of the suit property. While so, the defendants on 16.11.2007 interfered with the possession of the property and claiming right over the same. Hence, he filed the above suit before the learned District Munsif-cum-Judicial Magistrate, Arcot.

3. The respondents/defendants filed a written statement denying all the averments contained in the plaint and claiming that the plaintiff is out of possession and without seeking the relief of possession, the suit is not maintainable. According to him, as per the revenue records, the said Mohanraj and Leela Selvamani were not the owners of the property and they were not in



S.A.No.579 of 2012

possession of the same. On the other hand, the respondents/defendants have filed suits in O.S.Nos.139 and 140 of 2007 against the plaintiff for permanent injunction and the same was pending before the trial court.

4. The trial Court had taken all the suits namely O.S.No.5 of 2005 filed by the plaintiff and O.S.Nos.139 and 140 of 2007 filed by the defendants together and decreed all the three suits. Aggrieved over the decretal order, the defendants filed A.S.No.19 of 2010. The first appellate Court relying on the evidence of P.W.2, the Village Administrative Officer, held that the suit properties are all same, and that only Survey No.63 was converted into Survey No.494 and the same is sub divided into 494/1 to 494/56. However, the finding is not based on any revenue records to prove that the corresponding survey no.63 is new Survey Nos.494/1 and 494/56. The Revenue authorities were not also examined to prove the same. P.W.2, the Village Administrative Officer deposed that he was not aware of any cancellation of assignment given in favour of the appellant. Hence, the reading of the evidence of P.W.2, the Village Administrative Officer also does not reflect a clear picture. The oral evidence without any support of revenue records or without any other documentary evidence, is not sufficient and ambiguous admissions of a Village



S.A.No.579 of 2012

Administrative Officer cannot be relied upon for deciding title of the parties.

Hence, the Judgement of the first appellate Court relying on the evidence of P.W.2 without any proof with regard to cancellation of assignment, is not sustainable. Therefore, the Judgement and decree of the first appellate Court passed in A.S.No.19 of 2010, dated 30.03.2011 is liable to be set aside and accordingly the same is set aside. The matter is remanded back to the trial Court for fresh trial after framing issues with regard to the identity of the properties mentioned in the suits.

5. With the above direction, this Second Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.10.2021

vum

Index : Yes/No

Speaking order / Non speaking order



S.A.No.579 of 2012

WEB COPY

To

- 1.The Subordinate Judge, Ranipet.
- 2.The District Munsif cum Magistrate, Arcot.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.



WEB COPY



S.A.No.579 of 2012

M. GOVINDARAJ, J.

vum

S.A.No.579 of 2012
and M.P.No.1 of 2012

25.10.2021