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IN THE HIGH COURT OF JUDICATURE AT MADRAS

24.08.2021

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THE HONOURABLE MS.JUSTICE P.T. ASHA

S.A.No.648 of 2021 &
CMP No.13258 of 2021

Gnanasekaran ...Appellant/Defendant in Trial Court

Vs.

Indira ...Respondent/Plaintiff in Trial Court

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code against the Judgement and Decree dated 29.01.2021 passed in A.S.No.03 of 2018 on the file of the Court of the Subordinate Judge, Panruti, confirming the Judgment and Decree dated 04.10.2017 passed in O.S.No.160 of 2017 on the file of the District Munsif Court, Panruti.

For Appellant : Mr. R.Venkatajalapathy

JUDGEMENT

The defendant is the appellant before this Court challenging the concurrent judgment and decree passed in a suit filed for a declaration and consequential injunction. The parties, for the ease of understanding are referred to in the same rank as before the trial Court.

2. The plaintiff had filed a suit in O.S.No.160 of 2007 on the file of the learned District Munsif, Panruti, for a declaration of their title over the suit properties which consist of two items of property and a consequential relief of permanent injunction restraining the defendant, his men, agent or anybody on his behalf from trespassing into the suit property.

3. The case of the plaintiff was that the suit property originally belong to one Balasubramaniam, Son of Govindasamy Padayachi. The plaintiff had purchased the suit property from the said Balasubramaniam under a registered sale deed dated 10.02.2006 for a sale consideration of Rs.27,500/-. From the



date of the purchase, the plaintiff has been in possession and enjoyment of the same. While so, the defendant who had an eye on the property, wanted to encroach into the suit property. With this in mind, the defendant along with his son and henchmen, attempted to trespass into the suit property on 04.06.2006. The plaintiff attempts to file a police complaint was in vain. He had to approach this Court for a direction to the police to file a complaint in Crl.O.P.No.8253 of 2007. This attempt backfired on the plaintiff as the police authorities had registered a complaint against him on a false FIR. The plaintiff were therefore left with no other alternative except to move the civil Court for the reliefs stated supra.

4. The defendant had filed a written statement inter alia contending that one acre in the suit survey number had been purchased by him from the said Balasubramaniam under an oral sale after paying a sum of Rs.40,000/-. It is his case that he had been inducted into the possession of the suit property as soon as the sale had been concluded. The defendant would submit that 50 cents of the land of the property purchased by him was situate in S.No.493/4 and the other 50 cents was situate in S.No.493/15. He would state that the present survey numbers are 493/4B and 493/15A respectively. Though Balasubramaniam had received the entire sale consideration, he was evading the execution of a sale deed and its registration. The defendant would therefore contend that he also perfected title by adverse possession as he is in possession for over the statutory period i.e. for 24 years. He would further submit that on 29.06.2006, he had executed a gift settlement deed in favour of his son Panchatcharam and had put him in possession and enjoyment of the property. He would submit that the suit is bad for non-joinder of necessary parties and the plaintiff had failed to prove her possession and hence, the suit should be dismissed.

5. The learned District Munsif, Panruti, had framed over eight issues and parties had gone to trial with the plaintiff examining herself as PW1 and marking Exs.A1 to A7. The defendant on his side examined himself as DW1 and marked Exs.B1 to B4. The Commissioner's report and plan were also marked Exs.C1 and C2.

6. The trial Court, on consideration of the evidence on record, decreed the suit. Aggrieved by which, the defendant had filed A.S.No.3 of 2018 on the file of the Subordinate Judge, Panruti. The learned Subordinate Judge had also confirmed the judgment and decree of the trial Court and dismissed the appeal. Challenging this judgment and decree, the defendant/appellant is before this Court.

7. When the matter was posted today for admission the arguments of Mr.Venkatajalapathy, learned counsel for the



appellant/ the plaintiff were heard. He would claim a right to the suit property on the basis of Ex.A1, sale deed dated 10.02.2006 executed by Balasubramanian in favour of the plaintiff. The records would indicate that on 07.07.2006, the revenue records stood mutated in the name of the plaintiff and the adangal, chitta, etc., filed thereafter would prove the same. The defendant, on the other hand, would claim a right to the suit property and adjacent property on the basis of an oral sale wherein the defendant would submit that a sum of Rs.40,000/- had been paid to the said Balasubramanian for both the properties. It is needless to state that in cases of a sale where the consideration is over and above the sum of Rs.100/-, the same has to be compulsorily registered. The defendant admittedly did not have a written and registered deed in his favour whereas the plaintiff had obtained a registered sale deed and consideration had also passed. During the cross-examination of DW2, he was unable to give details of the date on which the oral sale had taken place. He has also admitted that there is no document to show that he had been requesting the said Balasubramanian to execute and have registered a sale deed in his favour by either sending a letter or a registered legal notice. Admittedly, there is no documents what so ever to show that the property had been handed over to the defendant by the said Balasubramanian. The Courts below have also taken note of the fact that in the settlement deed which is executed by the defendant in favour of his son and which has been marked as Ex.B1, the defendant has not referred to the oral sale, on the contrary, he describes the property as an ancestral property. Taking into account the above factors, the Courts below have rightly allowed the claim of the plaintiff. Further, the plaintiff has proved her possession by filing Ex.A6 - adangal entries.

8. In these circumstances, I do not find any reason to re-visit the findings of the Courts below and the appellant has not made out any questions of law warranting the interference of this Court. Consequently, the Second Appeal stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Panruti.

2. The District Munsif Court,
Panruti.

S.A.No.648 of 2021 &
CMP No.13258 of 2021

PMK (CO)
RGA (25/10/2021)