



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2021

CORAM:

WEB COPY

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

S.A. No.57 of 2017
and C.M.P. No.849 of 2017

1.Sevathal
2.Ravi
3.Selvakumar

.. Appellants/Plaintiff

Vs

Rajaram

...Respondent/Defendant

Second Appeal filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree in A.S.No.97 of 2006 dated 01.02.2016 on the IInd Additional Subordinate Judge, Villupuram, confirming the judgment and Decree in O.S.No.317 of 2003 dated 28.02.2005 on the file of the IInd Additional District Munsif, Ulundurpet.

For Appellants : Mr.S.Krishnasamy

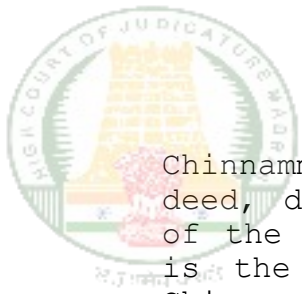
For Respondent : Mr.B.Abdulsamath

JUDGMENT

This second appeal is filed against the judgment and decree passed in A.S.No.97 of 2006 dated 01.02.2016 on the file of II Additional Subordinate Judge, Villupuram, confirming the judgment and Decree in O.S.No.317 of 2003 dated 28.02.2005 on the file of II Additional District Munsif, Ulundurpet.

2. Legal heirs of the plaintiff in the suit in O.S.No.317 of 2003 on the file of II Additional District Munsif, Ulundurpet, are the appellants in this Second Appeal. The husband of the first appellant filed the suit in O.S.No.317 of 2003 on the file of II Additional District Munsif, Ulundurpet, for declaration of his title and permanent injunction with regard to 'C' Schedule property.

3. The case of the plaintiff was that the suit 'C' schedule property comprised in New Survey No.253/3, measuring an extent of 51 ft. East-West x 22 ft. North-South is part of 'A' Schedule property which was purchased by one Chinnammal by a registered sale deed, dated 10.10.1915, and that the said Chinnammal executed a registered sale deed in favour of another



Chinnammal, wife of Ramasamy Padayachi, by a registered sale deed, dated 29.04.1954. The plaintiff claims to be the husband of the daughter of the said Chinnammal, by name, Sevathal. It is the further case of the plaintiff that the said Chinnammal executed a Will in respect of the entire 'A' Schedule property and other properties in favour of the plaintiff. The Will came into effect after the death of the testator, by name, Chinnammal in the year 1983 and the plaintiff got absolute title and enjoyment in respect of 'A' Schedule property. It is also the case of the plaintiff that the plaintiff put up a construction in a portion of 'A' Schedule property and 'B' Schedule property. The 'C' Schedule property, which is claimed to be part of 'A' Schedule property, is a vacant land. It is contended that "C" Schedule property is in the enjoyment of plaintiff along with the entire 'A' Schedule property.

4. The suit was contested by the defendant, who is the respondent herein, by filing a detailed written statement. The defendant denied the averments made in the plaint and disputed the title and enjoyment by the plaintiff or his predecessors in interest. It is the further case of the defendant that the suit 'C' Schedule property belonged to the defendant by virtue of a Will executed by his father on 10.09.1994. It is also the specific case of the defendant that the revenue records stood in the name of defendant's father prior to UDR and that after upgradation of records, patta was issued in favour of the defendant. The defendant-respondent specifically stated that the property comprised in S.No.253/3 is the ancestral property of the defendant and that a separate patta was also issued under Natham settlement. The defendant also clarified that the property belonged to the plaintiff is situated in Survey No.253/5 and that no part of the property in Survey No.253/3 was in the enjoyment or holding of the plaintiff or his predecessors in interest.

5. The trial Court framed necessary issues and found that the plaintiff has not produced any document to establish his title over the 'C' Schedule property. Since the Will produced by the plaintiff does not contain the 'C' Schedule property and the documents produced by the plaintiff Exs.A-1 to A-13 do not pertain to the suit 'C' Schedule property, the suit was dismissed by the trial Court with costs. Aggrieved over the judgment and decree of the trial Court passed in O.S.317 of 2003, the plaintiff, preferred the appeal in A.S.No.97 of 2006 on the file of II Additional Subordinate Court, Villupuram.

6. During the pendency of the Appeal Suit, the plaintiff died and the appellants herein were impleaded as his legal representatives. The lower appellate Court confirmed the findings of the trial Court.



7. Going through the documents, Exs.X-1 to X-3, it was found that the property in Survey No.253/3 was not found in the holding of the plaintiff or his predecessors in title at any point of time. A finding was also recorded by the lower appellate Court that the documents, Exs.A-1 to A-13, do not prove the plaintiff's title over the 'C' Schedule property. Aggrieved by the judgment and decree of the lower appellate Court, this Second Appeal is preferred by the appellants.

8. At the time of admitting the Second Appeal, this Court framed the following substantial questions of law :

(i) Whether the Courts below erred in dismissing the suit without considering the plea of easement of necessity to approach the 'B' Schedule thatched house from the western side veethi through the 'C' Schedule vacant site when the plaintiff has specifically pleaded and proved the question of easement of necessity ?

(ii) Whether the Courts below erred in dismissing the case of the plaintiff by ignoring the documents of title Ex.A-1, A-2 and A-13 produced by the plaintiff on the basis of the patta produced by the defendant which was obtained behind the back of the plaintiff and when the appeal with respect to grant of such patta is pending before the competent authority under EA-10 ?

9. Very strangely, the appellants have raised the first question of law to consider the plea of easement of necessity to have access to the 'B' Schedule property. The plaintiff had filed the suit for declaration of his title over the entire 'A' Schedule property, including the suit 'C' Schedule property. Having failed to establish his title, the plaintiff or his legal heirs, who are appellants herein, cannot project the case of easement of necessity, which was never raised before the trial Court or the lower appellate Court. The plea of easement cannot be accepted once the plaintiff prayed for declaration of title, as the plea of title and easement cannot go together. Hence the first question of law is answered against the appellants.

10. The learned counsel for the Appellant submitted that the Courts below have not discussed the rights of parties with reference to the recitals of the document or extent or survey numbers that were dealt with in each document relied upon by the Plaintiff. This Court was put to surprise. It is the duty of the Counsel who appear for the Appellant to demonstrate before this Court, how the findings of the Trial Court or the Appellate



Court are wrong or to substantiate the grounds raised by the Appellant in the grounds of appeal by referring to documents.

11. In the present case, the learned counsel appearing for the appellant relied upon the draft plan appended to the plaint. The learned counsel appearing on behalf of the appellant submitted that the dispute is only with reference to the property which is shown as "C" Schedule in the plaint. The property which is described as "C" Schedule in the plaint is the property which is stated to be their property in new S.No.253/3 measuring 51 feet East-West and 22 feet South-North. The entire extent of 51 x 22 ft., which is equivalent to 1122 Ft. is also described in the plaint as one comprised in new S.No.253/3. However the document Exs.X1 and X2 are the chitta and adangal. In both the documents, the property in S.No.253/3 has been shown as the property in the holding of defendant B.Rajaram, S/o.Velayutham Padayachi. From the documents filed by the plaintiff it is seen that they do not pertain to suit "C" Schedule. The court documents establish that the property in S.No.253/3 has been shown as the property of defendant. Ex.A1 is a certified copy of Sale Deed dated 10.10.1915 bearing Document No.2218/1915. From the property description, it can be seen that the Sale Deed is in respect of several properties comprised in different survey numbers. Similarly, Ex.A2 is the certified copy of Sale Deed dated 29.04.1954 by which one Chinnammal, W/o.Ramasamy Padayachi purchased the property from one Chinnammal, W/o.Shanmuga Padayachi. In the property description in this document also, the property in S.No.253/3 is not mentioned.

12. When the Court has given a finding placing reliance on a few documents, unless the finding is demonstrated to be false, this Court cannot re-appreciate evidence on its own in the second appeal. When the counsel for the appellant has not even made an attempt to rely upon any of the documents which were relied upon by the Courts below, this Court is unable to appreciate the arguments of the learned counsel appearing for the appellant that the Courts below have failed to look into the contents of the documents and that the findings based on such documents cannot be accepted.

13. Taking a clue from the grounds of appeal raised by the appellants, this Court examined some of the documents, which were relied upon by the Courts below. This Court is unable to find any error of appreciation or irregularity in the judgments of the Courts below. The Courts below have properly applied their mind and found that the documents relied upon by the plaintiff/appellants have no relevance to the suit 'C' Schedule property. The second question of law also, raised by the appellants, has no substance. Since the questions of law raised



by the appellants are answered against the appellants, this Court has no reason to interfere with the well founded judgments of the Courts below.

14. Accordingly, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssr

To

1. The IInd Additional Subordinate Judge, Villupuram.

2. The IInd Additional District Munsif, Ulundurpet.

+1 CC to Mr.B.Abdulsamath, Advocate sr 29618.

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PP(CO)
SP(27/10/2021)