



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A. (MD)No.321 of 2021

and C.M.P. (MD)No.4350 of 2021

WEB COPY

1.Herbert Newton

2.M.Arokiya Selvarani

... Appellants/Appellants/Plaintiffs

Vs.

A.Subramanian

... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree of the Lower Appellate Court dated 16.07.2020 made in A.S.No.58 of 2018 on the file of the Additional Sub Court, Tirunelveli, confirming the judgment and decree of the trial Court dated 19.01.2018 made in O.S.No.454 of 2012 on the file of the I Additional District Munsif Court, Tirunelveli.

For Appellants

: Mr.S.P.Maharajan

For Respondent

: Mr.G.Prabhu Rajadurai

JUDGMENT

The plaintiffs, who lost before both the Courts below, have filed the present second appeal.

2.The appellants/ plaintiffs filed the suit seeking for the relief of declaration of title and for permanent injunction. In order to substantiate the title over the property, the appellants heavily relied upon Ex.A1 to Ex.A5 & Ex.A9. In order to prove their possession, they relied upon Ex.A6 to Ex.A8 and Ex.A10 to Ex.A14.

3.The Courts below on appreciation of evidence, found that the suit property originally belonged to one Esakkimuthu Vathiriyar. On going through the documents marked as Ex.A2 to Ex.A5, the Court below found that the names of the vendors found in those documents had absolutely no correlation to the original owner of the property namely Esakkimuthu Vathiriyar and there was absolutely no explanation as to how those persons had got the title over the suit property.

4.The Revenue Official, who was examined as D.W.2, testified that the suit properties originally was granted patta No.707 and it stood in the name of Subbiah Vathiriyar and four others. "A" Register extract was also marked to substantiate the same as Ex.X1. It is true that the defendant/respondent has also not proved the subject property. However, that cannot be a ground to decree the suit in favour of the appellants and a decree cannot be passed based



on the weakness of the case of the defendant. The Courts below gave categorical findings to the effect that the appellants did not prove their possession over the suit property.

5.In the considered view of this Court, there is no substantial question of law involved in the present second appeal and this Court cannot undertake the exercise of appreciation of evidence at this stage, since it is beyond the scope of the second appeal under Section 100 of the Civil Procedure Code.

6.In the result, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gns

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional Subordinate Judge,
Tirunelveli.

2.I Additional District Munsif Court,
Tirunelveli.

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-18630[F] dated 02/06/2021)

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-18703[F] dated 03/06/2021)

S.A. (MD) No.321 of 2021
02.06.2021

KK(16.06.2021) 2P 7C

<https://hcservices.ecourts.gov.in/hcservices/>