



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.03.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A. (MD) .No.549 of 2020

and

C.M.P. (MD) No.5987 of 2020

WEB COPY

1.M.Sethu Pandian

2.Marimuthu @ Chelladurai

3.Subramanian ..Appellants/Appellants/Defendant 1,2 & 4

Vs.

1.V.Karuppasamy

2.Muthulakshmi

3.Avudaiammal

4.Vittil Thevar

5.Gandhi ..Respondents/Respondents/Plaintiff&
Defendant 5 to 8

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.38 of 2016 on the file of the Additional Sub Court, Tirunelveli, dated 16.12.2019 confirming the judgment and decree passed in O.S.No.96 of 2011 dated 05.11.2016 on the file of the 1st Additional District Munsif Court, Tirunelveli.

For Appellants : Mr.T.Selvan
For R1 : Mr.K.Suresh Subramanian

JUDGMENT

The defendants 1, 2 and 4 in O.S.No.96 of 2011 are the appellants. The challenge is to the judgment and decree of the appellate Court in A.S.No.38 of 2016, which confirms the judgment and decree of the trial Court in O.S.No.96 of 2011, declaring the title of the plaintiff and granting a permanent injunction in favour of the plaintiff.

2.According to the plaintiff, the suit properties were purchased by him from one Subramanian under a sale deed dated 04.11.1997, registered as Doc.No.953/1997 and pursuant to the said purchase, the plaintiff has been in possession of the property and mutation of revenue records had been effected in his favour. While so, the defendants 1 to 4, claiming under some colour of title,



attempted to interfere with the plaintiff's possession on 05.05.2010 and on subsequent dates. Hence, the plaintiff had come up with the suit seeking declaration of title and injunction.

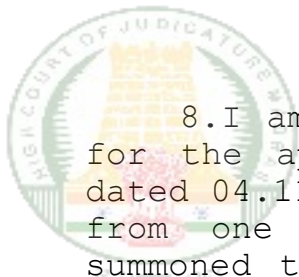
3.The suit was resisted by the defendants contending that the suit property belonged to one Subramania Pillai, S/o.Nellaiappa Pillai and that the defendants are the tenants under the said Subramania Pillai, S/o.Nellaiappa Pillai. It is also claimed that the lease is evidenced by a document (mlNthiy). It was also claimed that the said Subramania Pillai had executed certain documents exercising proprietary right over the suit property.

4.At trial, the plaintiff examined himself as P.W1 and one Hari Krishnan was examined as P.W2. Exs.A1 to A6 were marked. The 1st defendant was examined as D.W1 and one Karuppasamy was examined as D.W2. Exs.B1 to B3 were marked. The revenue records relating to the suit property were marked as witness documents, Exs.X1 to X5.

5.The trial Court, upon a consideration of the evidence on record, concluded that the plaintiff has proved his title and possession over the suit property, by virtue of his purchase under the sale deed, dated 04.11.1997. The mutation of revenue records in the name of the plaintiff was also taken into account, as a ground to buttress the claim of title made by the plaintiff. The admission of D.W1 in his evidence that the sale deed in favour of the plaintiff is true was also considered by the trial Court to grant a decree in favour of the plaintiff. The defendants were faulted for non production of the அட்வோகை which is said to be in existence. The documents, namely, Exs.B1 to B3, were considered and rejected on the ground that they cannot serve, as proof of title of Subramania Pillai. On the above conclusion, the learned trial Judge decreed the suit as prayed for. Aggrieved, the defendants 1, 2 and 4 preferred an appeal in A.S.No.38 of 2016. The learned appellate Judge, upon a re-consideration of the evidence on record, concurred with the findings of the trial Court and dismissed the appeal. Hence, the second appeal.

6.I have heard Mr.T.Selvan, learned counsel appearing for the appellants. Notice of motion was ordered on 30.11.2020. Mr.K.Suresh Subramanian, learned counsel appeared for the 1st respondent.

7.Mr.T.Selvan, learned counsel appearing for the appellants would vehemently contend that the Courts below were not right in believing the sale deed dated 04.11.1997, since no antecedent document has been produced and therefore, according to him, the plaintiff is not entitled to a declaration of title. He would further contend that Exs.B1 to B3 would atleast prove that Subramania Pillai, S/o.Nellaiappa Pillai, had atleast some right over the property.



8.I am unable to accept the submissions of the learned counsel for the appellants. The plaintiff claims under Ex.A1, sale deed dated 04.11.1997 and his claim is that he has purchased the property from one Subramanian, S/o.Parasurama Iyyar. The plaintiff has summoned the revenue records and the 'A' register relating to the suit village. It shows that the suit properties stood in the name of Subramanian, S/o.Parasurama Iyyar. This entry in the 'A' register would conclusively establish the fact that the properties stood registered in the name of Subramanian, S/o. Parasurama Iyer, from whom, the plaintiff had purchased the properties. The defendants have miserably failed to produce any document to show that Subramania Pillai, S/o.Nellaiappa Pillai had title to the property. The preceding of the Revenue Divisional Officer, under which patta was transferred in the name of the plaintiff, would also assume significance in the factual background. The Revenue Divisional Officer has considered the claim of the plaintiff in the light of the revenue records and had concluded that the plaintiff is entitled to mutation. There is no challenge to the said order. The defendants, who claim to be tenants under Subramania Pillai, S/o. Nellaiappa Pillai, have not produced even a scrap of paper to establish their tenancy and their possession.

9.In the light of the above, the Courts below cannot be faulted for granting a declaration of title in favour of the plaintiff. Despite his best efforts, the learned counsel for the appellants is unable to make out a question of law, much less a substantial question of law enabling me to entertain this second appeal. The appeal, therefore, fails and it is, accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Additional Subordinate Judge,
Tirunelveli.

2.1st Additional District Munsif,
Tirunelveli.

+1 CC to M/s.K.SURESH SUBRAMANIAN, Advocate (SR-12638[F] dated 22/03/2021)

S.A.(MD).No.549 of 2020
19.03.2021

MJ(CO)