BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 16.11.2021

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THE HON'BLE MRS.JUSTICE **V. BHAVANI SUBBAROYAN**

S.A.(MD) No.21 of 2014

C.Muthusamy ... Appellant/Appellant/Plaintiff

vs.

K.Soosaimanikkam ... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 25.07.2012 made in A.S. No.28 of 2011 on the file of the Sub Court, Kovilpatti confirming the judgment and decree dated 14.02.2011 made in O.S.No.200 of 2009 on the file of the District Munsif Court, Kovilpatti

For Appellant : Mr.G.Gomathi Sankar

For Respondent : Mr. M. Saravanan

JUDGMENT

Challenging the concurrent findings of the courts below in dismissing the relief of permanent injunction, the appellant has approached this court by way of the present Second Appeal.

2. The case of the plaintiff/appellant is as under:-

(i) The first item of the suit scheduled property belongs to one Manikkam by way of unregistered sale deed dated 24.06.1996 and he was in possession and enjoyment of the same by paying tax and thereafter on 08.09.2004 the said Manikkam sold the property to one Ramalakshmi, W/o. Kannayiram and she was in continuous possession and enjoyment of the same who has sold the same to the plaintiff by way of registered sale deed dated 04.03.2009. Whileso, when the plaintiff was out of station, on 04.03.2009 the defendant has encroached portion of the property and started construction of superstructure. On 07.03.2009 the plaintiff came and saw the construction and the plaintiff along with the villagers requested the defendant to stop the work. Since he refused to do so, the plaintiff on the advise of the elders in the village, gave a complaint before the Kovilpatti East Police

Station and by that time, the defendant completed the asbestos construction in the said property which is found in the second schedule of the suit property, which forms part of the first item of the suit scheduled property. The defendant also tried to obtain electricity connection and immediately the plaintiff had send a letter to the Village Panchayat President and Tamil Nadu Electricity Board by post. Thus the defendant had caused interference to the plaintiff from enjoying the suit scheduled property, hence he filed suit for declaration and permanent injunction and to remove the encroachment .

(ii) The defendant had filed a detailed counter stating that the purchase by the plaintiff has to be proved by him as the defendant is the owner of the property who is in occupation of the said land. The allegation of the plaintiff is that he has encroached upon and trying to construct a building is false and further submitted that the defendant purchased the property from one Kulanthaivelu on 18.11.1995 by way of an unregistered sale deed and he is possession and enjoyment of the same from that date and the plaintiff had send a notice stating that he had purchased the same on 23.03.2009 which is absolutely a false statement and prayed for dismissal of the suit.

3. On the above pleadings, the Trial Court had framed the following issues for consideration:-

(i) Whether the plaintiff is the absolute owner of the suit first scheduled property?
(ii) Whether the plaintiff is entitled for the relief of permanent injunction as against the defendant?
(iii) Whether the plaintiff is entitled for the relief of mandatory injunction as against the defendant?
(iv) To what other reliefs the plaintiff is entitled to?

4. During the trial, the plaintiff himself was examined as PW1 and nine documents were marked as Exs.A1 to A9 on the side of the plaintiff. The defendant examined himself as DW1 and five documents were marked as Exs. D.1 to D.5 on the side of the defendant.

5. On analysis of the oral and documentary evidence, the Trial Court had dismissed the suit for permanent injunction.

6. Aggrieved against the judgment and decree of the Trial Court, the plaintiff had preferred a first appeal contending that the Trial Court, without considering the documents filed by the plaintiff with regard to his possession and payment of house tax receipt had dismissed the same.

7. The first appellate court, after considering the oral and documentary evidence of the parties afresh, had concurred with the findings of the Trial Court and dismissed the appeal which is now under challenge in the present Second Appeal.

8. The said trial court has decided three issues and come to the conclusion that the plaintiff is claiming right over the property by way of an unregistered sale deed dated 23.03.2009 and in the said document the consideration of the property is Rs.11,000/-. As per the Registration Act, the document which is above Rs.200/- has to be compulsory registered and this document purchased for a sum of Rs.11,000/- is not admissible in evidence and hence the same was rejected. The prayer of the plaintiff is to grant mandatory injunction and permanent injunction as well as for declaration. The issue to be decided is whether the petitioner have title over the property. It is the case of the plaintiff that he had purchased the property by way of unregistered sale deed and the vendor also purchased the property by way of unregistered sale deed and the person namely Manikkam who is the vendor is no more and that being the case the plaintiff ought to have proved his title and right over the property by examining the legal heirs of the said Manikkam which had not been done and the possession is also to be proved. The plaintiff has not produced any document to prove his possession and only the legal notice which is issued being depended upon to prove his possession and also the plaintiff has not produced any document from the revenue department or examined the officials to prove whether he has obtained any patta for the said land or his predecessor in title is having patta for the said land. As no possession has been proved by the plaintiff and the document being an unregistered document the same was not accepted and rejected by the trial Court and no proof that tax has been demanded by the local body and no tax receipt has been produced to prove his possession or enjoyment. In the absence of any evidence to prove his possession and right over the property the Court has passed an appropriate judgment wherein the claim of the plaintiff has been rejected on the ground that the title, possession and enjoyment has not been proved by appropriate documents had dismissed the suit.

9. An appeal has been filed by the plaintiff in A.S. No.28 of 2011 and on 26.07.2012 and the same has been taken up for final disposal and after hearing the parties the appellate Court also concurred with the findings of the Trial Court and had dismissed the same.

10. Even in the appellate Court it is found that the plaintiff had purchased the property by way of an unregistered sale deed from one Ramalakshmi on 23.03.2009 who inturn had purchased the property by un registered sale deed from one Manikkam. The said

Manikkam alleged to have purchased the property on 24.06.1996 which is also an unregistered document and the plaintiff has not produced those documents also before the Court to prove that the title of predecessor . But the plaintiff has also not produced any document to show that the said vendor was in possession and enjoyment of the same, by producing any tax receipt or any revenue document.

11.As seen from the document and evidence produced the appellate Court has also come to the conclusion that the appellant/plaintiff has sent a notice and in the said plaint it is also found that before he could purchase the property by way of unregistered sale deed, the defendant had started construction in the said land and that being the case the appellate Court has also rejected the case of the appellant/plaintiff.

12.The appellant has filed this second appeal raising two substantial questions of law.

a) Whether the Courts below are correct in dismissing the suit when the plaintiff and the defendant claiming title under the unregistered sle deed and the plaintiff has produced his document in Ex.A.1 when the defendant does not produce any document in order to prove his title?

b) Whether the Courts below are given the weight to the documents filed by the plaintiff when the defendant also admitted the fact of the case?

13. The suit is not admitted and this Court need not indulge in depth regarding the questions of law raised. Inspite of that it is seen that when the plaintiff and defendant are claiming title under an unregistered sale deeds, it is only the issue of possession has to be decided as per Ex.A.1 , which is the unregistered sale document of the plaintiff, even though the defendant has not produced any document to prove his title to the said property.

14.It is the admitted fact that the before the plaintiff had purchased the property the defendant was in possession of the property and also the local body demanded tax and he has paid the same. By producing the payment receipts for the electricity connection issued to the said property also prove their possession. It is further noted that on the very next day of the alleged purchase the plaintiff had sent a notice to the local body and the Tamil Nadu Electricity Board to cancel the electricity connection which will prove that the plaintiff is not in possession of the said property.

15. That being the case, the title and the possession is not proved either by the plaintiff or the possession by the precedesor in title through an unregistered sale deed. This Court is of the

view that the plaintiff has got no case and has not made out any valid claim or evidence to prove his possession. This Court is not inclined to interfere with the well considered judgments passed by both the Courts below and the same is liable to be dismissed.

16. It is also seen that nobody can claim title over the property by way of unregistered sale deed . It is for the plaintiff and defendant to prove the possession by producing the document isssued in the manner known to law. The defendant has also not produced any registered title deed to show his ownership but he has proved that he is in possession of the property as the local body has demanded tax and he has also paid the same. The electricity connection which is also given to him which shows that the possession of the defendant and the further prayer for declaration and recovery of possession is rejected. Regarding the claim made by the plaintiff that on 14.08.2012 by letter, dated ந.க.எண். ஊ.நி.7/3156/2010> the Assistant Director of Panchayat, Tuticorin has informed that by Resolution No. 52 dated 25.01.2012 tax imposed on Soosai Manikkam has been cancelled by the said resolution of the Illupaiyurani Village Panchayat President.This will not give any advantage for the appellant as this document was issued in the year 2012 and the petitioner has filed the appeal suit in the year 2014, but produced it today which is not admissible. This document has not supported the case of the plaintiff, as it is only a demand of tax claim that has been cancelled and regarding the possession of the appellant he has not produced any document and mere avertment would not suffice and these factual aspects need not be gone into further which has not given riase to any question of law. Hence this Court is not inclined to interfere with the well reasoned judgments of both Courth.

17.In the result, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised 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 Sub Judge, Kovilpatti

2.The District Munsif, Kovilpatti

Copy to

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R. SUBRAMANIAN, Advocate (SR-34715[F] dated 17/11/2021)

+1 CC to M/s.G. GOMATHISANKAR, Advocate (SR-34660[F] dated 16/11/2021)

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