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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2021

PRONOUNCED ON : 07.03.2022

CORAM

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU
S.A.No.794 of 2005

Vijayalakshmi

...Appellant/Plaintiff

vs.

Tamilselvan

...Respondent/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgment and Decree dated 05.03.2004 passed in A.S.No.19 of 2003 on the file of the Principal Subordinate Judge, Tindivanam, reversing the Judgment and Decree dated 30.11.2001 passed in O.S.No.420 of 1995 on the file of the District Munsif cum Judicial Magistrate, Vanur.

For Appellant : M/s. Abirami
for Mr.V.Raghavachari

For Respondent : M/s.N.Mala

JUDGMENT

Challenge in this second appeal is to the Judgment and Decree dated 05.03.2004 passed in A.S.No.19 of 2003 on the file of the Principal Subordinate Judge, Tindivanam, reversing the Judgment and Decree dated 30.11.2001 passed in O.S.No.420 of 1995 on the file of the District Munsif cum Judicial Magistrate, Vanur.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court. The plaintiff is the appellant herein.

3. In the suit for declaration of the title and possession, the plaintiff could succeed only on the strength of his own title by reducing sufficient evidence and even if the title set up by the defendant is found against, in the absence of establishment of plaintiff's own title, the plaintiff must be non-suited. This is the legal position as reiterated in the case



of Union of India and others vs. Vasuki Cooperative Housing Society and others reported in AIR 2014 SC 937.

4. Whether the plaintiff has discharged this burden, was the issue to be decided. The trial court has held that the plaintiff is entitled to declaration and injunction but the First Appellate Court set aside the judgment and decree of the trial court and the suit came to be dismissed. Challenging the same, the appellant has preferred the Second Appeal.

5. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"(i). Whether the lower appellate Court is justified in dismissing the suit when the right of the appellant to the portion of the suit property is admitted?

(ii). Whether the lower appellate Court ought not to have applied the principle of roster, especially when the defendant has not produced any records to show that the predecessor in title had ever been in enjoyment of the property?

(iii). Whether the lower appellate Court had not failed to appreciate that the defendant had failed to prove his rights over the suit property through Sundaraj and it have not seen that the non examination of the Sundaraj is fatal to the case of the defendant?"

6. Heard the learned counsel for the appellant and the learned counsel for the respondent.

7. The suit property is an extent of 1.006 acres located in S.No.350/5A. The property was originally belonged to one Periyasamy Gounder. He had two sons, viz., Chinna Gounder and Govinda Gounder. Chinna Gounder died leaving behind his wife and two sons. He died in the year 1953. Oral Partition is pleaded in which suit property is said to have been allotted to Govinda Gounder and property in R.S.No.390/4 is allotted to Periyammal, who is the wife of Chinna Gounder.

8. Plaintiff claims title by way of purchase on 04.02.1993 from one Arumugam Gounder (tracing title through Govinda Gounder). The plaintiff claims that she had been in continuous possession and enjoyment of the property as a owner



by possession. The plaintiff has obtained title by adverse possession also. As the defendant was claiming title and enjoyment of the property, the suit for declaration was filed by the plaintiff.

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9. While disputing the title of the plaintiff, the defendant claimed that the suit property originally belonged to Govinda Gounder and the legal heirs of Chinna Gounder. The oral partition took place only after the sale of the property in R.S.No.390/4 and that the sale was by the two families together. In the partition, the suit property measuring an extent of 0.53 cents was given to Sundararajulu the branch of Chinna Gounder. The western portion measuring an extent of 0.53 cents was allotted to legal heirs of Govinda Gounder. Sundararajulu sold his share of 0.53 cents to Anjalaiaammal on 24.04.1981. Thereafter, defendant purchased the property on 05.07.1993 through a registered sale deed from Anjalaiaammal.

10. The main contention raised by the learned counsel for the appellant is that the judgment of the trial Court in decreeing the suit is based on reasoning and therefore the lower appellate Court should have upheld the same.

11. The contention raised by the learned counsel for the respondent is that the findings of the first appellate Court will serve no purpose and there is no substantial question of law raised in this case and therefore, the second appeal is liable to be dismissed.

12. The learned counsel for the appellant would submit that the first appellate Court has failed to appreciate the title deed under Ex.A1 and Ex.A2, which established the possession and enjoyment of the property by the legal heirs of Govinda Gounder and consequently possession and enjoyment of the property by the plaintiff. In order to appreciate this contention, the reasoning given by the lower appellate Court has to be looked into.

13. The claim of the plaintiff can be sustained only if the plaintiff proves the oral partition between his vendors predecessor in title and Chinna Gounder. There is a finding that there is no evidence as to the period during which the oral partition took place. In the later part of the judgment in Paragraph 27, there is a finding that there was no partition between Govinda Gounder and Chinna Gounder and that after the death of Chinna Gounder, there had been partition between Govinda Gounder and the legal heirs of Chinna Gounder.



14. The lower appellate Court has dealt with Ex.B1 - sale deed, which has been executed by Govinda Gounder as well as by the legal heirs of Chinna Gounder. If there had been an oral partition, there is no occasion for Govinda Gounder to be an executor in the sale deed. The plaintiff tried to explain this by saying that Govinda Gounder did not receive any consideration, even though he signed in the sale deed. This explanation obviously did not indicate truthfulness. It is also alleged that Govinda Gounder was the executor only because the purchaser insisted for that. This explanation obviously was not accepted by the first appellate Court. The existence of patta and other documents in the name of Govinda Gounder has been considered by the first appellate Court and the finding is that all those documents stored in the name of Govinda Gounder, as he happened to be the eldest member of the family. Even otherwise, when there is a title deed to show the title and there is a patta, title deed will prevail over patta.

15. The first appellate Court has also considered the fact that patta was not an individual patta, but it was a joint patta. The first appellate Court, while considering Ex.A2 sale deed, has considered the fact of oral partition between the sons of Govinda Goundar namely Arumuga Goundar and Sambandagoundar. Ex.A2 sale deed is an extent of 0.53 cents. There is also a finding that an extent of 0.53 cents, which is located to the west of the suit property alone could have been belonging to legal heir of Govinda Gounder, namely, Arumugam and Anbanandam. The eastern 0.53 cents over which the plaintiff's vendor did is the specific finding, which is not perverse. Therefore, when the plaintiff's vendor has no title and therefore the sale by the plaintiff's vendor is in favour of the plaintiff is without title. The finding that the plaintiff cannot claim any title based upon Ex.A1 sale deed is justified and therefore, the judgment of the first appellate Court is confirmed.

16. In the result, the second appeal is dismissed. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

- 1.The Principal Subordinate Judge, Tindivanam
- 2.The District Munsif cum Judicial Magistrate, Vanur.
- 3.The Section Officer, V.R.Section, High Court, Madras.

+1 CC to Mr.V.Raghavachari, Advocate sr 14831

+1 CC to M/s.N. Mala, Advocate sr 14969.

S.A.No.794 of 2005

NMI (CO)
SP(30/03/2022)