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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No. 1017 of 2013

and

M.P.No.1 of 2013

R. Rajendran

...Appellant/Appellant/Defendant

Vs

Karuppa Gounder (Died)

Palanisamy

...Respondent/2nd Respondent/2nd Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 17.04.2013 in A.S.No.23 of 2012 on the file of the Subordinate Court, Sathyamangalam and confirming the Judgment and Decree dated 15.10.2012 in O.S.No.148 of 2008 on the file of the District Munsif Court, Sathyamangalam.

For Appellant : Mr.I.C.Vasudevan

For Respondent : Mr.N.Manokaran

JUDGMENT

The defendant is the appellant in this second appeal.

2. The respondent/plaintiff filed a suit seeking for the relief of declaration to declare the registered settlement deed dated 20.06.2005 as null and void and for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property.

3. The case of the plaintiff is that the Government had assigned certain lands to the Ex-Servicemen Association and the Association formed a layout. Approval was also granted by the Town and Country Planning Authority. The suit property is one of the site in the said layout.

4. The original plaintiff namely Karuppa Gounder was an Ex-Serviceman and he was also the member of the Association.



He purchased the suit property from the Association through a registered sale deed dated 01.01.1981, marked as Ex.A3 (B4). Thereafter, he was in possession and enjoyment of the suit property.

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5. The further case of the plaintiff is that the defendant obtained a registered settlement deed dated 20.06.2005, marked as Ex.B5, from his father as if his father is the owner of the suit property. Taking advantage of this document, the defendant was attempting to interfere with the possession and enjoyment of the suit property. Hence, the suit came to be filed by Karuppa Gounder seeking for the relief of permanent injunction. During the pendency of the suit, he died on 27.12.2008 and he had executed a registered Will and bequeathed the property in favour of the second plaintiff. Hence, as a legatee, the second plaintiff succeeded to the property and he was substituted in the place of the original plaintiff.

6. The defendant filed a written statement and took a stand that Karuppa Gounder was the brother of his father. He was taken care by the defendant's father and he died leaving behind the defendant's father as Class II legal heir. Thereby, the father of the defendant became the absolute owner of the property. He executed a settlement deed in favour of the defendant and thereby the defendant became the owner of the property.

7. The defendant also filed an additional written statement and took a stand that Karuppa Gounder was the co-brother of his father. The defendant also reiterated his right over the property by virtue of the settlement deed and sought for the dismissal of the suit.

8. Both the Courts below, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, concurrently held in favour of the plaintiff and the suit was decreed. Aggrieved by the same, the defendant has filed the second appeal.

9. It is an admitted case that Karuppa Gounder is an Ex-Serviceman and the original sale deed was also executed in his favour. The defendant attempted to project the case as if the first plaintiff is not the assignee and there is yet another Karuppa Gounder, son of Ramana Gounder, who is the owner of the suit property. In order to ascertain this fact, both the Courts below appreciated the documents available on record and also Exs.X1 and X2. Both the Courts also took into consideration the oral evidence and they gave a categorical finding that the first plaintiff is the absolute owner of the suit property.

10. The first plaintiff executed a Will in favour of the second plaintiff and this Will was proved through the



attesting witness P.W.2. The second plaintiff is none other than the son-in-law of the first plaintiff. By virtue of the Will, the second plaintiff succeeded to the property.

11. The conduct of the defendant in this case makes him completely unbelievable. The defendant initially claimed that Karuppa Gounder is the brother of his father Ramasamy. Thereafter, he filed an additional written statement and claimed that Karuppa Gounder was his father's co-brother. During the cross examination, the defendant stated that Karuppa Gounder was his father's cousin brother. This vacillating stand taken by the defendant throws a lot of doubt on the claim made by the defendant over the suit property. Both the Courts below also found that the defendant did not produce any acceptable documents to establish the relationship between his father and Karuppa Gounder. Ex.B5, which was relied upon by the defendant was also found to be non-est in the eye of law, since the defendant failed to prove as to how his father became the owner of the suit property. The defendant has approached the Court with a false and motivated claim and both the Courts below rightly rejected the claim made by the defendant.

12. In the considered view of this Court, the findings rendered by both the Courts below does not suffer from any perversity and there is no ground to interfere with the same. In any event, no substantial question of law is involved in this second appeal.

13. In the result, this second appeal is dismissed. Consequently, connected miscellaneous petition is closed. Considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-

Assistant Registrar (CCC)

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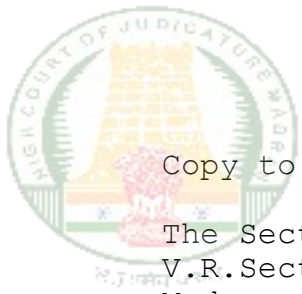
Sub Assistant Registrar

Lpp

To

1.The Subordinate Judge,
Sathyamangalam

2.The District Munsif,
Sathyamangalam.



Copy to:

The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.I.C.Vasudevan, Advocate SR. No.21459

+1cc to Mr.N.Manokaran, Advocate SR. No.21180

S.A.No. 1017 of 2013

and

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SKM (CO)

PR (19/04/2022)