



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

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WEB COPY

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.846 of 2015

K. Moorthy

...Appellant/Appellant/2<sup>nd</sup> Defendant

Vs.

1. P. Radha Devi

2. P. Geethamani

3. P. Sivaprasad

4. M. Uma

...Respondents/Respondent/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 19.06.2014 in A.S.No.9 of 2010 on the file of the Subordinate Judge, Poonamallee, confirming the Judgment and Decree dated 21.11.2006 in O.S.No.146 of 2001 on the file of the District Munsif-cum-Judicial Magistrate, Ambattur.

For Appellant : Ms.Usha Raman

For Respondents : Mr.R.Ramesh for R1

R2 to R4 - No appearance

JUDGMENT

The second defendant is the appellant in this second appeal.

2. The respondents/plaintiffs filed a suit seeking for the relief of permanent injunction against the defendants.

3. The case of the plaintiffs is that M/s.Erukkancheri Munusamy Mudaliar Charity was the original owner of the suit property. One P.L.Shanmugam purchased the property from the said charity through a registered sale deed dated 23.04.1982. This document was marked as Ex.A1. The said P.L.Shanmugam died intestate in the year 1992 and on his demise his legal heirs inherited the suit property. They wanted to sell the property and hence they appointed power of attorney agent through a registered power deed dated 22.04.1993, marked as Ex.A2. The first and second plaintiffs purchased the 'A and B' Schedule properties through sale deeds dated 21.08.1997, marked as Exs.A3 and A4. The third plaintiff purchased the 'C' Schedule property through a sale deed dated 14.08.1997, marked as Ex.A5.



Similarly, the fourth plaintiff purchased the 'D' Schedule property through a registered sale deed dated 14.08.1997, marked as Ex.A6. Subsequently, the revenue records was also mutated in the names of the plaintiffs and the patta was marked as Exs.A7 to A10.

4. The grievance of the plaintiffs is that the defendants, who did not have any right or title over the suit property, attempted to encroach upon the property. Aggrieved by the same, the suit came to be filed seeking for the relief of permanent injunction.

5. The case of the defendants is that the suit property belonged to M/s.Erukkancheri Munusamy Mudaliar Charity. They claimed that the suit property was transferred in the year 1937 through a Rokka Patta in favour of the grandfather of the defendants. Therefore, according to the defendants, there is no title for the plaintiffs in the suit property and they are not in possession and enjoyment of the property. Consequently, the defendants had sought for the dismissal of the suit.

6. Both the Courts below, based on the oral and documentary evidence and after considering the facts and circumstances of the case, concurrently held in favour of the plaintiffs and decreed the suit. Aggrieved by the same, the second defendant has filed the second appeal.

7. The learned counsel for the appellant submitted that the plaintiffs had not proved their title over the suit property and there was cloud over their title and inspite of the same, the plaintiffs did not seek for the relief of declaration of title. The learned counsel therefore submitted that the suit is liable to be dismissed on this ground alone. The learned counsel further submitted that the Trust had already transferred the property through a Rokka Patta to the grandfather of the defendants and hence there was no title for P.L.Shanmugam in the suit properties and through whom the plaintiffs are tracing their title. It was further submitted that both the Courts below failed to appreciate the documents filed on the side of the defendants to prove their possession in the suit property. The learned counsel, therefore submitted that the findings of both the Courts below, warrants the interference of this Court.

8. This Court carefully considered the submissions made on either side and carefully perused the materials available on record. This Court also carefully went through the findings of both the Courts below.



9. Both the Courts below categorically found that M/s. Erukkancheri Munusamy Mudaliar Charity was the original owner of the property and P.L.Shanmugam had purchased the property from the Charity through a valid document. On considering the issuance of Rokka Patta in favour of the grandfather of the defendants, both the Courts found that those documents can never be treated as a document of title. Both the Courts further found that the defendants were claiming right over the property from the year 1937 onwards and in order to substantiate the same, not a single document was filed before the Court. The earliest document, that was produced by the defendants, was documents pertaining to the year 1999. These documents are subsequent to the sale deeds that were executed in favour of P.L.Shanmugam in the year 1982 and the subsequent sale deeds executed in favour of the plaintiffs in the year 1997. Hence, both the Courts below concurrently held that the defendants neither proved their title nor possession in the suit property. On the other hand, both the Courts below found that the plaintiffs had not only filed the documents of title but also documents to prove their possession over the suit property. It must be borne in mind that the suit property is a vacant land and when it comes to possession of a vacant land, it is a settled principle that possession follows title. In this case, the title was held in favour of the plaintiffs and hence the plaintiffs must be construed to be in possession of the suit properties.

10. In the considered view of this Court, the findings of both the Courts below was based on oral and documentary evidence and this Court does not find any perversity in the findings of both the Courts below. In any event, no substantial questions of law are involved in the present second appeal.

11. In the result, this second appeal is dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

Lpp



To

1.The Subordinate Judge, Poonamallee

2.The District Munsif-cum-Judicial Magistrate, Ambattur.

+1 CC to Mr.R.Ramesh, Advocate sr 14260

+1 CC to M/s. Usha Raman, Advocate sr 14288

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SPD (CO)  
SP (28/03/2022)