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S.A.No.1036 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2022

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THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.1036 of 2022
and
CMP Nos.22154 & 22155 of 2022

Saraswathi

....

Appellant

Vs

1. Radhakrishnan

2. Jayapal

....

Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree passed in A.S.No.37 of 2017 dated 03.10.2019 on the file of the learned I Additional District and Sessions Judge, Vellore, confirming the Judgment and Decree dated 25.11.2014 made in E.A.No.478 of 2005 in E.P.No.32 of 2005 in O.S.No.301 of 2004 on the file of the learned Additional District Munsif Court, Vellore and set aside the same, by allowing this Second Appeal.

For Appellant : Mr.Luqmaan Sheriff
for T.K.Sathiaseelan

JUDGMENT

This second appeal is directed as against the Judgment and Decree dated 03.10.2019 passed in A.S.No.37 of 2017 on the file of the I Additional District and Sessions Judge, Vellore, confirming the Judgment



S.A.No.1036 of 2022

and Decree dated 25.11.2014 passed in E.A.No.478 of 2005 in E.P.No.32 of 2005 in O.S.No.301 of 2004 on the file of the Additional District Munsif Court, Vellore, thereby dismissing the application filed to set aside the proceedings in E.P.No.32 of 2005 in O.S.No.301 of 2004, including the order for delivery of possession and order for police aid.

2. The case of the appellant is that she is the absolute owner of the suit property and she is in possession and enjoyment of the same from the date of purchase i.e., from 07.04.2004. One Parasurama Gounder purchased the property from one Kulla Gounder by a registered sale deed dated 27.03.1929. He was in possession and enjoyment of the same. After the demise of the said Parasurama Gounder, his three sons became entitled to the same as his legal heirs. The petitioner had purchased the property from her vendor by a registered sale deed dated 07.04.2004 for a valid sale consideration. Therefore, the petitioner is a bonafide purchaser in respect of the suit property. She was raising crops in the suit property. The first respondent herein have obtained a decree in O.S.No.301 of 2004 on the file of the District Munsif Court, Vellore, for specific performance as against the second respondent. While being so, on 03.11.2005, the first respondent had attempted to take possession of the suit property. Therefore, she filed



S.A.No.1036 of 2022

an application under Order 21 Rule 99 and 101 to declare that she is the owner of the property and for declaration declaring that all the proceedings as null and void.

3. The first respondent resisted the suit on the ground that the suit property comprised in Survey No.416/B/1 of an extent of 0.03.5 Hect is the absolute properties of father of the second respondent i.e., Late Kandasamy, who died on 29.05.1992. After his demise, the second respondent and others were jointly enjoying the property and also the patta was transferred in the name of the second respondent herein. The second respondent entered into an agreement for sale. Thereafter, he failed to execute the sale deed and as such, the first respondent filed a suit for specific performance. After purchase of the suit property, he was issued a sale certificate and the possession of the property have also been taken over by the first respondent as early as on 03.11.2005 itself.

4. On the side of the petitioner, he had examined P.Ws.1 to 3 and marked Exs.P1 to P21. On the side of the first respondent, he examined R.Ws1 and 2 and marked Exs.R1 to R9. On considering the oral and documentary evidences adduced by the respective parties and the



S.A.No.1036 of 2022

submission made by the learned counsel, the Execution Court dismissed the suit. Aggrieved by the same, the petitioner preferred an appeal suit in A.S.No.37 of 2017 on the file of the I Additional District and Sessions Judge, Vellore and the same was dismissed and the judgment and decree passed by the trial Court was confirmed. Challenging the same, the present second appeal.

5. The learned counsel for the appellant has raised the following substantial questions of law:

i) Whether the first Appellate Court is correct in dismissing the petition filed by the appellant under Order 21 Rule 97 and Rule 101 of CPC ?

ii) Whether the appeal has to be allowed ?

iii) Whether the Lower Appellate Court is right in confirming erroneous Judgment of the Lower Court on the ground that the appellant has not proved his title over the suit property inspite of the sale deed in favour of the appellant marked as Ex.A1 ?

iv) Whether the Lower Appellate Court can confirm the Lower Court Judgment by alleging the appellant has failed to prove his possession in the suit property without considering the oral and documentary evidences adduced in the Trial Court ?



v) Whether the Lower Appellate Court has failed in remanding back the suit to the Trial Court for reconsideration of the exhibits marked on the side of the appellant in the suit ?

vi) Whether the Trial Court and the Lower Appellate Court are right in holding that the patta stands in the name of the defendant hence the appellant is not in possession and does not have title ?

6 . Heard, Mr.Luqmaan Sheriff, the learned counsel appearing for the appellant and this Court considered the submission made by the learned counsel for the appellant.

7. A perusal of the records reveals that the first respondent filed a suit for specific performance, in which the second respondent was set ex-parte. The first respondent, after verification of patta and other revenue documents, entered into an agreement with the second respondent and his mother dated 16.05.2003. The appellant herein had purchased the first item of the suit property by a registered sale deed dated 17.03.2004. The ex-parte decree was passed in the specific performance suit on 28.10.2004. It was not challenged by the second respondent. As per the decree dated 14.09.2015, the sale deed was executed in favour of the first respondent and



S.A.No.1036 of 2022

he had taken possession of the suit property, in the presence of Village Administrative Officer and Police Officials and also in the presence of R.W.2. The Senior Bailiff had adopted all the appropriate procedures and taken the possession of the suit property and handed it over to the first respondent herein. That apart, it is not a case of the appellant that he was dispossessed by the first respondent from the suit property. When the appellant filed an application under Order 21 Rule 97 which prescribed that where the holder of a decree for possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he or she may file an application to the Court complaining of such resistance or obstruction and thus, only the decree holder can maintain the petition under Order 21 Rule 97 of CPC.

8. Admittedly, the appellant is the third party to the proceedings. The provision under Order 21 Rule 97 and 99 have been construed to enable the Executing Court to adjudicate the inter se claims of the decree holder and the third parties in the execution proceedings themselves to avoid prolongation of litigation by driving parties to file independent suits. At the time of execution of decree no objector was present and thus none offered



S.A.No.1036 of 2022

any resistance or obstruction to the execution of the decree through Court.

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9. As such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the case. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in this appeal.

10. In view of above, this Second Appeal is dismissed and Judgment and Decree dated 03.10.2019 passed in A.S.No.37 of 2017 on the file of the I Additional District and Sessions Judge, Vellore, confirming the Judgment and Decree dated 25.11.2014 passed in E.A.No.478 of 2005 in E.P.No.32 of 2005 in O.S.No.301 of 2004 on the file of the Additional District Munsif Court, Vellore, is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.12.2022

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.



S.A.No.1036 of 2022

Lpp

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- To
- 1.The I Additional District and Sessions Judge, Vellore
 - 2.The Additional District Munsif Court, Vellore.

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