



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

S.A. No.935 of 2021

and

C.M.P. No.17700 of 2021

Velu @ Velayudam

.. Appellant/Appellant/Defendant

Versus

Pounammal

.. Respondents/Respondents/Plaintiff

Second Appeal filed under Section 100 of Civil Procedure Code, 1908, to set aside the judgment and decree dated 30.11.2020 passed in A.S. No.44 of 2018, on the file of the Additional Sub Court at Kallakurichi confirming the judgment and decree dated 30.01.2018 passed in O.S. No.298 of 2014, on the file of the I Additional District Munsif Court, Kallakurichi and consequently to dismiss the suit with throughout cost.

For Appellant : Mr. D.Irusappan

JUDGMENT

As against the concurrent judgment and decree of the Courts below, the defendant in the suit in O.S. No.298 of 2014 before the I Additional District Munsif Court, Kallakurichi, the above Second Appeal is preferred.

2. The respondent as plaintiff filed a suit in O.S. No.298 of 2014 before the I Additional District Munsif Court, Kallakurichi, for permanent injunction restraining the appellant herein from interfering with the peaceful possession and enjoyment of the suit property. It is the case of the plaintiff that the suit property originally belonged to one Meenatchiammal. It is the specific case of the plaintiff that the plaintiff is the only legal heir of the said Meenatchiammal and by virtue of a Will executed by Meenatchiammal on 10.08.1978, the suit property was bequeathed in favour of plaintiff. When there was correction in UDR records by introducing the name of one Pichamuthu as pattadhar, it is stated that the plaintiff came to know that some alienations had taken place and defendant had created some records to claim



title to the suit property. The suit was contested by the defendant on many grounds.

3. First of all, it was contended by the defendant that out of the total extent, an extent of 0.13 cent belonged to one Pachamuthu S/o. Muthusamy and another extent of 0.13 cent belonged to one Aadhimoolam. Though the sale deed in favour of Meenatchiammal is disputed in the written statement and the Will was described as a document of concoction, the appellant claimed title under two different sources to sustain his plea on title. Appellant claimed title to an extent of 13 cents from his grandfather, Athimoolam stating that it is his ancestral property. He also stated that an extent of 13 cents was orally purchased from one Pachamuthu. The trial Court, after framing necessary issues, specifically held that the plaintiff has proved her case. The Will under Ex.A1 was held to be true by the lower Court. Stating that the defendant / appellant has not substantiated the case pleaded in the written statement, the suit was decreed as prayed. Aggrieved by the same, the appellant preferred an appeal in A.S. No.44 of 2018 before the Additional Sub Court, Kallakurichi. Even the appellate Court dismissed the appeal confirming the judgment and decree of the trial Court. Aggrieved by the same, the above Second Appeal is preferred by the defendant.

4. In paragraph '4' of the written statement, the appellant has pleaded two different sources. He claimed that an extent of 13 cents belonged to his grandfather. No document of title or revenue record is produced to prove his case. In the second part of the same paragraph, the appellant admits that the entire suit property (27 cents) originally belonged to one Mottaya Servai. It is further stated that after the death of Mottaya Servai, the property was enjoyed by his son Pachamuthu. It is stated that the appellant's grandfather purchased the 13 cents orally from Pachamuthu and the remaining extent of 13 cents is being enjoyed by one Muthusamy son of Pachamuthu. The trial Court and the lower appellate Court examined the case of plaintiff and defendant with reference to the documents and concurrently found that the plaintiff has proved her case of title and possession. It was also found by Courts below that the appellant did not prove his case of title or enjoyment. The revenue records stands in the name of plaintiff and Pachamuthu, the father of Periyasamy under whom the plaintiff purchased the property. The appellant who claim title to 13 cents has not proved title or enjoyment as held by Courts below.

5. This Court is unable to find any merits in any of the



substantial questions of law framed by the plaintiff in the memorandum of grounds. Before the lower Court, the plaintiff have produced several documents apart from examining P.W.1 and P.W.2. The defendant / appellant has also filed few documents which would not support the case of the plaintiff. The Courts below, based on proper appreciation of evidence and documents apart from pleading, have come to the conclusion that the plaintiff has established her title. Findings of Court below are supported by pleadings and documents and there is no ground to interfere with the judgment and decree of the trial Court. The counsel for appellant is unable to demonstrate a semblance of right in favour of the appellant.

6. Having regard to the concurrent findings of Courts below, this Court is unable to sustain any of the substantial questions of law raised in the appeal. In view of the settled position of law on the scope of Section 100 C.P.C., this Court is unable to find any reason to interfere with the order of the Courts below. Accordingly, this Second Appeal is dismissed at the admission stage itself. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Bkn

To

1. The Additional Sub Court at Kallakurichi.
2. The 1st Additional District Munsif,
Kallakurichi.

Copy To

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.D.Senthil Kumar, Advocate SR.No.7838

S.A. No. 935 of 2021

SJ(CO)
GN(22/03/2022)