



S.A.No.967 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

S.A.No.967 of 2022

G.Veeramani ... Appellant / Appellant / Plaintiff

Vs

1.Kanniammal
2.G.Arumugam ... Respondents / Respondents / Defendants

PRAYER : Second Appeal filed under Section 100 of CPC praying to allow this appeal by setting aside the judgment and decree in A.S.No.14 of 2017 dated 18.02.2019 on the file of the learned Additional Subordinate Judge, Chengalpattu, by confirming the judgment and decree in O.S.No.1 of 2008 dated 28.04.2016 on the file of the learned District Munsif, Chengalpattu.

For Appellant : Mr.S.Krishnasamy



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J U D G M E N T

The plaintiff who has concurrently lost before the Courts below is the appellant before this Court.

2. The facts which has led to the filing of the above second appeal are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff had filed the suit for the following reliefs in O.S.No.1 of 2008 before the learned District Munsif Judge, Chengalpet.

a) declare that the plaintiff alone is the absolute and exclusive owner of the suit property; and

b) grant the consequential relief of permanent injunction against the defendants restraining them their men, agents and servants from in any way interfering with the suit property.



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4. It is the case of the plaintiff that his grand father Vedhachala Pillai had purchased 0.13 cents and other properties under a registered Sale Deed dated 24.09.1914 from one Subramanianar. Till his life time, the said Vedhachala Pillai had enjoyed the properties. Apart from 0.13 cents, another extent of 0.04 cents in the same survey number was the ancestral property of Vedhachala Pillai. Therefore, the said Vedhachala Pillai had enjoyed the total extent of 0.17 cents. Vedhachala Pillai had 3 sons, the plaintiff's father, Gopal Rathina Pillai @ Gopal Pillai, Nataraja Pillai and Damodhara Pillai. The plaintiff's grand father had died on 20.03.1994. After the demise of Vedhachala Pillai, they were enjoying the property in common and even during his life time, the brothers had orally relinquished their share in the property in favour of the plaintiff's father. Thereafter, the children of Nataraja Pillai and Gajendran had executed a Sale Deed with respect to the entire property in favour of the plaintiff after receiving a sum of Rs.50,000/-. The plaintiff would submit that he has mutated the revenue records in his name in Patta No.77. The defendants who have no right over the suit property had started to interfere



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with the plaintiff's possession and enjoyment of the suit property.

Therefore, the plaintiff had come forward with the suit.

5. The second defendant had filed a written statement, which was adopted by the first respondent, in which, they would deny the allegations contained in the plaint that the property belongs absolute to the plaintiff. It was their case that the said Vedhachala Pillai had a son Elumalai Pillai, who had succeeded to the estate as a Member of the Hindu Joint Family. The first defendant is the only daughter of the said Elumalai Pillai. Kamalammal is the wife of Elumalai Pillai and the daughter-in-law of Vedhachala Pillai. The suit property is the ancestral property of Elumalai Pillai, who has obtained patta in Patta No.77. He had died intestate on 17.02.2004, leaving behind his wife, Kamalammal and the first defendant, his daughter. The said Kamalammal had also died intestate on 09.09.2005. The first defendant as their only daughter succeeded to the property. The defendants have been enjoying the said property continuously for more than 20 years and have prescribed title to the property. The first defendant had sold the property in favour of the second



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defendant on 26.03.2007 after receiving valuable consideration and the second defendant has taken physical possession of the property and is in continuous possession and enjoyment of the same. The revenue records have also been transferred in the name of the second defendant in Patta No.1411. The present suit is nothing but an attempt to grab money from the second defendant. The suit filed as if the plaintiff is in possession is totally false. It is the second defendant, who is cultivating the lands. Therefore, they sought for dismissal of the suit.

6. The trial Court had framed the following issues:

- (i) Whether the plaintiff is in possession and enjoyment of the suit property?*
- (ii) Whether the plaintiff is entitled for declaration as prayed for?*
- (iii) Whether the plaintiff is entitled for permanent injunction as prayed for?*

7. On the side of the plaintiff, the plaintiff had examined himself as P.W1 and marked Exs.A1 to A6 besides examining one Ellappan as



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P.W2. On the side of the defendants, the second defendant has examined himself as D.W1 and one Marimuthu as D.W2. Exs.B1 to B9 were marked on their side.

8. The learned District Munsif, Chengalpet, on considering the evidence, had dismissed the suit. Aggrieved by which, the plaintiff had filed an appeal in A.S.No.14 of 2017 on the file of the learned Additional Subordinate Judge, Chengalpet. The learned Additional Subordinate Judge had also confirmed the findings of the trial Court and dismissed the appeal. The learned Judge has considered the admissions made in cross by the plaintiff to arrive at the conclusion. Challenging the above judgments and decree, the plaintiff is before this Court.

9. Heard the learned counsel for the appellant and perused the materials available on record.

10. The suit is filed for declaring the plaintiff to be the absolute owner of the suit schedule property. However, while perusing the course



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of the evidence, it appears that the said Vedhachala Pillai, who admittedly is the common ancestor had purchased the property under Ex.A1- Sale Deed. However, the learned trial Judge has held that the document is a mutilated one and it is not possible to verify the corresponding old Survey No.656/3 and further 0.13 cents has been purchased under Ex.A1. Ex.A2 does not pertain to the suit property and Ex.A3-Encumbrance Certificate does not reflect the transaction that has been pleaded by the plaintiff. The plaintiff has not produced any document to co-relate the old Survey number with the new Survey number. The plaintiff as P.W1 has admitted to the fact that though Patta No.77 is issued in the name of Elumalai Pillai neither he nor his vendors have raised any objections to the same for all these years. The plaintiff has himself pleaded partition amongst the legal heirs of Vedhachala Pillai and that Elumalai Pillai is one of the legal heirs of Vedachala Pillai, therefore if patta stands in his name it would only go to show that the property was allotted to his share. Further, the plaintiff has not produced any document to prove his possession and enjoyment of the property. On the contrary, the defendants have filed the documents to show their enjoyment of the suit property. That apart, the plaintiff has not



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chosen to cross examine D.Ws 1 and 2 or question the documents filed by them which only implies that the plaintiff has accepted the evidence in chief as stated by these witnesses. The plaintiff having filed the suit for declaring his absolute right to the property has miserably failed to prove the same. Both the Courts have extensively considered the evidence on record and rejected the plaintiff's case. I see no reason to hold otherwise particularly when the appellant / plaintiff has not been able to make out any perversity or error in the judgments passed by the Courts below. Further, the appeal does not give rise to question of law much less than a substantial question of law. Accordingly, the second appeal is dismissed.

No costs.

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Index:Yes / No

Speaking Order : Yes/No

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To

1. The Additional Sub Judge, Chengalpattu.
2. The District Munsif, Chengalpattu.
3. The Section Officer, V.R.Section High Court, Madras



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P.T.ASHA, J.,

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