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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

S.A.No.33 of 2017
and
C.M.P. No.438 of 2017

Palani

..Appellant/1st Defendant

Vs.

1. Pappa
represented by her Power of Attorney,
Kalaiselvi,
Ambedkar Colony,
Dharmapuri Town,
Dharmapuri Taluk,
Dharmapuri District.
2. The Commissioner,
Dharmapuri Municipality,
Dharmapuri,
Dharmapuri District.
3. The Tahsildar,
Dharmapuri Taluk,
Dharmapuri District.
4. The District Collector,
Dharmapuri Taluk,
Dharmapuri District.

..Respondents/Plaintiff,
Defendants 2 to 4

Second Appeal filed is under Section 100 of Civil Procedure Code, 1908, to set aside the judgment and decree dated 20.04.2015 passed in A.S. No.69 of 2014 by the learned Subordinate Judge, Dharmapuri in conforming the judgment and decree passed in O.S. No.35 of 2012 on 10.07.2014 by the learned District Munsif, Dharmapuri.

For Appellant : Mr. M.R.Jothimanian

For Respondents : Mr. V.Raghavachari for R1
Mr. D.Gopal,
Government Advocate (C.S) for R2
Mr. P.Harish for R3 and R4



JUDGMENT

The first defendant in the suit in O.S.No.35 of 2012 is the appellant in the above second appeal. The first respondent in the above appeal as plaintiff filed a suit in O.S. No.35 of 2012 before the District Munsif Court, Dharmapuri, for declaration of her title to the suit property and for consequential injunction restraining the defendants and their men from trespassing or interfering with the peaceful possession of the plaintiff in the suit property.

2.The suit property is described as a property situated in town survey No.C35/52 C35/53 and C35/54 in Virupatchipuram Revenue Village, Dharmapuri Taluk. The case of the first respondent in the plaint is that the suit property originally belonged to the plaintiff and her husband and that they were enjoying the same for more than 40 years. It is stated that the Special Tahsildar, Natham, Dharmapuri Taluk, issued patta in favour of plaintiff on 15.07.1992. It is further stated that the plaintiff is in possession and enjoyment of the suit property. Though it is stated by the plaintiff that her husband constructed a tiled house in the suit property covering substantial portion, the remaining portion of the suit property was kept vacant for their convenient enjoyment. It is the further case that about thirty years ago, the plaintiff had three houses bearing Door No.14 E, 14 and 14 D and that she was enjoying all the three house without any hindrance. It is contended that the plaintiff is living in Door No.14/40 and the first defendant is living nearby the suit property on the eastern side. Though there is no dispute with regard to Door No.14 and 14 E, it is stated by the plaintiff that the first defendant failed to get a sale deed at his request in respect of Door No.14 D and started giving trouble to the plaintiff. Though it is admitted by the plaintiff that the houses which were constructed long back had fallen down about five years ago and the suit property is kept as vacant side, it is stated further that the first defendant's mother was employed as a Sweeper and the father of first defendant who was also appointed as Assistant to the Bill Collector, influenced the officials to alter municipal records and created false records on the file of second defendant with a view to grab the suit property from the plaintiff.

3.The suit was resisted by the first defendant by refuting the plaint averments. It is admitted that the plaintiff's husband by name Chellan and the father of first defendant by name Selvam are brothers. It is the case of the first defendant that the suit property and other properties belonged to the plaintiff's husband and the father of first defendant. Stating that they were enjoying the property in common, the first



defendant contended that there was a partition in 1990 and that the first defendant's father informed the revenue and municipal authorities for sub-division and obtained an order in his favour for mutation by proceedings of Tahsildar dated 10.07.1992. It is also stated that the Tahsildar of Dharmapuri Taluk has issued Manaiivari Patta in favour of first defendant's father. The first defendant has also contended that the Tahsildar concerned has also granted patta in favour of the appellant. It is further stated that the plaintiff herself executed a sale deed in respect of Door No.14 E. It is further stated in the written statement that the suit in O.S. No.174 of 2009 was filed by the plaintiff earlier for similar relief and that the suit was later withdrawn with a liberty to file a fresh suit. However, the learned counsel submitted that the suit property which is described in the earlier suit is different from the present suit.

4.The trial Court decreed the suit after specifically framing issues relating to title and possession. After specifically holding that the plaintiff has proved her title to the suit property and that she is in possession of the suit property, based on oral and documentary evidence the trial Court held that the plaintiff is entitled to the relief of declaration and injunction.

5.On perusal of every document that was relied upon by the first defendant, the trial Court observed that the plea of title is neither supported by document nor proved by other means. It is to be noted that the trial Court considered the pleadings and evidence on the basis of oral and documentary evidence adduced by both parties and it is seen that on proper appreciation of evidence, the trial Court came to the conclusion that the plaintiff has established her title and the defendant has not produced any document to prove any semblance of right. Aggrieved by the judgment and decree of the trial Court, the first defendant preferred an appeal in A.S. No.69 of 2014 before the Sub Court, Dharmapuri, The lower appellate Court also considered the points raised by the appellant independently and confirmed the judgment and decree of the trial Court. Aggrieved by the concurrent findings of the Courts below, the above second appeal is preferred by the first defendant in the suit.

6.The appellant raised the following substantial questions of law in memorandum of grounds of appeal:

"1. Whether the plaintiff / 1st respondent herein is entitled to get the relief of declaration of the suit property without any title ?

2.Whether the Courts below are properly appreciating the evidences and exhibits to decree the suit and confirming the same ?



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3. Whether the Courts below are properly considering the S.Nos. In the schedule of properties mentioned in O.S.NO.174 of 2009 and this Suit in O.S.No.35 of 2012 ?

4. Whether the Courts below are rejecting the claim of appellant / 1st defendant based on the sale of suit property dated 12.12.1992 in respect of Door No.14-D is correct ?"

7. In this case, the appellant has not filed any document to prove his case that his father and the respondent's husband jointly owned the suit property. The case of plaintiff / first respondent is supported by oral and documentary evidence. The plaintiff produced Ex.A2, the patta issued to the plaintiff. The defendant has not produced any sale deed obtained from plaintiff as alleged. The transfer of patta later was on the basis as if he had obtained sale deed from plaintiff. Hence the order was obtained by misrepresentation. In such circumstances, the plaintiff's entitlement to get the relief of declaration declaring the title of plaintiff cannot be resisted. Before the lower Court, the plaintiff examined one Kalaiselvi who is the power of attorney agent of plaintiff. Documents under Exs.A1 to A14 were filed. From the documents filed by the plaintiffs, it is seen that the revenue documents are standing in the name of plaintiff's husband. The patta under Natham settlement scheme was factually issued in favour of plaintiff. In such circumstances, the suit property which was classified as Natham cannot be claimed by anyone who is not in possession of the property. Both the Courts have concurrently held that the first defendant though claimed ownership along with the plaintiff's husband, has not let in any evidence to prove his ownership.

8. Learned counsel appearing for the appellant submitted that the appellant has filed an application before the lower appellate Court for reception of additional documents along with the original documents and submitted that he could not get the copy of documents. When the counsel appearing for the appellant was given a fair opportunity to put forth his case as regards the additional documents sought to be filed before the lower Court, the counsel produced few documents in respect of which there is no pleading. The learned counsel for the appellant further admitted that the documents which were filed by him as additional document is neither registered nor stamped even though they are document of conveyance. In such circumstances, this Court is unable to accept the case of learned counsel for the appellant.

9. It is open to any party to furnish additional documents before the trial Court or the appellate Court. However, the provisions under Order 41 Rule 27 C.P.C. has to be satisfied if



the appellant files an application before this Court. None of the unregistered and unstamped document is admissible even for collateral purpose. The law is settled that unregistered and unstamped document cannot be let in evidence. The contention of the learned counsel for the appellant that he should be given a fair opportunity to produce the document cannot be accepted. The learned counsel has not produced before this Court the application he had filed before the lower Court and the reasoning of the lower Court in refusing to receive additional documents. Even before this Court no application is filed for reception of additional documents even though the appeal is pending from the year 2017. The Court has reasons to believe that the appellant was not in position to file these documents at the relevant point of time satisfying the requirements of Order 41 Rule 27 C.P.C. In this case, not even a genuine attempt is made by the learned counsel for the appellant for production of documents which were marked or filed as additional documents before the lower Court. The questions of law framed by the appellant reveals that they have no substance and raised without considering the factual findings by Courts below based on appreciation of evidence.

10. Having regard to the position that the judgment and decree of the Courts below are based on appreciation of evidence, there is no illegality or irregularity in the decision or decision making process. Further it is to be seen that the counsel for the appellant is unable to demonstrate before this Court by referring to any perversity in the findings. Since this Court has no reasons to interfere with the concurrent findings and facts, is unable to appreciate any of the substantial questions of law raised in this appeal.

11. In fine, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bkn

To

1. The Subordinate Judge,
Dharmapuri.



2. The District Munsif,
Dharmapuri.

Copy To

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The Section Officer,
V.R.Section,
High Court,
Madras - 104.

+1cc to Mr.D.Gopal, Advocate, S.R.No.11190

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.11306

+1cc to the Special Government Pleader, S.R.No.11319

S.A. No. 33 of 2017

KK(CO)
RGA(07/04/2022)