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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)Nos.338 & 339 of 2010

and

M.P.(MD)No.1 of 2010

In S.A. (MD)No.338 of 2010

1.A.Jeyalakshmi

2.A.Chelladurai

... Appellants / Appellants /
Defendants 1 & 2

-Vs-

1.D.Premkumar

... 1st Respondent / 1st Respondent /
Plaintiff

2.Thangammal

(Notice may be dispensed on
2nd Respondent she is exparte
in 1st Appellate Court)

... 2nd Respondent / 2nd Respondent /
3rd Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.134 of 2003 on the file of the Additional District Court / Fast Track Court No.1, Thoothukudi, dated 05.10.2009 confirming the judgment and decree in O.S.No.202 of 1996 on the file of the Sub Court, Thoothukudi, dated 07.07.2003.

For Appellants : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.S.Yasar Asarath

For R1 : Mr.M.P.Senthil

In S.A. (MD)No.339 of 2010

A.Jeyalakshmi

... Appellant / Appellant / Plaintiff

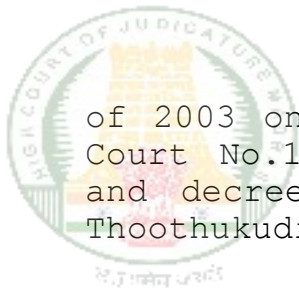
-Vs-

D.Premkumar

... Respondent / Respondent / Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, by setting aside the judgment and decree passed in A.S.No.208

<https://hcservices.ecourts.gov.in/hcservices/>



of 2003 on the file of the Additional District Court / Fast Track Court No.1, Thoothukudi, dated 05.10.2009 confirming the judgment and decree in O.S.No.80 of 1997 on the file of the Sub Court, Thoothukudi, dated 07.07.2003.

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For Appellant : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.S.Yasar Asarath

For Respondent : Mr.M.P.Senthil

COMMON JUDGMENT

The first appellant herein namely A.Jeya Lakshmi filed O.S.No.166 of 1996 on the file of the District Munsif Court, Tuticorin seeking permanent injunction restraining the first respondent herein namely Prem Kumar from interfering with her possession and enjoyment of the suit items 1 & 2. The first respondent herein filed O.S.No.202 of 1996 on the file of the Sub Court, Tuticorin, seeking the relief of declaration and recovery of possession in respect of the suit items 1 to 3. O.S.No.166 of 1996 was transferred to the file of the Sub Court, Tuticorin and renumbered as O.S.No.80 of 1997 and tried along with O.S.No.202 of 1996. Based on the divergent pleadings, in both the suits, issues were framed. Prem Kumar was examined as P.W.1. Three other witnesses were examined on his side. Ex.A1 to Ex.A22 were marked. Kamaraj Son of Jeya Lakshmi was examined as D.W.1. Ex.B1 to Ex.B23 were marked. After considering the evidence on record, by judgment and decree dated 07.07.2003, the trial court dismissed the suit filed by Jeya Lakshmi and decreed the suit filed by Premkumar as prayed for. In the suit filed by D.Prem Kumar, there were three defendants. While the 3rd defendant Thangammal did not challenge the judgment and decree rendered against her, the appellants alone filed A.S.No.134 of 2003 and A.S.No.208 of 2003. Both the appeals were dismissed by the first appellate Court by the impugned judgment and decree dated 05.10.2009. Aggrieved by the same, the second appeals have been filed. S.A.(MD)No.338 of 2010 arises out of O.S.No.202 of 1996, while S.A.(MD)No.339 of 2010 arises out of O.S.No.80 of 1997. Though these appeals were filed in the year 2010, till date, they have not been admitted.

2. The learned senior counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame the substantial question of law and admit these second appeals and then take them up 'for disposal'.

3. Per contra, the learned counsel appearing for the first respondent D.Prem Kumar submitted that the impugned judgment and decree do not call for any interference.



4. I carefully considered the rival contentions and went through the evidence on record.

5. Though the first respondent sought the relief of declaration and recovery of possession in respect of all the three suit schedules, the contest in these appeals revolves only around the suit schedules 1 & 2. Admittedly, the first appellant herein Jeya Lakshmi does not have any title document in respect of the suit 1st schedule. The courts below have concurrently found that the documents filed by the first appellant do not correlate to suit 1st schedule and held against her. As regards the suit 2nd schedule, the first appellant claimed title by virtue of the sale deed dated 09.09.1992 executed by one Krishnadoss. The courts below have found that there was nothing on record to show that the vendor Krishnadoss had any right or title or interest over the suit schedule. In fact, Ex.B21-sale deed dated 09.09.1992 did not pertain to the suit 2nd schedule at all. Only by virtue of the rectification deed, a right was sought to be established over the suit 2nd schedule. The courts below have noted that the rectification deed dated 09.08.1997 came into existence after the filing of the suit and rightly ignored the same.

6. The learned senior counsel appearing for the appellants would point out that the entire case of the first respondent is anchored on Ex.A8, Ex.A9 & Ex.A10. He would point out that these pattas were issued in favour of the first respondent's vendor on the same date and in clear violation of the G.O.Ms.No.376, Revenue Department dated 08.03.1988. The said G.O was marked as Ex.B5. I went through the contents of the said G.O. The said G.O prohibits and bans assignment of the land within 16 kilometers of the District Headquarters. Ex.A8 to Ex.A10 are not assignment pattas. They are regular revenue pattas. Therefore, the issuance of Ex.A8 to Ex.A10 will not fall within the prohibition set out in Ex.B5-G.O. The courts below have found that the vendor of the first respondent herein was in possession of the suit property for a long period and in recognition of the same, Ex.A8 to Ex.A10 were issued. From the said three pattadhars, the plaintiff had purchased the suit schedule items under Ex.A1 dated 28.01.1993, Ex.A5 dated 24.11.1995 & Ex.A7 dated 31.01.1993. The first respondent had also been issued with patta by the competent authority. The courts below after a careful consideration of the entire evidence on record came to the conclusion that the first respondent herein had established better title compared to the appellants herein. No doubt, the first appellant also produced some documents which were of the year 1974. But then, those documents do not pertain to the suit property. They pertain to the property comprised in Ward No.20 whereas the suit schedule item is located in Ward No.21.

7. I am only exercising jurisdiction under Section 100 of C.P.C. The first appellate court is the final court of fact. <https://hcservices.courts.gov.in/hcservices/> findings are shown to be perverse, I cannot interfere.



No substantial question of law is involved. These second appeals are dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Additional District Judge /
Fast Track Court No.1, Thoothukudi.

2.The Subordinate Judge, Thoothukudi.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S. YASARARAFATH, Advocate (SR-19953[F] dated 21/04/2022)

+2 CC to M/s.M.P.SENTHIL, Advocate (SR-19997,19996[F] dated 21/04/2022)

S.A. (MD) Nos.338 & 339 of 2010
20.04.2022

RK(06/06/2022) 4P 8C