



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.380 of 2010

WEB COPY

A.Ramalingam ... Appellant / Appellant / Plaintiff
-Vs-

P.Alagammal ... Respondent / Respondent / Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree made in A.S.No.151 of 2009 dated 16.12.2009 on the file of the Principal Sub Court, Madurai confirming the judgment and decree made in O.S.No.1178 of 2000 dated 31.07.2009 on the file of the Additional District Munsif Court, Madurai Town.

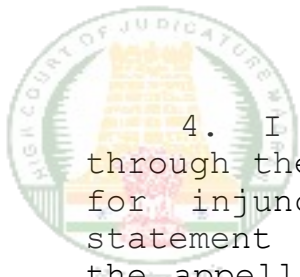
For Appellant : Mr.M.Thirunavukkarasu
For Respondent : Mr.K.Muraleedharan

JUDGMENT

The plaintiff in O.S.No.1178 of 2000 on the file of the Additional District Munsif, Madurai Town is the appellant in this second appeal. He filed the said suit seeking the relief of permanent injunction. The respondent filed written statement controverting the plaint averments. The plaintiff examined himself as P.W.1 and one of his vendors namely Muthu was examined as P.W.2. Ex.A1 to Ex.A26 were marked. The defendant examined herself as D.W.1. Ex.B1 to Ex.B9 were marked. The trial court vide judgment and decree dated 31.07.2009 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.151 of 2009 before the Principal Sub Court, Madurai. Vide judgment and decree dated 16.12.2009, the first appeal was also dismissed. Challenging the same, the second appeal came to be filed. Though the second appeal was filed way back in the year 2010, only notice was ordered and it has not been admitted till date.

2. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to formally admit the appeal after framing the substantial question of law.

3. Per contra, the learned counsel appearing for the respondent submitted that no substantial question of law arises for consideration.



4. I carefully considered the rival contentions and went through the evidence on record. The appellant herein filed the suit for injunction simpliciter. The respondent in her written statement questioned the very title of the appellant. Therefore, the appellant ought to have amended the suit prayer and sought the relief of declaration also. He failed to do so. That apart, both the documents of title, on which, the appellant is placing reliance namely Ex.A10 dated 21.08.1993 and Ex.A11 dated 28.06.1997, are unregistered documents. Of-course, the appellant's counsel would point out that the necessary stamp duty and penalty was paid and only thereafter, the documents were admitted. Admitting of the documents on payment of stamp duty and penalty will not make any difference. The transfer of title in this case could have taken place only through registered instruments. Through an unregistered sale deed, there cannot be any transfer of title. Therefore, the courts below were right in holding that Ex.A10 and Ex.A11 will not confer any right on the appellant herein.

5. Of-course, the appellant's counsel would state that Ex.A5 and Ex.A6 would definitely prove his possession. Ex.A5 is demand notice for tax, while Ex.A6 is property tax receipt. As rightly pointed out by the learned counsel appearing for the respondent, the plaintiff had failed to correlate these two documents to the suit property. When the courts below have concurrently found against the plaintiff, I do not deem it fit and appropriate to interfere at the stage of second appeal. The plaintiff claims to have purchased from one Muthu and one Aathi Lakshmi. There is nothing on record to show that Muthu had any title over any portion of the suit property. The appellant's counsel would now claim that Aathi Lakshmi was assigned the property that was sold by her under Ex.A11 and that he is now ready to file the same as additional evidence. The suit was filed in 2009. We are now in 2022. Nothing stopped the appellant from filing the assignment deed of Athilakshmi at the time of trial or atleast before the first appellate court. I decline to entertain the request made by the appellant's counsel at the stage of final hearing. No substantial question of law arises for consideration. The second appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Principal Sub Court, Madurai.

2.The Additional District Munsif Court, Madurai Town.

Copy To

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

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-6092[F] dated
15/02/2022)

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SS (CO)

KB (28.02.2022) 3P 6C