



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.78 of 2010

Selvanayagam

... Appellant/Appellant/Plaintiff
Vs.

1. Dhasan Nadar
2. Muppithathi Nadar (Died)
3. Raja Vincent

...Respondents/Respondents/
Defendants 1, 3 and 4

4. Thangalakshmi
5. Muthukani
6. Selvi

... Respondents

(R-4 to R6 were brought on record as LR's. of
the deceased 2nd respondent vide Order
dated 09.09.2020 made in M.P. (MD)Nos.1 to 3 of 2014)

Prayer: Second appeal filed under Section 100 of C.P.C., against the Decree and Judgment dated 07.09.2009 made in A.S.No.82 of 2007 on the file of the Subordinate Judge, Valliyoor, confirming the Decree and Judgment dated 30.11.2005 made in O.S.No.95 of 1998 on the file of the Additional District Munsif, Nanguneri.

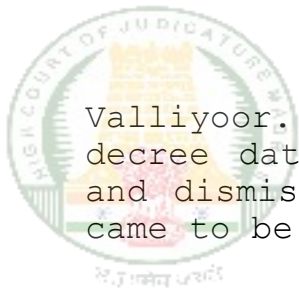
For Appellant : Mr.P.Thiagarajan
For R-1 & R-3 : Mr.J.Ashok
For R-4 to R-6 : No appearance.

* * *

J U D G M E N T

The plaintiff in O.S.No.95 of 1998 on the file of the Additional District Munsif, Nanguneri, is the appellant in this second appeal.

2. The appellant filed the said suit seeking the relief of declaration and permanent injunction. The case of the appellant is that he purchased the suit property under Ex.A.1 dated 18.09.1993. According to him, the defendants were staking rival claim and that necessitated filing of the suit. The defendants took the stand that the plaintiff's vendor did not have any title to convey the said title in favour of the plaintiffs. Based on the divergent pleadings, the trial Court framed the necessary issues. The plaintiff examined himself as P.W.1 and two other witnesses were examined on his side. Ex.A.1 to Ex.A.13 were marked. The defendants examined as many as four witnesses on their side. Ex.B.1 to Ex.B.22 were marked. After consideration of the evidence on record, the trial Court by judgment and decree dated 30.11.2005 dismissed the suit. Challenging the same, the plaintiff filed A.S.No.82 of 2007 before the Sub Court,



Valliyoora. The first Appellate Court by the impugned judgment and decree dated 07.09.2009 confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

3. Though the second appeal was filed as early as in the year 2010, only notice was ordered and it was not admitted till date.

4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to formulate substantial questions of law and take it up for disposal later.

5. Per contra, the learned counsel appearing for the respondents submitted that no substantial questions of law arises for consideration.

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

7. The appellant traces his title under Ex.A.1 dated 18.09.1993 which was executed by one Srinivasan claiming to be the Managing Trustee of Thoothukudi T.N.Subbaiyar Educational and Charitable Trust. The recitals of the said document read that the suit property was also one of the lands endowed in favour of the trust. In Ex.A.1, the title has not at all been traced. It is not known as to how the trust acquired title over the suit property. On the other hand, the defendants have marked quite a few documents to show that they had dealt with the suit items. That is why, the Courts below have concurrently held that the plaintiff had failed to prove his case. When a property is sold, as per the provisions of the Transfer of Property Act, the vendor must clear the encumbrance, if it comes to be known later. In this case, Ex.A.1 reads that it is the lookout of the purchaser to take care of the encumbrance. From this single recital, one can safely conclude that the executant of Ex.A.1 was himself not quite sure of his competence to convey the property in question.

8. The Courts below have concurrently held against the plaintiff. No substantial question of law arises for consideration. This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

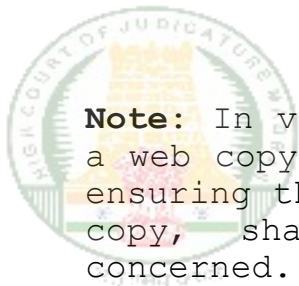
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Sub Assistant Registrar(CS)

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



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WEB COPY

To:

1. The Subordinate Judge,
Valliyoor.
2. The Additional District Munsif,
Nanguneri.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-12341[F] dated 15/03/2022)
S.A.(MD)No.78 of 2010
14.03.2022

SJ(CO)
GC(02.05.2022) 3P 6C