



S.No.1495 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 02.11.2022

CORAM: JUSTICE N.SESHASAYEE

S.A.No.1495 of 2000

Muthiah

....Appellant/Appellant/Plaintiff

Vs.

1.Arumuga Mudaliar (Died)

2.Marudaiya Pandian

3.Gomathiammal

4.Murugesan

5.Lakshmi

6.Saraswathi

7.Parameswari

8.Rajeswari

...Respondents/Respondents/Defendants

....LR's of the first respondent

[Respondents 3 to 8 are brought on record as LR's of the deceased 1st respondent vide order dated 27.12.2002 made in C.M.P.No.4856 of 2001]

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 28.04.2000 made in A.S.No.163 of 1998 on the file of the Principal Subordinate Court, Tenkasi, confirming the judgment and decree of the Principal District Munsif Court, Sankarankoil passed in O.S.No.123 of 1995 dated 03.11.1998.



WEB COPY



SANo.1495 of 2000

For Appellant : Mr.M.P.Senthil

For Respondents : No-appearance

J U D G M E N T

The plaintiff in O.S.No.123 of 1995 which he has laid seeking declaration of his title and for injunction is the appellant herein. The suit was dismissed and an appeal was preferred by the plaintiff in A.S.No.163 of 1998 where also he was unsuccessful. Hence, the second appeal at the instance of the plaintiff.

2. The entire dispute falls under a very narrow compass and the relevant facts are:-

- The dispute is over 4 cents of the property. This property along with all adjacent properties originally belonged to a certain Vairavan Mudaliyar. Vairavan Mudaliyar had two sons namely Sankarapandiya Mudaliyar and Kotti Mudaliyar. Sankarapandiya Mudaliyar had five sons of whom this Court is concerned only with one of his sons namely Subbaiya Mudaliyar. Kotti Mudaliyar had three sons and they are Arumuga Mudaliyar, Narayana Mudaliyar and Paramasiva Mudaliyar.
- It appears that there was a partition in which Kotti Mudaliyar's branch had become entitled to a block of 1.80 acres. This was divided into three



SANo.1495 of 2000

WEB COPY

plots. The northern most plot was allotted to Paramasiva Mudaliyar and the middle plot was allotted to Narayana Mudaliyar and the southern most plot was allotted to Arumuga Mudaliyar. Each of these plots approximately has about 60 cents.

- The aforesaid Subbaiya Mudaliyar from Sankarapandiya Mudaliyar's branch had some properties on the adjacent west to the above said 1.80 acres, more particularly, the southern plot belonged to Arumuga Mudaliyar who is the first defendant herein.
- While so, on 16.11.1952 vide Ext.B.1, sale deed, Subbaiya Mudaliyar sold some 48 cents belonging to him to Paramasiva Mudaliyar. This property, it must be stated, lies to the west of the plot measuring about 60 cents belonging to the first defendant. Later, Paramasiva Mudaliyar sold this 48 cents which he had obtained under Ext.B.1 to the first defendant vide Ext.B.2-sale deed dated 18.10.1969. The plaintiff is the son of Subbaiya Mudaliyar, the vendor under Ext.B1.
- Upto this point, the plaintiff has no dispute and he springs the cause of action from this allegation that there arose a dispute between Subbaiya Mudaliyar and the first defendant, when it was contended that Ext.B.1 was only a sham document but later it was resolved orally with the first defendant agreeing to sell the suit property measuring about 4 cents for a



SANo.1495 of 2000

consideration of Rs.200/- and that it had been orally sold to them.

WEB COPY

3. The first defendant filed his written statement and disputed it strongly.
4. The core contention was about whether the plaintiff has obtained title to the suit properties, if he is in possession of the property?.
5. This dispute went to trial and for the plaintiff, he examined himself as P.W.1 and he also examined two other witnesses as P.W.2 and P.W.3. However, he did not choose to produce any documentary evidence. For the defendants, the first defendant had entered the box and examined himself as D.W.1 and he has examined an independent witness as D.W.2. He had produced Ext.B.1 to Ext.B.14. Besides, the trial Court has also appointed the Commissioner whose report and the plan are marked as Ext.C1 and Ext.C2.
6. On appreciating the evidence, the trial Court found no merit in the claim of the plaintiff and dismissed the suit. The trial Court has taken exception to the fact that the plaintiff was not able to establish his title or possession with any documentary evidence. When the matter reached the first Appellate Court in A.S.No.163 of 1998, the Court found no material worthy enough to interfere



SANo.1495 of 2000

with the findings of the trial Court. Hence, this Second Appeal.

WEB COPY

7. This appeal was admitted for considering the following substantial question of law:-

1. Whether the findings of the Courts below are vitiated by its failure to consider the evidence of P.W.1, P.W.2 and P.W.3 and the construction put up in the suit property to the knowledge of the respondents and the physical features noted by the Advocate Commissioner under Ext.C-1 and C-2 and the admission of D.W-1?

2. Whether the Courts below are right in non-suiting the appellant on the basis of Section 54 of the Transfer of Property Act in the absence of any evidence that the value of the property is more than Rs.100/- in the year 1985?

3. Whether the Courts below are right in not moulding the relief after having found that the appellant is in possession?

8. The learned counsel appearing for the appellant submitted that notwithstanding the fact that the plaintiff has pleaded an oral sale for sale consideration of Rs.200/-, the fact remains that he is in possession of the suit property and this is borne out by Ext.C1 and Ext.C2, the report and the plan of the Commissioner.



SANo.1495 of 2000

9. This Court perused the Commissioner's report and finds that it falls well short of providing any advantage to the appellant. He has not pointedly made a statement where exactly the suit property lies and if any construction that has been put up by the plaintiff, remains there. This apart, if at all there are any constructions, there should have been some tax and rates pertaining to the same.

10. In fine, this Court does not find any merit in this appeal. Hence, this Second Appeal is dismissed. No costs.

02.11.2022

ssb

To

1.Principal Subordinate Court, Tenkasi,

2. Principal District Munsif Court, Sankarankoil



WEB COPY



SANo.1495 of 2000

N.SESHASAYEE., J.

ssb

SA(MD)No.1495 of 2000

02.11.2022