



S.A.No.1859 of 2000

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 23.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1859 of 2000

Coolu

...Appellant

-Vs-

1.Chittammal

2.Semban

3.Duraisamy

4.Palani

5.Rajendran

... Respondents

(Memo presented before the Court on 30.03.2022 is recorded as R2 & R4 are given up vide Court order dated 30.03.2022, made in S.A.No.1859 of 2000)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.42 of 1998, on the file of the learned Additional District Judge, Dindigul, dated 12.01.2000, reversing the judgment and decree passed in O.S.No.365 of 1993, on the file of the learned District Munsif, Nillakottai, dated 23.12.1997.



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For Appellant : Mr.K.Suresh
For R1 : Mr.S.Ramesh
for Mr.V.Raghavachari

JUDGMENT

The fifth defendant in the suit is the appellant. The suit is filed for declaration of title and injunction with alternative prayer for recovery of possession. The first respondent/plaintiff also prayed for mandatory injunction seeking realignment of channels said to be obliterated by the appellant. The suit was dismissed by the trial Court and on appeal filed by the first respondent/plaintiff, it was decreed. Aggrieved by the same, the appellant is before this Court.

2. According to the first respondent/plaintiff, the suit properties were originally purchased by the mother of the first respondent/plaintiff and the respondents 2 to 5/defendants 1 to 4, namely, Alagammal from one Viralimayathevar under registered sale deed dated 23.07.1962, which was marked



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as Ex.A.2. The respondents 2 to 5 are the brothers of first respondent. The appellant/5th defendant is the purchaser from the respondents 2 to 5 and their father, namely, Kalyani. It was further claimed by the first respondent that Alagammal, mother of the respondents 1 to 5, sold the suit properties to her on 28.09.1993. The appellant herein tried to interfere with the possession of the first respondent during the middle of November, 1993 and hence, the first respondent was constrained to file a suit for declaration and other reliefs as mentioned above.

3. The respondents 2 to 5 remained *exparte* and the suit was contested only by the appellant/5th defendant. It was a specific case of the appellant that the suit properties were the ancestral properties of the father of the respondents 1 to 5. The title of Viralimayathevar, vendor of the mother of respondents 1 to 5, namely, Alagammal was specifically denied by the appellant in his written statement. The appellant claimed title to the suit properties under three documents dated 18.05.1974, 07.07.1993 and 22.10.1993 respectively, which were marked as Exs.B.2, B.6 and B.1 respectively. The appellant also raised a plea of limitation.



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4. Before the trial Court, the first respondent/plaintiff was examined as P.W.1 and father of the respondents 1 to 5, namely, Kalyani was examined as P.W.2. On behalf of the first respondent/plaintiff, four documents were marked as Ex.A.1 to Ex.A.4. On the side of the appellant/5th defendant, he was examined as D.W.1 and he marked seven documents as Ex.B.1 to Ex.B.7. The report and plan of the Surveyor appointed by the Court were marked as Ex.C.1 to Ex.C.4.

5. The trial Court, on appreciation of the evidence available on record, came to the conclusion that the first respondent/plaintiff failed to prove the title of her mother's vendor namely, Viralimayathevar and hence, dismissed the suit. Aggrieved by the same, the first respondent filed an appeal in A.S.No.42 of 1998 on the file of the Additional District Court, Dindigul. The First Appellate Court, reversed the findings of the Trial Court and granted a decree for declaration and recovery of possession in favour of the first respondent. Aggrieved by the same, the appellant is before this Court.

6. At the time of admission of second appeal, the following substantial questions of laws were framed:



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“1. Whether the Lower Appellate Court was right in decreeing the suit as prayed for by the first respondent/plaintiff herein by relying upon Ex.P.1 & P.2, when the plaintiff has failed to explain as to how the transferor Viralimayathevar came to acquire the schedule mentioned properties?

2. Whether the suit was not barred by limitation?

3. Whether the appellant herein has not perfected his title over the suit properties by adverse possession?”

7. The learned counsel for the appellant submitted that the first respondent failed to prove the title of her vendor's vendor, namely, Viralimayathevar, even though it was specifically denied in the written statement filed by the appellant. It is the submission of the learned counsel for the appellant that in a suit for declaration of the title, the plaintiff has to win or lose based on the strength of his own case and he cannot rely on the weakness of the defence. The learned counsel for the appellant further submitted that the first respondent failed to lead any evidence that she enjoyed the property subsequent to the purchase under Ex.A.2. The revenue documents continue to be in the name of grandfather of the parties and in the absence any mutation either in the name of



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first respondent or her vendor, the title pleaded by the first respondent based on Ex.A.2 and Ex.A.1, cannot be accepted.

8. Per contra, the learned counsel for the first respondent/plaintiff submitted that the appellant himself as D.W.1 admitted about his knowledge of purchase by the first respondent under Ex.A.2. It is the submission of the learned counsel for the appellant that when the appellant acquired knowledge about the purchase by the first respondent even before the purchase of property from respondents 2 to 5, it is not open to him to deny the title of first respondent.

9. The learned counsel also tried to sustain the judgment passed by the First Appellant Court by relying on the additional document marked before the First Appellate Court as Ex.A.5, sale deed executed by one Ayyanan, brother of the father of the parties in favour of Viralimayathevar. Therefore, the learned counsel for the first respondent forcefully submitted that the first respondent by producing Ex.A.5 proved the title of Viralimayathevar, namely, her vendor's vendor and when the first respondent produced the documents from 1955 till the date of suit to prove her title, she is entitled to declaration and recovery of possession as prayed for.



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10. With regard to the legal submissions made by the learned counsel for the appellant that in a suit for title, the plaintiff must win on his own strength, this Court has no quarrel. In order to prove her title, the first respondent produced Ex.A.1 - sale deed in her name dated 28.09.1993 executed by her mother Alagammal, Ex.A.2, dated 23.07.1962, executed by Viralimayathevar in favour of her mother Alagammal, Ex.A.5, dated 12th January 1955, executed by Ayyanan in favour of Viralimayathevar. A perusal of Ex.A.1 and Ex.A.2 would make it clear that the description of the suit properties found in the plaint tallied with the description of properties covered by those two documents. However, under Ex.A.5, Ayyanan, namely, the brother of father of parties, Kalyani, sold only two items of properties to Viralimayathevar, the survey numbers of suit item-I and suit item-III were mentioned in Ex.A.5. However, there is no reference about the suit item-II. Therefore, the first respondent/plaintiff is not in a position to establish the title of Viralimayathevar in respect of item-II of the suit properties. However, she proved the title of Viralimayathevar in respect of items- I and III of the suit properties by producing 1955 document. Therefore, the decree granted by First Appellate Court in respect of items- I and III need not be interfered with. However, as first respondent failed to prove the entitlement of



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Viralimayathevar in respect of item-II of the suit properties, this Court is inclined to interfere with the findings of the First Appellate Court as far as item-II of the suit properties is concerned. Accordingly, the Second Appeal is allowed in respect of item-II of the suit properties by setting aside the judgment and decree of the First Appellate Court to that extent.

11. In nutshell,

a) this Second Appeal is partly allowed by setting aside the judgment and decree passed in A.S.No.42 of 1998, on the file of the Additional District Court, Dindigul, dated 12.01.2000, in respect of item-II of the suit properties;

b) the judgment and decree passed in A.S.No.42 of 1998, on the file of the Additional District Court, Dindigul, dated 12.01.2000, in respect of items- I and III stands confirmed; and

c) In the facts and circumstances of the case, there would be no order as to costs.

23.12.2022

NCC : Yes/No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Additional District Judge, Dindigul.
2. The District Munsif, Nillakottai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

CP

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