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S.A.No.1360 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.11.2023

CORAM :

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.No.1360 of 2007
and M.P.No.1 of 2007

Malarkodi

...Appellant

Vs.

Dhanammal

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree passed by the Principal District Judge, Vellore, dated 12.03.2007 in A.S.No.9 of 2007 confirming the Judgment and Decree passed by the Additional District Munsif Court, at Vellore, dated 28.02.2006 in O.S.No.226 of 1997.

For Appellant : Mr. A.Palaniappan

For Respondent : Mr.S.T.Bharath Gowtham
for Mr.T.R.Rajaraman

J U D G M E N T



S.A.No.1360 of 2007

The plaintiff is the appellant and the defendant is the respondent before this Court. The plaintiff is the defendant's brother's wife.

2.For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

The brief facts which give rise to this Second Appeal is that:

3.According to the plaintiff, the suit Schedule A property is her absolute property by virtue of the Sale deed dated 21.02.1997. The plaintiff further submits that the A Schedule property is a vacant site and not assessed to tax. While so, 15 days before filing of this suit, the defendant herein trespassed into a portion of the A Schedule property and have been in unlawful occupation. Hence, the plaintiff filed the suit for relief for delivery of possession of the B Schedule property and for permanent injunction.

4.The said suit was resisted by the defendant by contending that the suit property was gifted by her father. Thereafter, the defendant's husband had constructed a house in the property and she is living with her family. It is the further submission of the defendant that she is in



S.A.No.1360 of 2007

possession and enjoyment of A Schedule property and the property described as Munuswamy's property in the plaint plan. The defendant would also submit that the vendor of the plaintiff had no possession over the property to convey it to the plaintiff. Hence, the defendant disputed the case of the plaintiff that they have been in possession as trespasser. Hence, she prayed to dismiss the suit.

Evidence, Documents and Finding of the Courts below:

5.Before the Trial Court, on behalf of the plaintiff two witnesses were examined. The plaintiff was examined herself as P.W.1 and her predecessor in title, one Chinnappa Gounder was examined as P.W.2 and 6 documents were marked as Exs.A1 to A6. On behalf of the defendant, the defendant was examined herself as D.W.1 and 12 documents were marked as Exs.B1 to B12.

6.The Trial Court, after having considered the either side submissions, has dismissed the suit on a finding that the plaintiff's vendor has no title over the property. Therefore, the Sale deed stands in the name of the plaintiff will not confer any title or right over the property.



Aggrieved by the same, when the plaintiff preferred an appeal, the First Appellate Court has confirmed the finding of the Trial Court. While concurring with the finding of the Trial Court, the First Appellate Court has relied upon the evidence of P.W.2 and reiterated that the plaintiff's predecessor in title who was examined as P.W.2 has no right title over the suit property. Aggrieved by the same, the plaintiff is before this Court by filing this Second Appeal.

Substantial questions of law:

7. At the time of admission, this Court has formulated the following substantial questions of law:

(a) Whether the Courts below have erred in law in having held that the appellant has failed to prove her title in respect of the suit property is untenable and baseless in the light of the admission by the respondent that the property is an ancestral property which had devolved by succession upon her father Govinda Gounder and Chinnappa Gounder and that the said Chinnappa Gounder had sold his share of 3 ½ cents of land in favour of the appellant?



WEB COPY



S.A.No.1360 of 2007

(b)Whether the findings of the Courts below is perverse in having failed to consider that the suit property devolved upon by succession being the ancestral property in favour of the Vendor of the Appellant admittedly and that the sale deed dated 21.02.1997 in favour of the appellant/plaintiff and that the title in respect of the property is indisputable and the contra findings that the Appellant has no title is unsustainable in law?

(c)Whether the Courts below had misapplied the principle of law that the plaintiff must succeed on the strength of her own title and not on the weakness of the defendant case in the suit for possession where the Appellant/Plaintiff had substantiated the title in her favour by documentary evidence and the same being fortified by the Respondent's admission?

(d)Whether the courts below had erred in law inspite of rejecting the case of the respondent/defendant had failed to establish her case that the property in question was gifted to her by her father Govinda Gounder and the case of Adverse Possession also being rejected ought to have allowed the suit of the Appellant?"



S.A.No.1360 of 2007

Submissions on either side:

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8.The learned counsel for the appellant would submit that the very dismissal of the suit for not producing anterior title is contrary to the settled principles of law. According to the learned counsel for the appellant, the Court ought to have seen that the plaintiff has got the title from P.W.2/Chinnappa Gounder. The learned counsel for the appellant would also submit that the reliance of P.W.2 evidence in the place of Ex.A1/Sale deed is without any basis. The learned counsel would also further submit that since the plaintiff's vendor Chinnappa Gounder and the defendant are descendant from the common ancestor, the production of the anterior title by the plaintiff for exhibiting her right does not arise at all.

9.Per contra, the learned counsel for the defendant would invite the attention of this Court about P.W.2/Chinnappa Gounder's admission, wherein he was not in a position to putforth the details of his anterior title. It is also the submission of the learned counsel for the defendant that immediately after the execution of Ex.A1/Sale deed, she came forward to file the suit. Whereas the title of the plaintiff's vendor has not at all been established. Therefore, it is the submission of the learned counsel for the



S.A.No.1360 of 2007

defendant that the findings recorded by both the Courts below are liable to be confirmed.

10.I have given my anxious consideration to either side submissions.

Analysis of the submissions of both sides:

11.The Trial Court as well as the First Appellate Court have relied upon the evidence of P.W.2, and this Court is of the firm view that the plaintiff did not submit any anterior title. Even while seeing the documents which is the Sale deed of the plaintiff, it was in the year 1997. This document came into existence just prior to filing of this suit. Therefore, the findings recorded by both the Courts below that the anterior title is very much necessary to prove the title over the suit property could not be found faulted with. Apart from that, the case of the plaintiff is that she is the absolute owner of the suit property by virtue of the Sale deed dated 21.02.1997, whereas the defendant has specifically contended in her written statement that the suit property is her absolute property. When the defendant has taken such specific stand that the suit



S.A.No.1360 of 2007

property is her property, while the plaintiff filing the suit for delivery of possession, ought to have sought for the relief of declaration. This was also found as a ground for denying the relief to the plaintiff. Both the Courts below, have also found the reference of the defendant's name in the Revenue documents, even prior to the purchase of the property by the plaintiff. Therefore, the title of the plaintiff was doubted. The finding recorded by both the Courts below that the plaintiff has not proved the title over the suit property is based on the material and on legal basis. The appellant has not produced any material to deviate from the said findings. Hence, the substantial questions of law are answered in favour of the respondent.

12.In the result, this Second Appeal is dismissed. Consequently, connected miscellaneous petition is also closed. There shall be no order as to costs.

16.11.2023

Internet : Yes/No
Index: Yes/No
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8/10



S.A.No.1360 of 2007

- 1.The Principal District Judge, Vellore,
- 2.The Additional District Munsif, Vellore,
- 3.The Section Officer, V.R.Section, High Court, Madras.

C.KUMARAPPAN,J.



WEB COPY



S.A.No.1360 of 2007

apd

S.A.No.1360 of 2007
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16.11.2023