



SA.No.398 of 2007

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03 .11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.398 of 2007

1. Nagarajan

2. Krishnamoorthy

3. Narayanan

4. Arumugam

... Appellants

- Vs -

1. Thangavel (Died)

2. T.Santhi

3.T.Murugaiyan

... Respondents

(R2 and R3 brought on records as Legal heirs of the deceased sole respondent vide order of Court dated 23.04.2019 made in CMP. No.17289 to 17291 of 2017 in S.A.No.398 of 2007)



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Second Appeal is filed under Section 100 of the Civil Procedure Code aggrieved by the Judgment and decree of the learned Principal Subordinate Judge, Villupuram made in A.S.No.82 of 2005 dated 21.07.2006 by confirming the Judgment and decree of the learned Principal District Munsif Court Villupuram made in O.S.No.109 of 2001 dated 29.04.2005.

For Appellant : Mr. R. Rajarajan for D.Rajasekar
For Respondents 2 and 3 : Mr. N. Suresh

JUDGMENT

The appellant herein was the plaintiff before the Trial Court and the respondent herein was the defendant before the Trial Court below.

2. The brief facts which have give rise to the instant second appeal is as follows:

According to the plaintiff, originally the suit property belongs to one Paramandham Pillai. He had two sons by name Sadasivam Pillai and Sampantham Pillai. It is the further submissions of the plaintiff that both the children of Paramandham Pillai sold the property to the plaintiff's 1 to 3's grand father, and 4th plaintiff's father one Varadharaja Pillai on 04.09.1967 under Ex.A1.



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3. The sum and substance of the plaintiff's contention is that by virtue of Ex.A1 dated 04.09.1967, the plaintiff became the owner of the property.

4. However, the said suit was resisted by the defendant by contending that the suit property belongs to the defendant by virtue of the Sales Certificate/Ex.B2 dated 28.03.1927.

5. **Substantial Questions of Law**

When the Second Appeal was admitted before this Court, this Court has framed the following substantial question of law:-

“a) Whether the Courts below are correct in dismissing the suit for declaration of title to the plaintiffs when it has not been proved by defendant that his father took delivery of the property by invoking Order 21 Rule 95 and 96 of C.P.C

b) Whether the Courts below are correct in finding that Ex.B2, Sale certificate confer title, when it has been held that the Sale Certificate does not create title, it is merely evidence of title as held in AIR 1931 Patna 241 (F.B)

c) Whether the Courts below are correct in tracing the title of the defendant, to Ex.B2, alone when defendants father was not a usufratuary mortgagee”



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6. Submission of either side counsel:

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The learned counsel for the appellant vehemently submits that the description of property referred to in Ex. B2/Sale Certificate is different from the suit property, and that the patta proceedings issued by the Revenue Authorities and Exs.B.23, 26 and 27 will not bind the plaintiff. It is also the submission of the learned counsel for the appellant that there is no proof available to show the possession taken by the auction purchaser namely the defendant from the Court as contemplated under Order 21 Rule 95 of the C.P.C. Hence, prayed to allow this second appeal.

7. Per contra the learned counsel for the respondent would vehemently submits that the very sales certificate is only in respect of the suit property, which factum was fairly admitted by the plaintiff. The learned counsel for the respondent would invite the attention of this Court in respect of the patta proceedings. Wherein the Assistant Settlement Officer has passed an order on 10.11.1997 under Ex.B.26, issuing patta to the defendant for the suit property based upon the Court auction sale which was subsequently confirmed by the District Revenue Officer under Ex.B.27. Therefore, would submit that the suit property absolutely belongs to the defendant by virtue of the Sales Certificate.



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8. I have given my anxious consideration to the either side submission.

9. Analysis of the submissions

From the either side submission, the only point to be considered is, whether the sale certificate/Ex.B2 relates to the suit property or not. In this regard the learned counsel for the Respondent would rely upon the patta proceedings Exs.B26 and B27 and also the admissions made by the plaintiff. While considering the patta proceedings under Exs.B26 and B27 the defence put fourth by the plaintiff before the revenue authority was that, even if the defendant's father Natesa Pillai took the suit property in Court auction, still the plaintiff perfected title by way of adverse possession, as the defendant did not take possession of the suit property in pursuance of the Court auction sale.

10. Therefore, the defence put fourth by the plaintiff before the Revenue Authority was only on the basis of adverse possession. In fact there is no dispute that the suit property and the property referred to in the Sales Certificate are one and the same. Here the sales certificate Ex.B2 is of the



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year 1927, whereas the plaintiff resist the claim only based upon 1967 sale deed. The Trial Court as well as the First Appellate Court has given much reliance to the Ex. B2/Sales Certificate and subsequent patta proceedings and kist receipt and found that the suit property belongs to the defendant. Therefore, this Court is of the view that the concurrent finding of fact recorded by the both the Court below in respect of title to the suit property based upon the Ex.B2/Sales Certificate cannot be interfered with and further there are no material available to deviate from the said findings. Therefore, the substantial questions of law are answered in favour of the respondent.

11. In the result this second appeal is dismissed. No order as to costs. Consequently, the connected miscellaneous petitions are closed.

03.11.2023

smn
To

1. The Principal Subordinate Judge, Villupuram.
2. The Principal District Munsif Court Villupuram



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