



S.A.No.724 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.724 of 2023

Muthukrishnan

... Appellant / plaintiff

Vs

Punniyamoorthy (died)

1. Valli
2. Nivashini
3. Nidharshana
4. Minor Nishandhini
5. Minor Dharanidharan
6. Kamalammal

....Respondents / Defendants

Prayer : Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 14.12.2021 made in A.S.No.24 of 2018 on the file of the Principal District Court, Ariyalur, confirming the judgment and decree dated 27.07.2018 made in O.S.No.153 of 2010 on the file of the Sub Court, Ariyalur.



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For Appellant : Mr.R.Venkatesulu

JUDGMENT

The plaintiff who has lost in both the Courts below has preferred the above second appeal from the judgment and decree in a suit filed for declaration and injunction.

2. The brief facts which are necessary for disposing of the above second appeal are herein below set out and the parties are referred to in the same ranking as before the Tribunal.

3. The plaintiff had filed the suit O.S.No.153 of 2010 on the file of the Subordinate Judge, Ariyalur, seeking a declaration of his right over the suit schedule property and for a consequential injunction restraining the defendant from interfering with his peaceful possession



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and enjoyment of the suit property, which was an extent of 0.260 sq.mts in Natham S.F.No.559/7-A in Ariyalur District within the four boundaries and a vacant site.

4. It is the case of the plaintiff that on 05.08.1958, one Rajammal had purchased the property, which was then in Zamin S.F.No.308/2 and measured 0.16 cents for a total sale consideration of Rs.270/- . Rajammal's husband was one Veerasamy. The plaintiff's father Chinnappa Naidu @ Muniyasamy Chettiyar and Veerasamy were brothers. The plaintiff would contend that his father had purchased the property to the north of the aforesaid property under a Court auction sale and the same was contiguous to the property purchased by Rajammal. There was a thatched house bearing No.7 in the said property. It is the further case of the plaintiff that his father had purchased the said Rajammal's property under an oral sale for a sum of Rs.90/- on 15.08.1960 and since that day, his father has been in



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possession and enjoyment of this property as well as the property purchased by him in the court action as a single unit. In the year 1964, the plaintiff's father had removed the thatched hut and put up a tiled house in the northern portion, which was assessed as Door No.7A and also in the suit property, which was bearing Door No.7. The plaintiff would contend that these properties are assessed to tax in his father's name and that his father got the revenue records mutated.

5. The plaintiff would further submit that till the year 1995, his father rented out the house in the suit property to his cousin. After his father's demise in the year 1995, the plaintiff had remodeled the tiled house in the northern portion into a terraced building and tiled house. The suit property was also demolished and the plaintiff had constructed another tiled house side by side to the terraced building on the northern side.



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6. While things stood so, it appears that Veerasamy and Rajammal's son, Rajagopal had petitioned the Revenue Divisional Officer for mutation of patta in his name and the same was mutated in his name, to which the plaintiff had submitted the objections. However, by order dated 04.06.2010, the patta was granted in favour of Rajagopal. The plaintiff's representation to the District Revenue Officer is pending.

7. On 23.07.2010, the defendant had purchased the suit property from Veerasamy's son, Rajagopal, and had started to interfere with the plaintiff's peaceful possession of the property. Hence the suit. Only the purchaser has been impleaded, and Rajammal's legal heirs have not been impleaded.

8. The defendants had filed a written statement *inter-alia* contending that the suit property has not been sold to the plaintiff's



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father and allegations to the contrary are absolutely false. The plaintiff has clandestinely changed the patta in his name during the updating of the register taking advantage of the fact that the property is a vacant site. Thereafter, on a petition by the son of Veerasamy, namely, Rajagopal, the patta was cancelled and mutated in the name of Rajagopal. The defendant is the *bonafide* purchaser who has purchased the property for a valuable consideration. The defendant has also constructed a house on the suit property and has been in possession and enjoyment of the same since then. The patta, documents etc., stand in the name of the defendant. Therefore, he sought for dismissal of the suit in question.

9. Both the Courts below have held against the plaintiff. Aggrieved by which, the plaintiff is before this Court.



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10. Heard the learned counsel for the appellant/plaintiff and perused the records.

11. The plaintiff has come to Court with a case that the property belonged to one Rajammal and that the plaintiff's father had purchased the same under an oral sale for a consideration of Rs.90/-. He has further submitted that his father got the revenue records mutated in his name. From the date of his purchase, he has been remitting the tax. The Courts below have found that the patta bearing No.3035 in respect of the suit property stands in the name of Veerasamy, the husband of Rajammal which is evidenced by Ex.B2. That apart, Exs.A7 to A28, A71 to 77 and 79, which are tax receipts filed by the plaintiff, all stand only in the name of Veerasamy. The plaintiff, who has pleaded that his father had mutated the revenue records in his name as soon as he purchased the property, has not let in a single piece of evidence to prove the same. Further, Ex.B6, which is the order of cancellation of



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the Revenue Divisional Officer, would clearly show that the patta was originally granted in the name of the plaintiff without any document, and the sub division has been erroneously carried out without the same being supported by documents. Further, the plaintiff, as P.W.1, has admitted that it is the defendant who is in possession of the property. In the light of his overwhelming evidence, which has been considered in detail by the Courts below, I see no reason to interfere with the concurrent judgment of the Courts below. Further, the appellant has not been able to make any question of law much less than a substantial question of law. Accordingly, the second appeal is dismissed. No costs.

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Index: Yes/No
Speaking order/non-speaking order
srn



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P.T.ASHA, J.,

srn

To

1. The Principal District Court, Ariyalur,
2. The Sub Court, Ariyalur.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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