



WEB COPY



S.A.No.127 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.127 of 2017

Premakumari

...Appellant

Vs.

Kumar @ Palanisamy

... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 29.09.2013 in A.S.No.142 of 2012 on the file of the Principal Subordinate Judge, Salem, confirming the judgment and decree dated 22.09.2011 in OS.No.1015 of 2009 on the file of the Principal District Munsif, Salem.

For Appellant : Mr.C.Sai Krishna
for Ms.V.Srimathi

For Respondent : Mr.V.Sekar



S.A.No.127 of 2017

WEB COPY

JUDGMENT

The unsuccessful defendant in the suit is the appellant. The respondent filed a suit seeking declaration that the sale deed dated 07.01.2008 executed by one Kuppandi Gounder in favour of the appellant/defendant was null and void and not binding on the respondent and for consequential injunction. The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings against him, the defendant has come up with this Second Appeal.

2. According to the respondent/plaintiff, the suit property was originally belonged to Sadachi Ammal @ Marimuthammal, who executed a registered settlement deed on 24.03.2004 in favour of the respondent and his brother Logasurian. Subsequently, the said Logasurian executed a gift deed dated 29.09.2009 gifting his share in the suit property in favour of the respondent. Thus, the respondent has been in possession and enjoyment of the suit property as exclusive owner by paying the kist and the Government patta also stands in the name of respondent. The appellant/defendant who is a



S.A.No.127 of 2017

stranger to the suit property claimed that he purchased the suit property on 07.01.2008 from one Kuppandi Gounder and attempted to interfere with the possession of the respondent. Therefore, the respondent was constrained to file a suit for declaration and injunction as mentioned above.

3. The appellant/defendant filed a written statement denying the right of the respondent over the suit property. It was her case that settlement deed executed by Sadachi Ammal would not confer any right to the respondent and the same was a fraudulent document. It was also claimed by the appellant that the settlement deed executed by Logasurian in favour of the respondent was a document created for the purpose of giving trouble to the appellant. The appellant also claimed that he purchased the suit property from his real owner Kuppandi Gounder on 07.01.2008. It was also stated that the said Kuppani Gounder got the suit property by way of a partition in a koorchit dated 15.07.2000. Thus the appellant sought for dismissal of the suit.

4. Before the trial Court, the respondent was examined as PW1 and two other witnesses were examined as PW2 and PW3. On behalf of the respondent/plaintiff, 15 documents were marked as Ex.A1 to Ex.A15. The



S.A.No.127 of 2017

appellant/defendant was examined as DW1 and the appellant's vendor Kuppani Gounder was examined as DW2 and on behalf of the appellant, four documents were marked as Ex.B1 to Ex.B4.

5. The trial Court on appreciation of oral and documentary evidence available on record and based on the admission of the appellant under Ex.B2, came to the conclusion that the respondent proved his right over the suit property and the appellant's vendor Kuppani Gounder's right over the suit property had not been properly proved. Therefore, the trial Court granted a declaration and injunction as prayed for and the appellant has preferred an appeal in A.S.No.142 of 2012 on the file of the Principal Subordinate Judge, Salem. The first Appellate Court also affirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the appellant is before this Court.

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

“a) Whether or not the plaintiff proved the title of his settlor under Ex.A2 in respect of the suit



WEB COPY



S.A.No.127 of 2017

property especially when Ex.A15, the sale deed under which the settlor stated to have purchased the property does not relate to the suit property?

b) Whether the Lower Courts right in upholding the title of the plaintiff merely on the basis of the revenue records, which would not prove title to the suit property?

c) In view of the fact that the settlor under Ex.A2, executed another settlement deed under Ex.B5 in respect of the very same suit property, whether the Lower Courts right in holding that the suit property was validly settled under Ex.A2 in favour of the plaintiff and his brother?”

7. The learned counsel for the appellant submitted that in the title document of the respondent/plaintiff, Ex.A2, there is a reference about only one survey number of the suit property namely R.S.No.141/12A and there is no reference about the other survey numbers of the suit property namely R.S.No.141/11B and R.S.No.141/12B. The learned counsel for the appellant further submitted that even under parent document Ex.A15 the reference is only in respect of 7 cents of property in S.No.128/3 and the respondent failed to correlate the old mittha survey number with the present suit survey numbers.



S.A.No.127 of 2017

WEB COPY

8. It is the submission of the learned counsel for the appellant that the respondent failed to prove his title over the suit property. The learned counsel for the appellant further submitted that subsequent to Ex.A2 settlement by Sadachi Ammal in favour of the respondent/plaintiff, she also executed another document under Ex.B5 in respect of the very same suit property. Therefore, the settlement deed executed by Sadachi Ammal in favour of the respondent under Ex.A2 cannot convey any title to the respondent.

9. Per contra, the learned counsel for the respondent/plaintiff submitted that in Ex.A2 settlement deed in favour of the respondent apart from 7 cents in S.No.141/12A there is a reference about 3 cents in S.No.141/11. Therefore, it covers all the subdivisions mentioned in the plaint. The learned counsel for the respondent further submitted that in Ex.B2 sale deed executed by the appellant's vendor Kuppanidi Gounder, which came into existence subsequent to the settlement in favour of the respondent, he clearly admitted that the property covered under Ex.B2 lies on the south and west of property belonged to the respondent/Palanisamy and his brother Logasurian. Therefore, the appellant and his vendor clearly admitted in Ex.B2 that the suit survey



S.A.No.127 of 2017

numbers which are lying on the north and east of property covered under Ex.B2, as seen from Ex.A6 FMB plan, belonged to respondent and his brother Logasurian. When the appellant and his vendor clearly admitted that the suit survey numbers are the property belonging to the respondent and his brother Logasurian under Ex.B2, the appellant is not entitled to dispute the title of the respondent.

10. It is seen from Ex.A2 settlement deed executed by Sadachi Ammal in favour of the respondent, he purchased 7 cents of land in Suit S.No.141/12A and 3 cents of land in S.No.141/11. In the plaint, the respondent seeks right over the 1.26 cents [0.005 Hectares] in S.No.141/12A and 1.26 cents [0.005 Hectares] in S.No.141/11B and 1.26 cents [0.005 Hectares] in S.No.141/12B. When the respondent got 10 cents of land under the settlement deed Ex.A2 in respect of S.No.141/12A [7 cents] and S.No.141/11 [3 cents], it is not open to the appellant to say that there is no reference about the suit Survey numbers in the settlement deed in favour of the respondent. Further in Ex.B2 sale deed executed by vendor of the appellant, it was clearly mentioned that subject matter of sale under Ex.B2 lies on the south and west of property of the respondent and his brother Logasurian. Ex.A6 is the FMB plan in



S.A.No.127 of 2017

respect of the suit survey numbers.

WEB COPY

11. A perusal of Ex.A6 FMB plan in respect of S.No.141 would indicate that subdivision Nos.12A, 12B and 11B which are suit properties lies on north and east of subdivision No.11A. The land in Subdivision 11A is the subject matter of the sale under Ex.B2, wherein it has been clearly admitted by the appellant as well as his vendor Kuppandi Gounder that the properties lying on north and south are the property of the respondent and his brother Logasurian. Therefore, in the registered document, the appellant's vendor Kuppandi Gounder clearly admitted title of the respondent over the suit survey numbers.

12. In such circumstances, the appellant is not entitled to state that the respondent failed to prove his title by correlating the old mittha Survey number with the new survey number mentioned in Ex.A2. Further in the written statement, the appellant claimed that his vendor Kuppandi Gounder got the suit property under koorchit dated 15.07.2000, for the reasons best known to him, the appellant failed to produce the said koorchit to prove the alleged right of his vendor Kuppandi Gounder over the suit survey number.



S.A.No.127 of 2017

However, under Ex.B2 the said Kuppani Gounder and the appellant admitted the right of the respondent over the suit survey numbers. Thus a reading of Ex.A2, boundary description in Ex.B2 read with Ex.A6 FMB, would establish title of respondent/plaintiff by preponderance of probabilities.

13. In such circumstances, by taking into consideration the evidence available on record, both the Courts below rightly came to the conclusion that the respondent was entitled to declaration and injunction as prayed for. The substantial questions of law 1 and 2, framed at the time of admission are answered accordingly against appellant and in favour of the respondent. As far as the substantial question of law No.3 is concerned once the settlor of respondent executed a gift deed under Ex.A2 to settle the suit property in favour of respondent, she could not execute a subsequent conveyance deed in respect of the very same property. Merely because, a conveyance deed has been executed by settlor in respect of the very same property, subsequent to the settlement deed executed in favour of the respondent, it will not affect the title of the respondent which he got under anterior document and the substantial question of law No.3 also answered against the appellant and in favour of the respondent.



S.A.No.127 of 2017

WEB COPY

14. In view of the discussions made earlier, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.

15. a) In the result, the Second Appeal is dismissed by confirming the judgment and decree passed by the Courts below.

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

20.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
dna

To

1.The Principal Subordinate Judge, Salem.



S.A.No.127 of 2017

2.The Principal District Munsif, Salem.

WEB COPY

S.SOUNTHAR, J.

dna

S.A.No.127 of 2017