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S.A.No.290 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 290 of 2017

Selvi

...Appellant

Vs.

Baskaran

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 13.02.2015 passed in A.S.No.49 of 2014 on the file of the II Additional Sub Court, Cuddalore, in confirming the judgment and decree dated 08.11.2013 passed in O.S.No.362 of 2007 on the file of the Additional District Munsif Court, Cuddalore.

For Appellant : M/s.S.Mani

For Respondent : No appearance



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JUDGMENT

The unsuccessful plaintiff is the appellant before this Court. The appellant filed a suit for declaration of title and recovery of possession. The suit as well as the first appeal filed by the appellant were dismissed by the Courts below. Aggrieved by the same, the appellant/plaintiff is before this Court.

2. According to the appellant, he purchased the property from one Nagaraj vagaiyara under registered sale deed dated 20.12.2006. It is also stated that even prior to the sale the appellant was in possession of the suit property. The revenue documents namely patta for the suit property stands in the name of the appellant's vendor. It is further claimed by the appellant that during January 2007 when she was out of town, the respondent committed trespass into the suit property and put up some construction. Hence, she was constrained to file a suit for declaration of title and recovery of possession.

3. The respondent filed a written statement denying the title of appellant's vendor and his right to convey the suit property to him. The



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respondent asserted that he had been in possession and enjoyment of the suit property for the past 35 years. The sale deed in favour of the appellant was also denied on the ground that appellant's vendor did not have any title over the suit property.

4. Before the Trial Court, the appellant was examined as P.W.1 and three witnesses were examined as P.W.2 to P.W.4. The defendant was examined as D.W.1 and yet another witness was examined on his side as D.W.2. The appellant marked five documents as Ex.A1 to Ex.A5 and respondent marked six documents as Ex.B1 to Ex.B6.

5. On appreciation of oral and documentary evidence available on record, the Trial Court came to the conclusion that appellant failed to prove the title of her vendor and consequently she was not entitled for declaration of title and recovery of possession. Aggrieved by the same, the appellant preferred an appeal in A.S.No.49 of 2014 on the file of learned II Additional Sub-ordinate Judge, Cuddalore. The first Appellate Court also concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the appellant is before this Court.



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6. The learned counsel for the appellant submitted that the appellant purchased the suit property from one Nagaraj Vagaiyara under the registered sale deed dated 20.12.2006 and the same has been marked as Ex.A1. The appellant was able to let some evidence in support of his title by producing registered sale deed in his favour. On the other hand, the respondent failed to produce any document in support of his title. In such cases, the Courts below ought to have granted declaration as prayed for in favour of the appellant.

7. The learned counsel further by taking this Court to Ex.A2, Re-survey notice issued in the name of appellant's vendor submitted that the right of appellant's vendor was proved by Ex.A2 and the same has been over looked.

8. Admittedly, the respondent is in possession of the suit property. Therefore, the respondent is entitled to the presumption that he is the owner of the property by virtue of Section 110 of Evidence Act, unless the contrary is proved by the person who wants to assert title in himself. The appellant filed a suit for declaration of his title and recovery of possession. Therefore, the burden is on the appellant/plaintiff to prove her title. It is settled law that the plaintiff in a suit for declaration cannot pick holes in the defence and succeed



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and the plaintiff has to succeed on his own strength. In the case on hand, the title of plaintiff's vendor is disputed by the respondent. The appellant failed to lead any evidence to show that appellant's vendor had title to convey. The adangal extract for the suit survey number marked as Ex.B6 would suggest that property was registered in the name of one Appakutty Pillai in the records of municipality. There is no evidence available on record to show how the vendors of plaintiff got property. One of the vendors of the plaintiff was examined as P.W.3. He deposed that suit property was purchased by plaintiff's vendor's father namely Kuppusamy from Kiliambal. However, the documents in favour of said Kuppusamy has not been produced by the appellant. The wife of P.W.3 was examined as P.W.4. She deposed that the said Kiliambal orally gifted the suit property to the above said Kuppusamy. Therefore, the appellant has no definite case with regard to the title of his vendors. Evidence of P.W3 and P.W4 are contrary to each other. In such circumstances, the appellant miserably failed to prove the title of her vendors. Both the Courts below, by taking into consideration the evidence available on record correctly came to the conclusion that the appellant failed to prove the title of her vendors and hence, I do not find any perversity in the findings rendered by the Courts below.



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S.SOUNTHAR, J.

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9. Accordingly, the second appeal stands dismissed;

a) by affirming the judgment and decree dated 13.02.2015 passed in A.S.No.49 of 2014 on the file of the II Additional Sub Court, Cuddalore, confirming the judgment and decree dated 08.11.2013 passed in O.S.No.362 of 2007 on the file of the Additional District Munsif Court, Cuddalore.

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

11.10.2023

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

1. The II Additional Sub Court, Cuddalore,
2. The Additional District Munsif Court, Cuddalore.

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