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S.A.No.485 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.485 of 2017
and
CMP.No.11954 of 2017

Chandran

...Appellant

Vs.

1.Sekar
2.Salammal
3.A.Palani
4.A.Venkatesan
5.Valli
6.S.Malar
7.Bhuvaneswari

...Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 29.01.2015 passed in A.S.No.75 of 2010 on the file of the Sub-Court, Ranipet in confirming the judgment and decree dated 18.03.2010 passed in O.S.No.123 of 2003 on the file of the District Munsif Court, Ranipet.



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For Appellant : Mr.P.Mani

For Respondents : Mr.T.P.Prabakaran for R3 & R4
No appearance- R1, R2, R6 & R7
Dispensed with for R5

JUDGMENT

The unsuccessful plaintiff, who filed a suit for declaration and injunction, is the appellant herein. The plaintiff's suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the First Appellate Court. Aggrieved by the same, the plaintiff has come by way of this Second Appeal.

2. According to the plaintiff, 46 cents of the land in S.No.46/1A4 was assigned in favour of one Ramamoorthy by the Government under Ex.A2 dated 03.11.1986. After the death of Ramamoorthy, the appellant/plaintiff purchased 23 cents from Ramamoorthy's wife under Ex.A1 dated 21.04.1998. After purchase, the revenue documents got transferred in favour of the plaintiff, but the respondents/defendants tried to interfere with his possession. Therefore, he was constrained to file a suit for declaration and injunction.



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3. The appellant/plaintiff also prayed for alternative relief of recovery of possession. The suit was originally filed against one Arumugam and the first respondent namely Sekar. Pending the suit, the said Arumugam died. Therefore, the legal representative of the deceased were brought on record as defendants 3 to 8.

4. The Respondents filed a written statement and resisted the suit on the ground that the entire extent of land in the suit property in S.No.46/1A4 was assigned in favour of one Pappan, who was the father of the deceased first defendant Arumugam. Thus, the defendants claiming right and possession over the suit property. Earlier the suit for injunction was filed by the deceased Arumugam and the first respondent in OS.No.76 of 1997 against the plaintiff's predecessor in title Ramamoorthy and the plaintiff. The said suit was decreed in favour of the deceased Arumugam and the first respondent by granting injunction. Aggrieved by the same, the plaintiff and the said Ramamoorthy filed a First Appeal and the same was also dismissed. Therefore, the respondents also raised a plea of *res judicata*.



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5. Before the trial Court, the plaintiff was examined as PW1 and two witnesses were examined on behalf of the plaintiff as PW2 & PW3. Four documents were marked on behalf of the plaintiff as Ex.A1 to Ex.A4. On behalf of the respondents, the first respondent was examined as DW1 and 11 documents were marked as Ex.B1 to Ex.B11.

6. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the appellant/plaintiff failed to prove his title over the suit property and consequently dismissed the suit. Aggrieved by the same, the appellant filed an appeal in A.S.No.75 of 2010 on the file of the Subordinate Judge, Ranipet. The First Appellate Court also affirmed the findings of the trial Court. Aggrieved by the said judgment and decree, the unsuccessful plaintiff is before this Court.

7. Mr.P.Mani, learned counsel for the appellant trying to assail the judgment of the Courts below on the ground that the appellant/plaintiff proved his right over the suit property by producing assignment patta in favour of the plaintiff's vendor's husband Ramamoorthy. The leaned counsel for the appellant further submitted that the patta issued in faovur of the defendants'



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predecessor Pappan was not an assignment patta and the same was only a revenue patta. In such circumstances, the appellant/plaintiff is entitled to declare the title as prayed for.

8. The assignment patta in favour of the plaintiff's vendor's husband Ramamoorthy was issued on 03.11.1986. Whereas, the patta in favour of Pappan father of deceased first defendant, which was marked as Ex.B6, was issued in the year 1980. Therefore, both the Courts below came to the conclusion that the plaintiff was not able to show how after issuance of patta in favour of Pappan, the plaintiff was issued with assignment patta in the year 1986 as Ex.B6 patta issued in favour of Pappan was anterior in time. There is no explanation on the part of the appellant/plaintiff how the assignment patta for the plaintiff's vendor's husband was issued without cancelling earlier patta issued in favour of Pappan. The appellant failed to examine any revenue officials to explain the discrepancy.

9. The Courts below also based on Ex.B6 and Ex.B3 an Advocate Commissioner's report filed in the earlier suit in OS.No.76 of 1997, wherein entry in A-Register had been referred, came to the conclusion that the total



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extent available in the suit Survey number was only 1 acre and 3 cents.

However, it was argued on behalf of the appellant that patta for Pappan was issued only for 1 acre and remaining 46 cents assignment patta was issued in favour of Ramamoorthy. The appellant/plaintiff failed to lead any evidence to show that the total extent of property available in the suit survey number was 1 acre 46 cents as claimed by him. Therefore, both the Courts below came to the conclusion that in the absence of proper explanation on the part of the plaintiff how his vendor of the husband was issued with the assignment patta without cancelling the earlier patta issued in favour of Pappan under Ex.B6, the appellant was not entitled to the relief prayed for. The appellant/plaintiff in the suit for declaration and injunction, has to prove his title on his own strength and he can not take advantage of holes in the defence.

10. It is clear from the records available that the assignment patta relied on by the appellant was dated 03.11.1986, whereas the patta, Ex.B6 relied on by the defendants was of the year 1980. Therefore, based on Ex.B6 patta, which was anterior in time, a decree for injunction was granted in favour of the first respondent and deceased Arumugam in earlier suit. Subsequent to the disposal of the earlier suit and the first Appeal, the present plaintiff



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purchased a portion of the suit property in earlier suit from the wife of Ramamoorthy, who suffered a decree for injunction, and has come with the present suit. Therefore, both the Courts below have rightly come to the conclusion that the plaintiff failed to lead only acceptable evidence to prove his title and possession over the suit property and consequently, dismissed the suit. I do not find any perversity in the findings of the facts by the Courts below.

11. a) In the result, the Second Appeal stands 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. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.
dna

To

- 1.The Sub-Court, Ranipet.
- 2.The District Munsif Court, Ranipet.

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