



WEB COPY



S.A.No.673 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.673 of 2017
and
CMP.No.17458 of 2017

N.Jayachandra

... Appellant

Vs.

1.V.Krishnan
2.K.Bhavani

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 14.09.2016 in A.S.No.101 of 2004 on the file of the I Additional Subordinate Court, Villupuram, confirming the judgment and decree dated 23.06.2004 in OS.No.430 of 1999 before the Additional District Munsif Court, Villupuram.

For Appellant : Ms.R.Meenal

For Respondents : Mr.N.Suresh



S.A.No.673 of 2017

JUDGMENT

WEB COPY

The plaintiff is the appellant herein. He filed a suit for declaration of title, permanent injunction in respect of suit 'B' Schedule property and mandatory injunction in respect of suit 'C' Schedule property. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the plaintiff is before this Court.

2. According to the appellant/plaintiff, the suit 'A' Schedule property originally belonged to one Pemraj Pandari and his son Mahaveerchand Pandari, who have purchased the same from one J.N.Srinivasa Rao on 11.05.1964. The appellant purchased the said property by way of registered sale deed dated 24.08.1981 from Mahaveerchand Pandari and legal heirs of deceased Pemraj Pandari. From the date of purchase, the appellant has been in possession and enjoyment of the suit 'A' & 'B' Schedule properties.

3. The first respondent's father Venkatesa Iyer purchased a vacant site next on the east of the suit 2nd item of 'A' Schedule property from the plaintiff's predecessor-in-title namely Kabila bai Ammal. The said property is



S.A.No.673 of 2017

bounded on the north by 'B' Schedule property. The plaintiff and her predecessor-in-title have been in possession and enjoyment of the 'B' Schedule properties and the same has been used as an ingress and egress to the 2nd item of 'A' Schedule property. The respondents without having any manner of right trespassed into the 'B' Schedule property, put up construction to an extent of East-West 9 and North-South 1 and extended their septic tank on the Southern side of 'B' Schedule property which is described as 'C' Schedule property in the plaint. The defendants also made an attempt to commit trespass into the other portion of the suit properties. In these circumstances, the suit was laid by the appellant for above said reliefs.

4. The respondents filed a written statement denying the title as well as the possession of the appellant over suit 'B' Schedule property. It was further averred that neither the appellant nor her predecessor-in-title had any right over the 'B' Schedule property as there was no reference about 'B' schedule property in the title deeds. The averment in the plaint regarding continuous enjoyment of the suit schedule property by appellant and her predecessor-in-title has been specifically denied in the written statement.



S.A.No.673 of 2017

WEB COPY

5. Before the trial Court, the husband of the appellant/plaintiff was examined as PW1 and yet another witness was examined as PW2 and 21 documents were marked as Ex.A1 to Ex.A21. On behalf of the respondents, the first defendant was examined DW1 and 11 documents were marked as Ex.B1 to Ex.B11. The trial Court has appointed an advocate Commissioner to note down the physical features and the report and plan of Advocate Commissioner have been marked as Ex.C1 & Ex.C2.

6. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the appellant failed to establish her title and possession over the suit 'B' Schedule property and consequently dismissed the suit. Aggrieved by the same, the appellant preferred the first Appeal in A.S.No.101 of 2004 on the file of the I Additional Subordinate Judge, Villupuram. The first Appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the appellant is before this Court.



S.A.No.673 of 2017

7. The learned counsel for the appellant submitted that the first

Appellate Court having come to the conclusion that 'B' Schedule property is the only way to reach 2nd item of 'A' Schedule property and both the appellant and the respondent are entitled to use 'B' Schedule property as a common passage, ought not to have dismissed the suit filed by the appellant.

8. Ex.A1 is the certified copy of the settlement deed executed by one Kabila bai ammal in favour of the appellant's vendors namely, Sreenivasa Rao and Raghavendra Rao. As per Ex.A1, the vendors of the appellant derived title in respect of item Nos.1 and 2 of 'A' Schedule property. In parent document Ex.A1 there was no reference about suit 'B' Schedule property as access to item No.2 of 'A' Schedule property. Ex.A2 is the sale deed in favour of the appellant. Both the Courts below on appreciation of recitals found in Ex.A1 & Ex.A2 came to a factual conclusion that 'B' Schedule property was not conveyed to the appellant under Ex.A2. In these circumstances, the appellant is not entitled to claim exclusive title over the suit property and consequently both the Courts held that the prayer for declaration and consequential relief of injunction and mandatory injunction were not maintainable.



S.A.No.673 of 2017

9. Though the first Appellate Court observed that 'B' Schedule property is only way to access item 2 of 'A' Schedule property, the appellant has not laid the suit seeking declaration of his easementary right by necessity. In these circumstances, both the Courts below are correct in coming to the conclusion that the appellant is not entitled to declaration of title and other consequential relief in respect of 'B' Schedule property. The factual conclusion reached by the Courts below is based on proper appreciation of Ex.A1 and Ex.A2 and the same does not call for any inference by this Court. In the absence of any substantial question of law arising for consideration, the Second Appeal is dismissed.

10. 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.

16.11.2023

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



WEB COPY



S.A.No.673 of 2017

To

- 1.The I Additional Subordinate Court, Villupuram.
- 2.The Additional District Munsif's Court, Villupuram.



WEB COPY



S.A.No.673 of 2017

S.SOUNTHAR, J.

dna

S.A.No.673 of 2017
and
CMP.No.17458 of 2017

16.11.2023