



S.A.No.252 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 252 of 2019

P.Kolandasamy

...Appellant

Vs.

1.Pappannan
2.Ramasamy
3.Nanjammal
4.Palaniappan
5.Ramakkal

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in A.S.No.44 of 2013 dated 11.12.2017 passed by the learned Sub-Judge, Sathyamangalam confirming the judgment and decree passed in O.S.No.238 of 1998 dated 31.03.2004 passed by the learned District Munsif, Sathiyamangalam.

For Appellant : M/S.S.Parthasarathy

For Respondent 1 to 5 : Mr.S.A.Mohamed Mubarak



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JUDGEMENT

The unsuccessful plaintiff is the appellant. He filed a suit for declaration of title, recovery of possession and mandatory injunction. The suit was dismissed by the Trial Court and findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the same, the plaintiff is before this Court.

2. According to the appellant/plaintiff, he purchased the suit property under Ex.A1 dated 18.03.1993. Subsequently, he permitted the defendants to occupy suit items 1 to 5 with right to cancel the permission. The 1st respondent obtained permission from appellant to repair the four walls of the suit structure in item 1 of the suit property. Taking advantage of the permission, he pulled down the walls and put up a pucca construction. In these circumstances, the appellant cancelled the permission granted to respondents 2 to 5 orally on 31.07.1998. As respondents started acting against the interest of the appellant, a cloud was created over the title of appellant and hence, he was constrained to file a suit for declaration of title and recovery of possession. The appellant also sought for mandatory injunction against the 1st defendant directing him to remove the pucca construction put up by him in item 1 of the suit property.



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3. The defendants filed a written statement denying the title of the appellant over the suit property. It was their case that they have been in possession and enjoyment of the suit items 1 to 5 right from the days of their fathers. The respondents claimed that the 1st respondent family had been in possession and enjoyment of the suit item 1 for the past 60 years. The family of defendants 2 and 5 had been in possession and enjoyment of the suit items 2 and 3 for the past 50 years. The family of defendants 3 and 4 had been in possession and enjoyment of the suit items 4 and 5 for the past 30 years. The respondents specifically denied the alleged permission pleaded by the appellant and claimed that they had been in possession and enjoyment on their own right.

4. Before the Trial Court, the appellant was examined as P.W.1 and his relative was examined as P.W.2. The respondents 1 to 3 were examined as D.W.1 to 3 and two other witnesses were examined as D.W.4 and D.W.5. On behalf of the appellants, 9 documents were marked as Ex.A1 to Ex.A9. On behalf of the respondents, 9 documents were marked as Ex.B1 to Ex.B9.



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5. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that appellant failed to prove the plea of permissive occupation and respondents had been in possession and enjoyment of the suit property for several years even prior to the date of purchase by the appellant and consequently dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.44 of 2013 on the file of Sub-Court, Sathyamangalam. Before the First Appellate Court, the appellant again examined himself as P.W.1 and one Paramesh was examined as P.W.3, 5 other documents were marked on behalf of the appellant as additional evidence including the parent title documents of the appellant. The additional documents filed by the appellants were marked as Ex.A10 to Ex.A14. The First Appellate Court also on appreciation of entire evidence before it, including additional evidence raised, concurred with finding of Trial Court. Aggrieved by same, the appellant has come by way of this second appeal.

6. The learned counsel for the appellant tried to assail the judgments of Courts below by submitting that he has proved his title by producing Ex.A1 and in the absence of any evidence to prove title of respondents, the Courts below ought to have accepted Ex.A1 and decreed the suit as prayed for.



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7. The First Appellate Court, on careful consideration of documents filed on behalf of the appellant, came to the conclusion that vendor of the appellant were allotted with only 2 acres 0.03 cents in suit survey number under Ex.X1 and he sold 2.44 acres to the plaintiff under Ex.A1. There is no explanation on the part of the appellant how his vendor who was allotted with 2 acres 0.03 cents under Ex.X1 could sell 2.44 acres to the appellant under Ex.A1. Further, in the parent documents the property allotted to vendor of the appellant were described as lying on East of North-South Cart track. As per the plaint plan, the suit items 2 to 5 are lying on the West of North-South AB Cart track. However, in the plaint while describing the suit properties instead of showing the North-South Cart track as western boundary, the appellant described the western boundary as Kolathur main road. The suit items 2 to 5 are situated in between Kolathur main road and North-South Cart track in the suit survey numbers. Therefore, the description found in the plaint is also not in accordance with his title documents. Taking into consideration all these facts, the First Appellate Court rightly came to the conclusion that appellant failed to prove his title over the suit properties. Both the Courts below concurrently found that appellant failed to prove the plea of permissive occupation raised by him. Over and above, P.W.1 himself in his



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evidence admitted that respondents/defendants had been in possession and enjoyment of the suit property for several years even before the date of purchase of the property by him. In these circumstances, I do not find any perversity in the findings rendered by the Courts below. There is no substantial question of law arising for consideration in this second appeal to interfere with the findings rendered by the Courts below.

8. Accordingly, the second appeal stands dismissed.

a) by affirming the judgment and decree passed in A.S.No.44 of 2013 dated 11.12.2017 on the file of learned Sub-Judge, Sathyamangalam confirming the judgment and decree passed in O.S.No.238 of 1998 dated 31.03.2004 on the file of learned District Munsif, Sathiyamangalam.

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

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

1. The learned Sub-Judge, Sathyamangalam
2. The learned District Munsif, Sathiyamangalam.



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S.SOUNTHAR, J.

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