



S.A(MD)No.1186 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 20.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.1186 of 2011

James

... Appellant/Appellant
/Plaintiff

Vs.

Jesu Fernando

... Respondents/Respondents
/Defendants

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 16.08.2004 made in A.S.No.81 of 2004 on the file of II Additional Sub Court, Tirunelveli, confirming the judgment and decree, dated 23.03.2004 made in O.S.No.223 of 2000 on the file of Principal District Munsif Court, Valliyoor.

For Appellant : Mr.S.Sivathilakar

For Respondent : Mr.R.T.Arivukumar



S.A(MD)No.1186 of 2011

WEB COPY

JUDGMENT

The unsuccessful plaintiff in the suit for injunction has come up by way of second appeal.

2. According to the appellant, the suit property originally belonged to his wife and after her death, he has been in enjoyment of the same. It was also further averred that the appellant's wife filed suits against the respondent in O.S.No.624 of 1972 and 947 of 1972 and those suits were dismissed. It was further averred that the respondent also filed suits against the appellant's wife in O.S.No.1083 of 1980 and the same was decreed. Challenging the same, the appellant filed an appeal in A.S.No.48 of 1981 on the file of the Sub Court, Tirunelveli and the same was allowed. Based on the allowing of appellant's wife appeal in A.S.No.48 of 1981, the present suit has been filed by the appellant seeking injunction.

3.The respondent has filed a written statement denying the title and possession of the appellant as well as his wife over the suit property. The respondent further averred that he purchased the suit property from his sister



S.A(MD)No.1186 of 2011

Thangammal by documents, dated 29.09.1972 and from St.Mariyannai Church by document dated 09.09.1969.

4.The trial Court on consideration of oral and documentary evidence available on record came to the conclusion that the appellant failed to produce any documents to prove his *prima facie* title and possession over the suit property and dismissed the suit. Aggrieved by the same, the appellant filed the first appeal in A.S.No.81 of 2004. The First Appellate Court also concurrent with the findings of the trial Court. Aggrieved by the said concurrent findings, the appellant is before this Court.

5.The learned counsel for the appellant submitted that the appellant proved his possession over the suit property by producing patta as Ex.A3 and the Will executed by his wife as Ex.A15 and those documents were not taking into consideration by the Courts below.

6. The present suit has been laid by the appellant seeking injunction. Therefore, it is incumbent upon the appellant to prove the lawful possession over the suit property. The appellant laid a suit for injunction in respect of 5



S.A(MD)No.1186 of 2011

ares of land in S.No.342/2B and 430/2B in Karaisuthu Uvari Village, Radhapuram Taluk, Tirunelveli District. The appellant claimed that originally the suit property belongs to his wife and after her death he has been in possession of the suit property. However, the appellant has not produced any document to prove the title of his wife over the suit property. Therefore, the Will allegedly executed by the appellant's wife will not confer any right to the appellant over the suit property in the absence of any document to prove the alleged right of his wife. In order to prove the possession over the suit property, the appellant produced Ex.A3 -Patta. The Courts below rejected the patta produced by the appellant on the ground that the extent of land mentioned in under Ex.A3 – Patta is 5 cents, whereas the appellant sought for injunction in respect of larger extent namely 5 ares. Further, during the course of examination, the appellant also admitted that the respondent is in possession of portion of the suit property. Therefore, both the Courts below came to the conclusion that the appellant fails to prove his lawful possession over the suit property. The said findings is based on the evidence available on record. The finding of fact by the Courts below is binding on this Court.



S.A(MD)No.1186 of 2011

7. In these circumstances,

WEB COPY

a) I do not find any substantial question of law and consequently the Second Appeal stands dismissed and the judgment and decree passed by the learned A.S.No.81 of 2004 on the file of II Additional Sub Court, Tirunelveli, stands confirmed;

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

20.02.2023

NCC : Yes/No
Index : Yes / No
vsd

To

- 1.The II Additional Sub Court,
Tirunelveli.
- 2.The Principal District Munsif Court,
Valliyoar.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(MD)No.1186 of 2011

S.SOUNTHAR, J.

vsd

S.A(MD)No.1186 of 2011

20.02.2023