



1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)NO.610 OF 2023
and
C.M.P(MD)No.14170 of 2023

D.Kannan :Appellant/Second Respondent/
Second defendant

.VS.

1.M.Parameshwari : Ist Respondent/Appellant/Plaintiff

2.A.Durairaj

3.K.Krishnamoorthy

4.K.Vishwanathan :Respondents 2 to 4/Respondents
1,3 and /Defendants 1,3 and 4.

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree made in A.S.No. 71 of 2018, dated 26.02.2023, on the file of the Principal Subordinate Court, Pudukkottai, reversing the judgment and decree made in O.S.No.8 of 2010, dated 21.07.2017, on the file of District Munsif Court, Keeranur.

For Appellant

:Mr.C.Gangai Amaran



JUDGMENT

WEB COPY

This Second Appeal is filed challenging the judgment of the Principal Sub-Court, Pudukkottai in A.S.No.71 of 2018, which was filed against the judgment in O.S.No.8 of 2010, on the file of the learned District Munsif, Keeranur.

2.The first respondent, as plaintiff, has filed the suit against the appellant and respondents 2 to 4 seeking the relief of permanent injunction not to disturb her possession in the suit property and for other reliefs.

3.The suit property measures an extent of 0.01.0 ares in S.No.444/16 in Chengalur Village, Kulathur Taluk, Pudukkottai District within the specific boundaries given in the plaint schedule of property.

4.The case of the plaintiff in brief is as follows:

The suit property was in possession and enjoyment of the plaintiff and her husband and their predecessor for a long time. In confirmation of their possession and enjoyment, assignment patta was given to the plaintiff. There is a house with asbestos roof in the



suit property. On the south of the suit property, defendants property situates. The defendants are influential persons. The defendants tried to cut the Karuvelam trees standing in the plaint schedule property on 15.10.2009, which was prevented by the plaintiff and her relatives. A complaint was given in this regard in Mathoor Police Station. The defendants are trying to prevent the peaceful possession of the plaintiff in the suit property. Thus the suit was filed.

5. In the written statement filed by the defendants, it is stated that the suit property and in the lands surrounding the suit property are Natham lands. The plaintiff's husband Murugaiah and his Pangali Maruthaiah Mangalar, his son Sappani Mangalar sold the suit property to the second defendant's father Kosalraj Mangalar on 21.11.1978. From the date of purchase, Kosalraj is in possession and enjoyment of the property. Claiming of possession of the suit property is not correct. The revenue records, especially, patta was not given after proper enquiry. Patta would have been obtained by exercising influence and by fraudulent means. Thus the defendants prayed for dismissal of the suit.

6. On considering the oral and documentary evidence



produced before the trial Court, the learned Trial Judge after finding that the plaintiff was granted Ex.A1 patta and she is in possession and enjoyment of the property on the basis of Ex.A1 patta and that Ex.B1 and Ex.B3 documents produced by the defendants do not relate to the suit property, strangely dismissed the suit on the ground that the plaintiff produced Ex.A4 which do not relate to the suit property. In appeal, the learned First Appellate Judge, reappraised the evidence and found that the plaintiff has established her title and possession in respect of the suit property and rival claim made by the defendants is not proved and finally held that the dismissal of the suit on the basis of Ex.A4 is not acceptable when the plaintiff traces her title and possession on the basis of Ex.A1, sets aside the judgment of the trial Court and decreed the suit and allowed the appeal. Therefore this Second appeal is filed by the second defendant.

7.The point for consideration in this Second Appeal is whether any substantial questions of law is made out for admission of the Second Appeal?

8.A reading of the judgment of the trial Court shows that it has elaborately considered the oral and documentary evidence



produced by the parties. After appreciating the evidence, the learned Trial Judge found that Ex.A1 relates to the suit property in S.No.444/16. He also found that the rival claim made by the defendants on the basis of Ex.B3-Sale deed does not relate to the suit property, but it relates to the property in S.No.158/7. There is an observation that the defendants have not produced any evidence to show that they have valid claim in respect of the suit property in S.No.444/16. From the evidence of P.W.1, the learned Trial Judge came to the conclusion that Ex.B3 property relates to the property on the south of the suit property. It recorded that the defendants have contradictory plea in the written statement and in the evidence of D.W.1 with regard to the enjoyment of the suit property by the defendants. Finding that the defendants have not specifically denied the assignment of suit property to the plaintiff through Ex.A1 and that they have not produced any document to show that they are in possession of the suit property, it was found that the plaintiff was in possession of the suit property on the basis of Ex.A1, assignment patta. However, on the basis of Ex.B2 letter, the trial Court came to the conclusion that Ex.A4 does not relate to the suit property.

9.Ex.B2 is the letter of Tahsildar, Kulathoor given under the



Right to Information Act. Ex.A4 relates to S.No.444/16 as per the proceedings in Tho.MU.P.T.R.No.1044/2009 and relates to Sathiamangalam Village. Without any further examination and the veracity of the information in Ex.B2 and Ex.A4, the learned Trial Judge came to the conclusion that the plaintiff produced Ex.A4 despite the fact that it does not relate to the suit property. Thus dismissed the suit stating that the plaintiff has approached the Court with unclean hands. This finding of the learned Trial Judge without any further enquiry with regard to Ex.B2 and Ex.A4, is not proper and in the manner known to law. This mistake was rectified by the First Appellate Court. The learned First Appellate Judge finding that the plaintiff has established her right, title and possession in respect of the suit property on the basis of Ex.A1, sets aside the judgment of the trial Court and decreed the suit.

10. This Court finds from the well considered judgment of the First Appellate Court that there is no cause for any interference by this Court. The plaintiff has proved the case without reasonable doubt with regard to her right, title, enjoyment and possession in respect of the suit property and the suit was rightly decreed by the First appellate Court. The judgment of the First Appellate Court stands confirmed. There is no substantial questions of law arises for



consideration in this Second Appeal.

WEB COPY

11. Thus the Second Appeal is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

17.10.2023

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
vsn

To

1. The Principal Subordinate Judge,
Pudukkottai.
2. The District Munsif,
Keeranur.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



8

G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
S.A(MD)NO.610 OF 2023
and
C.M.P(MD)No.14170 of 2023**

17.10.2023