



S.A(MD).No.411 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.411 of 2022
and C.M.P(MD)No.5020 of 2022

Thangasamy

.... Appellant/Appellant/Plaintiff

Vs.

The India Cement Company Ltd.,
Rep by its
General Manager,
Sankar Nagar,
Township,
Tirunelveli,
Tirunelveli District

... Respondent/Respondent/Defendant

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 08.09.2021 passed in A.S.No.28 of 2020 on the file of the Subordinate Court, Aruppukottai confirming the judgment and decree dated 28.11.2019 passed in O.S.No. 131 of 2017 on the file of the Additional District Munsif Court, Aruppukottai.

For Appellant : Mr.A.R.Kannappan

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. The appellant is the plaintiff in the suit in



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O.S.No.131 of 2017 on the file of the Additional District Munsif Court, Aruppukkottai. The suit was filed for declaration to declare the sale deed dated 16.11.1998 registered as Document No.1555/1998, Tiruchuzhi, SRO standing in the name of the respondent/defendant as null and void and also for a permanent injunction restraining the respondent/defendant from interfering with the appellant/plaintiff's peaceful possession and enjoyment of the suit schedule property.

2. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. The plaintiff claims right over the suit schedule property in the following manner:

Originally, the suit property belong to Nagalingam Reddiyar son of Rengappa Reddiyar and his brother Jeyaraman. Both executed a registered sale deed dated 16.01.1962 in favour of the plaintiff's mother's younger sister Ilanjiammal. Later, bequeathed the suit property by a registered sale deed dated 03.06.1993 in favour of the plaintiff. Ilanjiammal died in the year 2004. According to the plaintiff, till the life time Ilanjiammal, the suit schedule property was owned by her and after her demise, by virtue of the



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sale deed dated 03.06.1993, the plaintiff became the owner of the suit schedule property and is in enjoyment of the same. According to the plaintiff, Ilanjiammal was paying the kist during her life time. According to the plaintiff, he came to know that on 16.11.1998 a fraudulent sale deed has been executed in favour of the defendant in respect of the suit schedule property which is owned by him. In such circumstances, the suit has been filed for declaration and permanent injunction.

4. The defendant has filed his written statement before the trial court. The defendant has stated that the suit schedule property was purchased under a valid sale deed dated 16.11.1998 from Rasamy Reddiyar and his wife Ilanjiammal who had earlier purchased the same by a sale deed dated 06.10.1969. They have also stated that the revenue records including the patta have been mutated in their favour subsequent to their purchase. The kist receipt was also paid by the defendant's company. They have also stated that the vendors of Ilanjiammal have no saleable interest in the suit schedule property and they have also denied execution of the sale Will dated 03.06.1993 in favour of the plaintiff. They have also pleaded that the suit is barred by limitation.



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5. The trial court framed the issues based on the pleadings of both parties. On the side of the plaintiff, 4 documents were produced which were marked as Ex.A.1 to Ex.A.4 and 1 witness was examined namely the plaintiff himself as P.W.1. On the side of the defendants, 5 documents were filed which were marked as Ex.B.1 to Ex.B.5 and one witness was examined on their side namely their authorized representative Mr.Chithiraivel as D.W.1. The documents filed by the defendant included the parent title deed dated 06.10.1969 which is marked as Ex.B.4, the original sale deed dated 16.11.1998 standing in the name of the defendant was also marked as Ex.B.2. Based on the oral and documentary evidence available on record, the trial court has dismissed the suit filed by the plaintiff by giving the following reasons:

i) The original registered sale deed dated 03.06.1993 (Ex.A.2) was not produced by the plaintiff;

ii) The whereabouts of the original Will was also not pleaded in the plaint;

iii) None of the attesting witnesses was examined by the plaintiff to prove the Will (Ex.A.2) as required under Section 68 of the Indian Evidence Act and Section 63 of Indian Succession Act.

iv) No steps were taken by the plaintiff as required under Section 69



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of the Indian Evidence Act to prove the signature of the person who executed Ex.A.2 Will;

v) No further steps were taken through examination of other witnesses by invoking Section 71 of the Indian Evidence Act after taking steps to examine Ex.A.2 Will;

vi) Death certificate of Elanjiammal was not filed by the plaintiff.

6. This Court is of the considered view that the reasons given by the trial court for dismissing the suit are perfect and sound reasons and based only on the oral and documentary evidence available on record. The appellant has also not disputed before this Court that the reasons given by the trial court are not based on oral and documentary evidence available on record. Since the Will (Ex.A.2) has not been proved by the plaintiff, the trial court has rightly dismissed the suit. The lower Appellate Court by its judgment and decree dated 08.09.2021 in A.S.No.28 of 2020 on the file of the Sub Court, Aruppukkottai has also rightly confirmed the findings of the trial court by dismissing the first appeal filed by the plaintiff. Only based on oral and documentary evidence available on record, the courts below have concurrently held that there is no merit in the suit filed by the plaintiff. The revenue records have also been mutated in the name of the defendant



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pursuant to their purchases of the suit schedule property in the year 1998.

The suit was filed by the plaintiff only in the year 2017 challenging the sale deed of the year 1998 standing in the name of the defendant. The substantial questions of law raised in the grounds of this Second Appeal by the appellant are all issues which have been rightly considered by the courts below and does not call for any interference by this Court. There are no substantial questions of law involved in this Second Appeal.

7. In the result, this Second Appeal is dismissed. Accordingly, the judgment and decree dated 08.09.2021 passed in A.S.No.28 of 2020 on the file of the Subordinate Court, Aruppukottai confirming the judgment and decree dated 28.11.2019 passed in O.S.No.131 of 2017 on the file of the Additional District Munsif Court, Aruppukottai, is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet: Yes/No
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To,

- 1.The Subordinate Court, Aruppukottai
2. The Additional District Munsif Court, Aruppukottai,
- 3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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