BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.CHANDRASEKHARAN**

S.A.(MD) No.641 of 2023
and
C.M.P.(MD) No.14965 of 2023

T.Sekar ..Appellant

Vs.

C.Kalian ...Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the order dated 29.11.2021 made in A.S.No.81 of 2018 on the file of the Principal Sub Court, Kumbakonam confirming the judgment and decree dated 03.11.2018 made in O.S.No.344 of 2012 on the file of 1st Additional District Munsif Court, Kumbakonam.

For Appellant : Mr.R.Maheswaran
For Respondent : Mr.A.George Stephen

<u>JUDGMENT</u>

This second appeal is filed challenging the concurrent judgments in A.S.No.81 of 2018 on the file of the Principal Sub Court, Kumbakonam in O.S.No.344 of 2012 on the file of the 1st Additional District Munsif Court, Kumbakonam.

2.The respondent/plaintiff filed a suit in O.S.No.344 of 2012 seeking the relief of permanent injunction in respect of the suit property. The case of the respondent/plaintiff, in brief, is that the suit property is an extent of 0.015 ares and tiled house in R.S.No.179/74 in MGR Colony, Manappadayur Village, Thiruvazhanjuli Village, Kumbakonam Taluk, Thanjavur District. This property, according to the case of the respondent, belongs to him and it is shown as A, B, C and D in the rough sketch. He is in possession and enjoyment of the suit property. In approval of his possession and enjoyment, patta has been granted in respect of the suit property to the respondent. He has been paying the house property tax to the tiled house in the suit property. There are 10 Poovarasu trees in the suit property. The respondent borrowed a sum of Rs.4,500/- from the appellant and he was made to part with blank signed stamp papers and normal papers. The appellant had also obtained the patta of the plaintiff as a security. Despite the respondent is ready to payback the amount, the appellant refused to receive the amount and tried to encroach the suit property, leading to filing of the suit.

3.This case of the respondent is countered by the appellant stating that the respondent had sold the suit property to the appellant on 14.01.1995 through an unregistered sale deed. In confirmation of the sale deed, he had handed over the patta of the suit property. The averment made in the plaint that the respondent had handed over the patta in connection with the loan transaction is absolutely not correct. The appellant is in possession and enjoyment of the suit property. He let out the property to one Chandru in 1997 and thereafter, it is used for rearing cattle and storing agricultural products.

4.On the basis of the oral and documentary evidence produced, the trial Court found that the respondent had produced cogent evidence in the form of oral and documentary to show his entitlement to the suit property and his possession. On the other hand, the appellant had failed to prove the sale of the property, that he is in possession and enjoyment of the suit property and thus, decreed the suit. This finding of the trial Court was confirmed by the first appellate Court in an appeal filed by the appellant in A.S.No.81 of 2018. Thus, the appellant is before this Court.

5.The learned counsel appearing for the appellant submitted that the plaintiff has not produced any title documents and the appellant was in possession and enjoyment of the suit property in pursuance of the unregistered sale deed. However, the Courts below had not properly appreciated the oral and documentary evidence produced by the appellant and thus, decreed the suit.

6.Considered the submissions of the learned counsel appearing for the appellant and perused the records.

7.From the case set out by the parties, it is not in dispute that the suit property belonged to the respondent. The respondent has produced the original patta in his name as Ex.A1 and property tax receipts as Ex.A2 and Ex.A3. That apart, Ex.X1 to Ex.X3, ie., copies of Chitta, Adangal and FMB sketch, have been filed. In support of these documents, the respondent had examined P.W1 to P.W3. The appellant examined D.W1 to D.W3 and produced Ex.B1 and Ex.B2.

8.As stated earlier, even the appellant admits that the respondent is the owner of the suit property but claims that respondent had sold the suit property to the appellant through the unregistered sale deed dated 14.01.1985. The learned trial Judge found that since the value of the suit property is more than Rs.100/-, the unregistered sale deed suffers from the vice lack of registration under Section 17 of the Indian Registration Act. Not only that, it was found that the appellant has not produced the original unregistered sale deed for perusal of Court as an exhibit. Only the signature of the respondent in the Xerox copy of the unregistered sale deed dated 14.01.1995 was marked as Ex.B1. Except this, there are no other documents produced by the appellant in support of his case that he is in possession and enjoyment of the suit property from the date of purchase ie. on and from 14.01.1995. Therefore, on the ground that the unregistered sale deed dated 14.01.1995 is not admissible in law, that the original is not produced and that no documentary evidence is produced in support of the appellant's claim of possession of the suit property, the trial Court, on the basis of the oral and documentary evidence produced in support of the respondent's claim of title and possession decreed the suit. That was confirmed by the first appellate Court. This Court finds that there is no impropriety or illegality in appreciating the evidence for coming to the conclusion of granting the decree of permanent injunction in favour of the respondent.

9.In ***Sir Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd., 1962*** reported in ***AIR 1962 SC 1314,*** the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1.Whether it is of general public importance (or)

2.Whether it directly and substantially affects the rights of parties ***and if so***,

3.Whether it is ***either*** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) ***(or)***

4.The question is not free from difficulty and calls for discussion of alternative views.

10.In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

11.In fine, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

03.11.2023

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To

1.The Principal Subordinate Judge,
Kumbakonam.

2.The 1st Additional District Munsif,
Kumbakonam.

3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

G.CHANDRASEKHARAN, J.

mm

S.A.(MD) No.641 of 2023

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