



S.A(MD)No.299 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No.299 of 2018

and

C.M.P(MD)No.8480 of 2018

R.Gopal

... Appellant

Vs.

1. A.Irulayammal

2. Thiruvannamalai Panchayat Board,
by its President,
Thiruvannamalai,
Srivilliputhur Taluk,

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment passed in A.S.No.39 of 2009, dated 12.01.2018 on the file of the Subordinate Court, Srivilliputhur, by confirming the Judgment and Decree passed in O.S.No.43 of 2006, dated 02.09.2009 on the file of the Principal District Munsif, Srivilliputhur.

For Appellant : M/s.S.Mahalakshmi

For R-1 : Mr.L.Prabhu

For R-2 : No appearance



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JUDGMENT

This Second Appeal is filed against the Judgment and Decree passed in A.S.No.39 of 2009, dated 12.01.2018 on the file of the Subordinate Court, Srivilliputhur, by confirming the Judgment and Decree passed in O.S.No.43 of 2006, dated 02.09.2009 on the file of the Principal District Munsif, Srivilliputhur.

2. The 1st Defendant is the Appellant and the Plaintiff is the 1st respondent and the 2nd Defendant is the 2nd Respondent herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants.

3. The plaintiff has filed the suit in O.S.No.43 of 2006 for declaration and injunction. The brief facts of the case as stated by the plaintiff is that originally the suit property belongs to one Alaguthevar. After demise of the said Alaguthevar, his four sons executed power of attorney dated 17.04.1978 in favour of one Unguservai in respect of 44 cents of scheduled mentioned property. At the same time the wife of Alaguthevar namely Muthukaniammal had executed a power of attorney dated 17.04.1978 in favour of the said Unguservai in respect of



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Old S.No.72,73 and 74 in new S.No.46 / 2 admeasuring 2 acres 56 cents in that southern side east portion of 5 cents belonged to her and her sons. The said Unguservai in turn has sold the property to one Muthiah son of Vellaisamy Servai on 22.04.1982. Further the said Muthiah in turn has sold the property to Arjunan, who is the plaintiff's husband. The further contention of the plaintiff is that the plaintiff's husband and the plaintiff are in enjoyment of the property and further the property was rectified by its rectification deed dated 09.10.1986.

4. The contention of the 1st defendant / appellant is that the 1st defendant was in possession and enjoyment of the suit property for more than 30 years by paying tax and the both the courts failed to appreciate the oral and documentary evidence. Hence the present second appeal.

5. The contention of the 1st defendant / appellant is that the First Appellate Court failed to accept the power of attorney executed by Muthukaniammal. It is seen the First Appellate Court had held that the fact that Muthukaniammal had executed power of attorney was stated in the plaint and the 1st defendant has also admitted in the written statement. Even in Ex.B3, produced



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by the 1st defendant, mentions about Muthukaniammal's power of attorney. In spite of the same the 1st defendant failed to produce the power of attorney deed executed by Muthukaniammal before Trial Court. Further the First Appellate Court has held that the first appeal was filed in the year 2009 and the 1st defendant has not produced the same at the time of filing the first appeal. But had produced only on 07.10.2017, after a lapse of 8 years. Furthermore, held the case on merit and had discussed about the said Power of Attorney executed by Muthukaniammal. In such circumstances, the First Appellate Court had declined to accept the power of attorney deed executed by Muthukaniammal. This Court is of the considered opinion when the First Appellant Court had discussed about the said Power of Attorney, the Court ought to have allowed the I.A. and ought to have allowed to mark the same as evidence, thereafter ought to have held the same on merits.

6. In view of the above, this Second Appeal is allowed. The matter is remitted back to the Appellate Court. The Judgment and Decree in A.S.No.39 of 2009, dated 12.01.2018 on the file of the Subordinate Court, Srivilliputhur is hereby set aside. The Appellate Court is directed to restore the I.A.No.164 of



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2017 and thereafter, consider the claim of the parties in accordance with Law.

The Appellate Court is directed to dispose the Appeal, within a period of four months, from the date of receipt of a copy of the Order. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

21.12.2023

Internet : Yes

KSA

To

1. The Subordinate Court,
Srivilliputhur.
2. The Principal District Munsif Court,
Srivilliputhur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

KSA

**Judgment made in
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