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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.10.2023**

CORAM:

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

S.A.(MD) No.572 of 2023

1.M.Nagaraj

2.N.Padma

..Appellants

Vs.

T.Manivasagam

...Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree passed by the Additional Sub Court, Srivilliputtur in A.S.No. 34 of 2015 on 27.06.2022 in confirming the judgment and decree passed by the Additional District Munsif Court, Srivilliputtur in O.S.No.389 of 2012 on 05.01.2015.

For Appellants

: Mr.M.Jothi Basu

JUDGMENT

This second appeal is directed against the judgment and decree of the first appellate Court, Srivilliputtur in A.S.No.34 of 2015, which confirmed the judgment of Additional District Munsif Court, Srivilliputtur in O.S.No.389 of 2012.



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2.The appellants in this case filed a suit in O.S.No.389 of 2012 against the respondent seeking

a) a relief of declaration of title in respect of item No.2 of the suit properties; mandatory injunction to remove the construction made by the respondent in item No.2 of the suit properties;

b) to direct the respondent to pay the market value of the land, on which the defendant constructed a building;

c) cost and other reliefs;

3.The case of the appellants, as seen from the plaint, in brief, is that the suit properties and other properties originally belonged to one Innasi Nadar. The said Innasi Nadar and his son, Mudiappan had executed an unregistered sale deed in respect of the suit properties to the first plaintiff. Thereafter, the first plaintiff had executed a settlement deed in respect of the suit properties on 15.10.2009. Since then, they have been enjoying the suit properties. The defendant had constructed a building and during the course of construction, he encroached item No.2 of the suit properties and put up construction. On this pleadings, the suit was filed for the aforesaid reliefs.

4.The said suit was resisted by the defendant claiming that the



description of the suit properties as given in the plaint is not correct. The suit property was originally belonged to Innasi Nadar through a partition deed dated 20.01.1972. The defendant had purchased the property on 02.04.1993 and had put up the construction. During the course of construction, the appellants have not made any objection for the construction. The settlement deed had been executed by the appellants to suit their convenience. The defendant had given a complaint to the District Superintendent of Police, Virudhunagar on 03.10.2022 against the creation of the settlement deed. The claim made on the basis of the unregistered sale deed is not correct and legal.

5. On the basis of the said pleadings, the trial Court had framed the following issues:-

- i) Whether the item No.2 of the suit property belonged to the plaintiffs independently?*
- ii) Whether the defendant had encroached item No.2 of the suit properties and constructed a building?*
- iii) Whether the plaintiffs are entitled for the relief of declaration as prayed for?*
- iv) Whether the plaintiffs are entitled for the relief of recovery of possession?*
- v) Whether the plaintiffs are entitled for the relief of market value of the item No.2 of the suit properties?*
- vi) To what relief, if any, the plaintiffs are entitled to?*



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6. During the course of trial, P.W1 and P.W2 were examined on the side of the plaintiffs/appellants and D.W1 and D.W2 were examined on the side of the defendant/respondent. Ex.A1 to Ex.A7 and Ex.B1 to Ex.B7 were marked.

7. On considering the oral and documentary evidence, the learned trial Judge had dismissed the suit, among other grounds, on the ground that the appellants had failed to prove the title claim in respect of the suit properties. There was also finding to the effect that though the appellants have claimed right in respect of the suit property on the basis of the unregistered sale deed, no steps have been taken for paying the deficit Court fee and marking the documents. Finding that the appellants have not established the case of purchasing the entire extent of 37 cents in item No.1 of the suit properties and that the defendant had positively proved by producing the documents to show the purchase of 18½ cents within 37 cents, ie., southern 18½ cents and that the item No.2 of the suit properties lies within this 18½ cents, the trial Court dismissed the claim of the appellants in all aspects. The first appellate Court has also confirmed the judgment of the trial Court.

8. From the consideration of the oral and documentary evidence and submissions of the learned counsel for the appellants, it is evident that the



plaintiffs claimed title in respect of the item No.2 of the suit properties based on the unregistered sale deed, which was not marked. An unregistered sale deed cannot be relied for the purpose of claiming title over the property. Obviously, Ex.A2, the settlement deed is a self-serving document and on that basis, the plaintiffs cannot set up title to the property in dispute.

9.In the considered view of this Court, the appellants have miserably failed to establish the claim of title in respect of the item No.2 of the suit properties and therefore, the appellants are not entitled for any relief. Both the Courts below have rightly and properly analyzed and appreciated the evidence and came to the conclusion that the appellants/plaintiffs are not entitled for any relief. This Court finds no reason to interfere with the judgments of both the Courts below. There is no substantial question of law arise for consideration in this second appeal.

10.In this view of the matter, this Second Appeal is dismissed. No costs.

Index : Yes/No
Internet : Yes/No
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To

- 1.The Additional Subordinate Judge,
Srivilliputtur.
- 2.The Additional District Munsif,
Srivilliputtur.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

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