



S.A.No.1358 of 2004

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No.1358 of 2004

1.S.Paramasiva Thevar(Died)
2.Manickam
3.Paramaguru
4.Sathya ... Plaintiff/Appellant/Appellant
(Appellants 2 to 4 are brought on record
as LR's of the deceased sole appellants
vide order dated 02.07.2010)

-Vs-

1.G.Ramalakshmi
2.Executive Officer,
Mamsapuram Town Panchayat
Office, Mamsapuram. ... Defendants/Respondents/
Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment dated 19.11.2003 passed in A.S.No.4 of 2003 by the Subordinate Judge, Srivilliputtur,



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confirming the judgment and decree dated 22.01.2002 passed in O.S.No.407 of 1999 by the Additional District Munsif, Srivilliputtur.

For Appellants : Mr.M.Thirunavukkarasu
For R2 : No appearance

J U D G M E N T

Being aggrieved by the concurrent findings of the trial Court and the first appellate Court as well, the plaintiff herein has preferred the second appeal.

2.Parties are referred to hereunder according to their litigative status before the trial Court.

3.Originally, the suit was filed by Paramasiva Thevar in O.S.No.407 of 1999 before the Additional District Munsif Court, Srivilliputhur, against his brother's daughter Ramalakshmi and against the Executive Officer of Town Panchayat, Mamsapuram, for declaration of title, for permanent injunction not to interfere with his



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peaceful possession and enjoyment of the suit property and for mandatory injunction to the effect that the second defendant shall not effect name change in the house tax assessment.

4.The trial Court, on evaluation of evidence, concluded that as alleged by the plaintiff, he did not purchase the suit property on 10.07.1979, from the first defendant's father orally for an amount of Rs.90/- and Ex.A1 is invalid document and the property belongs to the first defendant and only based on lease(othi), the plaintiff was in possession and enjoyment of the property and the suit was dismissed in toto.

5.The plaintiff, who lost before the trial Court, preferred an appeal in A.S.No.4 of 2003 before the Sub-Court, Srivilliputhur and the first appellate Court holding that the oral evidence of P.W.1 is contradictory to Ex.A3. It was further observed that Ex.A2-Patta was obtained only in the year 1999 and only based on Exs.A3 to A6, the



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title of the plaintiff cannot be decided. Against the true owner, the person, who is in possession of the property, cannot seek for any order of injunction and on that ground, the appeal was dismissed, by confirming the judgment and decree passed by the trial Court. Aggrieved, the plaintiff is on second appeal.

6. According to the plaintiff, the suit property belonged to his elder brother Iyyasamy Thevar; the first defendant is the only legal heir of the said Iyyasamy Thevar; he purchased the suit property orally from the first defendant, on 10.07.1979 in the presence of Karupppiah Thevar and Narayana Thevar; Since then, he has been in possession and enjoyment of the suit property by dumping garbage, keeping haystack and the cattle shed, which was not obstructed by the first defendant; In 1990 - 1991, he constructed a house thereon with his own funds, with the knowledge of the first defendant; The house tax assessment stands in his name for Door No.2; The said details are found in the House Tax Demand Register; Since the first



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defendant had given an application to the second defendant to effect name change in the house tax assessment, he sent a legal notice dated 23.03.1999, to both the defendants; With the false allegations, the first defendant sent a reply notice; her claim is hit by law of limitation; hence, the suit for declaration of title, for permanent injunction not to interfere with his peaceful possession and enjoyment of the suit property and for mandatory injunction not to effect name change in the house tax assessment, in the name of the first defendant as against the second defendant was sought for.

7.Per contra, the first defendant has claimed that she never sold her property orally for a sum of Rs.90/- on 10.07.1979. She would further claim that it is a fraudulent claim, in order to cheat her. The plaintiff was never in possession and enjoyment of the suit property as a owner. Since the plaintiff never enjoyed the suit property as owner, there was no occasion for her to raise any objection. Changing the name in Mamsapuram Town Panchayat is a



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fraudulent collusive action of the plaintiff with connivance of the panchayat union staff. After knowing the said fraudulent action, she took steps and name change was effected in the house tax assessment, in her name. The plaintiff, by setting up a oral sale falsely, cannot claim any right or title to the suit property.

8.Whereas on behalf of Mamsapuram Town Panchayat Executive Officer/the second defendant, it is claimed that as per the Office Records, from 1988 - 1989 and 1989 - 1990 tax has been assessed in the name of the first defendant under the Tax Assessment No.3652. Based on the Will executed by the father of the first defendant dated 24.10.1986, tax is being assessed in the name of the first defendant.

9.Based on the rival pleadings, the trial Court framed the relevant issues.



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10.At trial, the plaintiff Paramasiva Thevar has examined himself as P.W.1 and one Narayana Thevar to prove the oral sale was examined as P.W.2. Exs.A1 to A6 were marked. Ex.A1 is the property tax assessment Register from 1998 to 1999 in respect of the suit property. Ex.A.2 is the patta for the suit property in the name of plaintiff. On the defendants' side, the first defendant has examined herself as D.W.1. One Mathavan and Govinda Thevar have been examined as D.Ws.2 and 3. Exs.B1 to B6 were marked. Ex.B1 is the house tax receipts in the name of Iyyasamy Thevar, dated 03.03.1984. Exs.B4 and B6, are the house tax receipts in the name of the first defendant.

11.After detailed evaluation of evidence, the trial Court has concluded that the claim of the plaintiff that he did purchase the suit property by way of oral sale from the first defendant for an amount of Rs.90/-, on 10.07.1979, was rejected in toto and Ex.A1 was held to be an invalid document and the suit was dismissed with cost.



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12. Aggrieved by the judgment and decree of the trial Court, the plaintiff preferred an appeal in A.S.No.4 of 2003 before the Sub-Court, Srivilliputtur. After determining the relevant points for consideration, the first Appellate Court relying upon both sides evidence, after discussion and concluded that on the date of sale, the first defendant's father was alive and the suit property does not belong to the first defendant at all. Hence, the plaintiff could not have purchased the suit property from the first defendant by way of oral sale and consequently confirmed the judgment and decree of the trial Court, by dismissing the appeal with cost. Therefore, unsuccessful plaintiff has preferred the second appeal against the concurrent findings of the above said Courts.

13. Despite the receipt of notice, neither the first respondent appeared nor represented through her counsel.



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14.It is the argument of the learned counsel appearing for the appellants that the plaintiff purchased the suit property from the first defendant on 10.07.1979, by way of oral sale for an amount of Rs.90/-, in the presence of Karuppiah Thevar and Narayana Thevar and pursuant to the same, he has been in possession and enjoyment of the suit property by dumping garbage, keeping haystack and cattle shed and the documents viz., Exs.A1, A2 and A6 would strengthen the case of the plaintiff and both the Courts mentioned supra have concluded that he is not entitled for declaration of title is incorrect.

15.The plaintiff claims to have purchased the suit property from the first defendant, who is none other than his brother's daughter by way of oral sale, on 10.07.1979. Admittedly, the suit property is the property of the first defendant's father. It is also not in dispute that the first defendant's father passed away only in the year 1987. Of-course, after the sale pertaining to the immovable property if the value is below Rs.100/-, as per Section 54 of the Transfer of



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Property Act, 1882, the Oral Sale is permitted.

16. Section 54 of Transfer of Property Act, 1882, is extracted hereunder:

“54. Sale defined.-‘Sale’ is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.-‘Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only a registered instruments.

‘In the case of tangible immovable property of the value less than one hundred rupees, such transfer may be made either by a registered instruments or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.-A contract for the sale of immovable property is a contract that a sale of such



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property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

Sale

The section deals with three subjects:

- I. Definition of sale.*
- II. Mode of transfer by sale.*
- III. Contract for sale.*

when a tangible immovable property worth value less than Rs.100/- is delivered under a oral contract for sale, the sale gets completed.

17. When the plea of oral sale is stoutly denied by the first defendant, it is for the plaintiff to prove the same with candid evidence. The witness connected to the oral sale was examined as P.W.2. The fact remains that on the date of alleged sale, the first defendant's father was very much alive. It is very strange to hear that the plaintiff while his elder brother Iyyasamy Thevar was very much alive, he being the owner of the property at the relevant point of time,



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he has claimed that he has purchased the suit property by way of oral sale from the first defendant, who is the daughter of his brother Iyyasamy Thevar and both the Courts, viz., the trial Court and the first appellate Court have not believed the oral and documentary evidence let in by the plaintiff, gave concurrent findings that he has not purchased the suit property by way of oral sale, the documents Exs.A1 and A2 are of the year 1999.

18.In view of the concurrent findings of the fact given by the trial Court and the first Appellate Court, no substantial question of law arises for consideration in this appeal. The Second Appeal is devoid of merits and liable to be dismissed and accordingly, dismissed. Considering the relationship between the parties, there shall be no order as to costs.

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NCC:Yes/No

Index:Yes/No

Internet::Yes/No



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To

- 1.The Subordinate Court,
Srivilliputtur.
- 2.The Additional District Munsif,
Srivilliputtur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R. KALAIMATHI,J.

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