



S.A.No.1502 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.1502 of 2007

and

C.M.P.No.1 of 2007

1.Balaraman

2.Vijayan

3. Harikrishnan

... Appellants

vs.

1.Rajeswari

2.A.Krishnan

...Respondents

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.20 of 2004 dated 26.04.2007 on the file of the Court of the Subordinate Judge, Ponneri, confirming the judgment and decree dated 27.02.2004 made in O.S.No.735 of 1992 on the file of the Court of the District Munsif of Ponneri.

For appellants

: Mr.N.R.R.Arun Natarajan



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For respondent 1 : Mr.P.Dinesh Kumar for
M/S. S.V.Vijay Prasanth

For respondents 2 : No appearance.

JUDGMENT

The plaintiffs are the appellants herein and the respondents are the defendants before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

3. The brief facts which give rise to the instant Second Appeal is that, the suit property bearing S.F. No.220/3 measuring an extent of 66 cents, and S.F. No.220/4 measuring an extent of 44 cents were ancestral properties of Pichai, son of Mari of Vallavoyal Village. It is their further submission that, in respect of the above property patta is stands in their name and there is also revenue records and Adangal in the name of the plaintiffs. While so, due to the family circumstances, they moved from the suit property since 1982. In the meanwhile, when they visited the village



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during August-1992, they came to know about the fencing over the suit property. On enquiry, it came to their knowledge that the 2nd defendant claimed right over the suit property. Therefore, to remove the cloud over the title of the suit property, and to get back the possession of the property, it necessitated the plaintiffs to institute the suit. Hence, the plaintiffs have come forward with a suit for declaration and for delivery of possession.

4. The said suit was resisted by the 2nd defendant by contending that, he had purchased the suit property from the 1st defendant in the year 1987. And the 1st defendant had purchased the suit property in 1958 by virtue of a sale deed dated 05.05.1958. Ever since the date of purchase, the predecessor in title of the defendant has been in physical possession and enjoyment of the property. The 2nd defendant had purchased the suit property on 02.12.1987, under Ex.B3. He has also further stated that he moved an application before the revenue authorities and cancelled the patta standing in the name of the plaintiffs; now, patta was also transferred in the name of the 2nd defendant and he has been in physical possession and enjoyment of the property. Hence, it is submitted



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that the plaintiffs have no right over the property. Hence prayed to dismiss the present suit.

5. Before the Trial Court, the plaintiffs have marked 7 documents and examined one witness. Similarly, on behalf of the defendant, 9 documents were marked and three witnesses were examined.

6. It is pertinent to mention here that, though the suit property contains two items of the property, the defendant has not disputed the title of the plaintiffs in respect of the first item of the property [SF.No.220/3]. But they are only disputing the title of the plaintiffs in respect of the second item of the property [S.F.No.220/4].

7. The Trial Court, after having considered oral and documentary evidence have found that though the plaintiffs are entitled to decree for S.F.No.220/4, as against the second item of the property, the Trial Court ultimately dismissed the suit. Not satisfied with the order of the Trial Court, the plaintiffs preferred the First Appeal and the First



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Appellate Court also concurred with the finding of the Trial Court and ultimately the First Appellate Court dismissed the First Appeal. The plaintiffs even after the order of the First Appellate Court, preferred the Second Appeal.

8. The learned Counsel appearing on behalf of the appellants would submit that, even according to the findings rendered by the Trial Court, as well as the First Appellate Court, the defendant has submitted title deed in respect of 25 cents in S.F.No.220/4. When there is a specific finding by the Trial Court, that through the title deed submitted by the defendant, they have not established any right over the property, the trial Court ought to have decreed the suit in favour of the plaintiffs.

9. The learned counsel would further contend that, even for arguments sake, if the defendant is the owner of 25 cents, even then, for the remaining portion of 19 cents the right vest with the plaintiffs and the same has to be declared, and they also must be given a decree for delivery of possession. Apart from that, the learned counsel would also contend that the very judgement of the First Appellate Court is not in consonance



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with Order 41 Rule 31 of CPC. Hence the learned counsel would pray to interfere with the order of the Trial Court and prayed to allow the Second Appeal, and thereby prayed to decree the suit as prayed for.

10. Per contra, the learned counsel for the respondent would contend that, though the entire claim of the plaintiffs rest upon the revenue record namely patta, which has been marked as Ex.A2, such patta has been cancelled subsequently by a revenue proceedings. It was further contended that in the revenue proceedings, there is a finding in favour of the defendant that they have been in possession and enjoyment of the property for quite a long time, and also that the patta as on today stands in the name of the 2nd defendant. Therefore, the claim of the plaintiffs which is based upon the revenue records cannot be the basis to get title to the plaintiff. Hence he would submit that there are no grounds to interfere with the well considered finding of the Courts below and hence, prayed to dismiss the Second Appeal.

11. I have given my anxious consideration to either side



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submissions.

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12. The entire issue revolves around as to the factum, whether the plaintiffs have established title over the suit property. In this regard, the plaintiffs are very much relying upon Ex.A1-patta, and Ex.A2 original patta dated 31.08.1987. At this juncture, the learned counsel for the respondent would draw the attention of this Court in respect of the sale deed dated 05.05.1958 which stands in the name of the 1st defendant. He also draw the attention of Ex.B2 which is a patta standing in the name of the 1st defendant.

13. The learned counsel for the respondent would also further draw the attention of this Court to Ex.B4, namely the order passed by the revenue authority. According to Ex.B4 the patta which stands in the name of the plaintiffs was cancelled based upon the sale deeds Ex.B1 and Ex.B3. Subsequently the patta was transferred in the name of 2nd defendant. Therefore, the contention of the plaintiffs that they have got patta over the suit property stands falsified. Apart from that, it is a settled principle of law that the revenue records are not the document of title.



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14. As rightly contended by the learned counsel for the appellants, though there is a finding by both the Courts below that the defendant has not proved the title over the suit property and the sale deed is only in respect of 25 cents in S.F.No.220/4, cannot be a ground for the plaintiff to have a declaration. Here both the Courts below have based their findings on the ground that the plaintiffs have not established any title over the suit property. This Court could not find any perversity over such findings, since the documents relied by the plaintiffs are only revenue records. Though, as rightly contended by the learned counsel for the appellants that the defendant has not established any title over the property, cannot be a ground to interfere with the order of the Courts below, when such order could not come within the definition of perversity.

15. It is a well settled principle of law that since because there is an alternative view possible, the same cannot be a ground to interfere with the findings given by both the Courts below, and such findings must be duly respected in its right perspective. Thus this Court could not find



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any substantial question of law involved in this matter.

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In the result, this Second Appeal stands **dismissed**. There shall be no order as to costs. Consequently, connected miscellaneous petition in CMP.No. 1 of 2007 is also closed.

30.04.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
Neutral: Yes/No

jrs

To

1. The Subordinate Court,
Ponneri,
2. The District Munsif Court,
Ponneri,
3. The Section Officer,
V.R.Section, High Court,
Madras.

C.KUMARAPPAN,J.



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