



S.A.No.255 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM

THE HON'BLE MR. JUSTICE V.SIVAGNANAM

S.A.No.255 of 2012

K.Varadha Reddy

...

Appellant

Vs.

1.Mary

2.Kirubamani

3.Manormani

4.Anandaraj

5.Thinagaran

6.Nesakumar

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree of the learned Additional Subordinate Judge (Trainee District Judge), Vellore dated 10.03.2006 in A.S.No.41 of 2004, confirming the Judgment and Decree of the learned Principal District Munsif, Vellore dated 06.02.2004 in O.S.No.733 of 2000.

For Appellant

: Mr.S.Bala Ganesh

For Respondents

: No appearance

JUDGMENT

Challenge in this Second Appeal is made to the Judgement and Decree of the learned Additional Subordinate Judge (Trainee District Judge), Vellore dated 10.03.2006 in A.S.No.41 of 2004, confirming the Judgment and



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Decree of the learned Principal District Munsif, Vellore dated 06.02.2004 in
O.S.No.733 of 2000.

2.For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3.The defendant in O.S.No.733 of 2000 on the file of the Principal District Munsif, Vellore is the appellant herein.

4.Upon considering the oral and documentary evidence, the trial Court found the plaintiff's title over the plaint schedule properties and decreed as prayed for.

5.Aggrieved over the same, the defendant filed an Appeal in A.S.No.41 of 2004 on the file of the Additional Subordinate Judge (Trainee District Judge), Vellore. The First Appellate Court, after considering the case and argument of the learned counsel for the parties, confirmed the judgment and decree of the trial Court and dismissed the appeal. Aggrieved by this, defendant filed the present Second Appeal.



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6.The learned counsel for the appellant submitted that defendant filed two sale deeds in Exs.B1 and B2 dated 25.04.1994 and 08.04.1994 to show his title. However, the trial Court and the First Appellate Court failed to consider the fact. Based upon the patta, chitta and other revenue documents filed by the plaintiffs, declaring title is an unsustainable one. Besides, the plaintiff's claim of adverse possession as well as ownership is contrary to each other. The trial Court and the First Appellate Court failed to consider the fact and declared title to the plaintiff in the absence of any acceptable evidence. Therefore, necessary question of law has to be framed and the Second Appeal has to be admitted.

7.Though notice served to the respondents and the names of the respondents are printed in the cause list, there is no representation for the respondents.

8.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.



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9. On perusal of the records and evidence, it is seen that the plaintiff filed a suit against the defendants to declare the plaint schedule properties in Survey No.368 of 2002 to an extent of 83 cent at Kandepedu Village.

10. The Defendant filed written statement and contested the suit and further submitted that defendant had purchased the property in pursuant of the Sale Deeds dated 25.04.1994 and 08.04.1994, which is evidenced by Exs.B1 and B2. On perusal of the records, it is seen that defendant failed to file any document to show his vendor's title over the plaint schedule properties. On the other hand, the plaintiffs filed documents to show that they are in possession from the year 1971 and further plaintiffs filed two mortgage deeds Exs.A15 and A16 to prove the relationship of the parties and original ownership. Further, plaintiffs filed Ex.A2, Chitta issued in the name of the plaintiff's father one Yacoob and Asirvadam and plaintiff's father was continuously in possession from the Special year 1389 . Ex.A3, Adangal, reflects the name of the plaintiff. Plaintiffs filed sufficient documents to show his enjoyment over the plaint schedule properties. His enjoyment is evidenced by Ex.A10 Adangal for the special year 1396 and in Ex.A.11, settlement register, plaintiff's father name alone is found. Under this circumstances, considering the long possession of



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the plaintiffs over the plaint schedule properties and in absence of any better title shown by defendant, the trial Court declared title over the plaint schedule properties and created enjoyment as prayed for, which is confirmed the First Appellate Court.

11. There cannot be any doubt whatsoever for consideration of irrelevant fact and non consideration of relevant fact would give rise to substantial question of law. The case does not meet out the parameter laid down by the Hon'ble Supreme Court in the following decisions:-

1. AIR 2008 1749 379 in the case of *Moses Vs. Kasturiba*

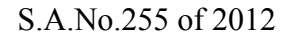
2. AIR 2008 SC 956 in the case of *Abdul Raheem Vs.*

Karnataka Electricity Board

3. AIR 2008 SC 1749 in the case of *Kashmir Singh Vs.*

Harnam Singh and another.

12. Therefore, the findings of the trial Court and the First Appellate Court are based upon the evidence on record and they are not perverse. There is no ground for reversing the findings recorded by the trial Court and the First Appellate Court. There is no merit for admitting in the Second Appeal. There is no substantial questions of law involved in this case.



gd

Consequently, the connected Miscellaneous Petition, if any, is closed.

12.07.2024

Neutral Citation : Yes/No

To

1. The Additional Subordinate Judge (Trainee District Judge), Vellore.
2. The Principal District Munsif Court, Namakkal

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