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S.A.No.467 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.467 of 2013

and

M.P.No.1 of 2013

Minor Muthukrishnan (died)

1.Minor Krishnaveni

D/o Purushothaman

Rep by next friend mother Dhanalakshmi

2.Purushothaman

3.Dhanalakshmi

... Appellants

Vs.

1.Subramanian (died)

2.Padmavathi

(R1 died, R2 recorded as LR of the deceased R1 vide Court Order dated 22.07.2022 made in S.A.No.467 of 2013)

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree made in A.S.No.54 of 2010 on the file of the II Additional Subordinate Judge, Cuddalore dated 22.12.2011 reversing the Judgment and Decree made in O.S.No.522 of 2004 on the file of the Additional District Munsif, Cuddalore, dated 26.07.2010.



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S.A.No.467 of 2013

For Appellants : Mr.S.Vijayakumar

For Respondents : M/S.G.Sumithra for R2

JUDGMENT

The present appeal arises against the judgment and decree of the Court of the II Additional Subordinate Judge at Cuddalore in A.S.No.54 of 2010, dated 22.12.2011. In and by way of the said judgment dated 22.12.2011, the learned first Appellate Court reversed the judgment and decree of the Court of the Additional District Munsif at Cuddalore in O.S.No.522 of 2004, dated 26.07.2010.

2. O.S.No.522 of 2004 was presented by the respondents before me seeking for a declaration of their title with respect to 'A' and 'B' schedule mentioned properties.

3. The respondents before me are the plaintiffs and the appellants are the defendants.

4. For the sake of convenience, the parties shall be referred to as their ranks in the suit.



S.A.No.467 of 2013

5. The plaintiffs claim that they purchased the property from one Abdul Gani Rowther. The purchase was through two sale deeds, dated 23.01.1984 and 31.10.1991. According to them, the first plaintiff had entered into a sale agreement with the said Abdul Gani Rowther on 27.10.1983. In order to prove that they are the owners of the property, the plaintiffs have to prove that their vendor Abdul Gani Rowther was the owner of the property. In order to substantiate the same, the plaintiffs pleaded and marked the document dated 26.07.1981. The document dated 26.07.1981 is Ex.A4. As per Ex.A4, one Bhakthavachalam Naidu is said to have sold the property to Abdul Gani Rowther. The plaintiffs, further alleged that the defendants, who are the neighbours, threatened to occupy their property and hence came forward with the suit for declaration of title and injunction.

6. It is the case of the defendants that neither Abdul Gani Rowther nor Bhakthavachalam Naidu were the owners of the property. They stated that the property which was originally situated in Old Survey No.399 B/2 corresponding to New Survey Number 165/3 is a Government land. The Government brought the property for sale and it was purchased by Tamil Nadu Suddha Sanmarga Nilayam, Vadalur,



S.A.No.467 of 2013

which was then represented by its President. The defendants claim to have purchased the property from the President of the said Sangam by way of a registered sale deed dated 10.08.2002. He further pleaded that after the purchase of the property he had spent several thousands of rupees in order to level the land and he was in possession and occupation of the same.

7. Before the trial Court, the first plaintiff, Subramanian examined himself as P.W1 and one Abdul Basha was examined as P.W2 and they marked Ex.A1 to Ex.A18. On the other hand, the defendants, examined 3 witnesses including themselves as D1 to D3 and marked Ex.B1 to Ex.B22.

8. The learned Trial Judge after detailed examination of the case, came to the conclusion that the plaintiffs had not proved that Bhakthavachalam Naidu is the owner of the property. Therefore, dismissed their claim. This resulted in a regular appeal being presented in A.S.No.54 of 2010 before the II Additional Subordinate Judge at Cuddalore.



S.A.No.467 of 2013

WEB COURT

9. At the appellate stage, an application was moved in I.A.No.8 of 2011, in order to receive Chitta and Adangal for the purpose of substantiating that Bhakthavachalam Naidu is the owner of the property. The said application was allowed and on that basis, the said documents which had been received as Ex.B19 and Ex.B20 in the appeal. The first Appellate Court reversed the judgment of the trial Court and decreed the suit as prayed for. It is against the said reversing judgment, the second appeal has arisen.

10. Initially, the Court ordered notice regarding admission and thereafter, the second appeal was admitted on 14.02.2022 on the following substantial questions of law:

a) Whether the Lower Appellate Court while receiving the additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, failed to follow the procedure under Order XLI Rule 28 of the Code of Civil Procedure and hence the additional evidence ought not to have been looked into by the Lower Appellate Court?

b) When the Lower Appellate Court reversed the findings of the Trial Court, whether the same was done in compliance with the mandate required under Order XLI Rule 31(c) of the Code of Civil Procedure?



S.A.No.467 of 2013

c) Whether the findings rendered by the Lower Appellate Court can be termed as perverse for improper appreciation of the oral and documentary evidence that was available on record?

Since the issues involved in the substantial questions of law are one and the same, I have heard the appeal on that basis.

11. Heard Mr.S.Vijayakumar, the learned counsel for the appellants and M/S.G.Sumithra, the learned counsel for the respondents and carefully perused the records.

12. The learned first Appellate Judge had allowed I.A.No.8 of 2012, namely an application under Order 41 Rule 27, straight away. The documents which had been received in appeal as Ex.A19 and Ex.A20 are the Chitta and Adangal relating to the property situated in the Survey Number 399 B/2. As the application under Order 41 Rule 27 is allowed, the Appellate Court ought to have given an opportunity to the respondents therein, in order to substantiate or reject the same by virtue of the provisions under Order 41 Rule 28. I find that the said procedure has not been followed in the present case.



S.A.No.467 of 2013

13. If I ignore the procedural irregularity and accept Ex.A19 and Ex.A20 on their face value, they continue to remain as only revenue records. Unless and until the plaintiffs had been able to prove that Bhakthavachalam Naidu was the owner of the property, nothing but dust had been purchased from him by Abdul Gani Rowther and consequently what had been transferred from Abdul Gani Rowther to the plaintiffs has to be mud or dust again.

14. The crucial document showing the title of Bhakthavachalam Naidu in the suit schedule mentioned property is missing. Further, Ex.A19 and Ex.A20 are mere revenue documents. The plaintiffs not being able to trace their title to some antecedent title of Bhathavachalam Naidu, the same cannot be utilised for the purpose of the suit. I have searched in vain to find out title of Bhathavachalam Naidu and I am not able to find any document. The findings of the lower appellate Court that Chitta and Adangal stands only in the name of Bhakthavachalam Naidu and therefore, the suit has to be decreed cannot be accepted.

15. A suit for declaration of title cannot be decreed on the basis of the revenue records. Revenue records cannot and can never confer title.



S.A.No.467 of 2013

This is too well settled by various judgments rendered by the Courts. The title having been declared by the lower appellate Court on the strength of revenue records definitely has to be held as perverse. Accordingly, the judgment and decree of the learned II Additional Subordinate Judge, Cuddalore, in A.S.No.54 of 2010 dated 22.12.2011 is interfered with for both the procedural as well as substantial violation of law.

16. Accordingly, the second appeal is allowed and the judgment of the lower Appellate Court is set aside and the judgment of the Additional District Munsif, Cuddalore, in O.S.No.522 of 2004 is restored. There shall be no costs in the appeal.

11.01.2024

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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S.A.No.467 of 2013

To:
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- 1.The II Additional Subordinate Judge,
Cuddalore
- 2.The the Additional District Munsif,
Cuddalore,
- 3.The Section Officer,
Vernacular Section,
High Court of Madras.

V.LAKSHMINARAYANAN, J.



WEB COPY



S.A.No.467 of 2013

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