



S.A. No.365 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM:
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.365 of 2024
and
C.M.P.No. 11048 of 2024

Chinnaian

... Appellant

Vs.

1. Pappa

Sellapappu (died)

2. Rajamanickam

3. Palanisamy

4. Anjalai

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 05.11.2019 in A.S.No. 28 of 2018 on the file of the Principal Subordinate Court, Ariyalur dismissing the first appeal affirming the judgment and decree made in O.S.No.60 of 2010 dated 29.08.2018 on the file of Addl. District Munsif Court, Ariyalur.



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For Appellant : Mr.S.Vijayakumar

JUDGMENT

The appellant herein is the 3rd defendant in the suit preferred this Second Appeal challenging the findings of the courts below in the Appeal Suit in A.S.No. 28 of 2018 on the file of Principal Subordinate Court, Ariyalur affirming the judgment and decree passed in O.S.No.60 of 2010 on the file of the Addl. District Munsif Court, Ariyalur.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. Brief facts of the case is as follows :-

Originally, the suit was filed by one Sellapappu against defendants 1 to 4, in which the present appellant is the 3rd defendant and 1st respondent is the 1st defendant. The contention of plaintiff Sellapappu is that she purchased the property through a sale deed dated 07.06.1960 and enjoyed as absolute owner and she was granted with Patta No.386. But, the contention of plaintiff that when she purchased property from one



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Kanchamalai Padayachi, the contention of defendants is that one Ayyavu was the owner of the property and by way of partition, the suit property was allotted to him. The said Kanjamalai was not the original owner and among sons of Ayyavu, the partition was effected. Accordingly, share was allotted to Saminathan, who is father of 3rd defendant. Furthermore, the contention of plaintiff is that without proper enquiry, at the instigation of 1st defendant, the Tahsildar granted joint patta in favour of defendants in respect of entire Survey No.124/2 . Having come to know about the same, the plaintiff gave a complaint to Revenue Divisional Officer, Ariyalur to cancel the patta and on calling upon the defendants, an enquiry was conducted. Thereafter, the Revenue Divisional Officer has ordered to cancel the patta and issued a separate patta in favour of plaintiff in the year of 2006. Against that order, the defendants preferred an appeal, wherein it was misrepresented that the plaintiff has given a consent letter, but the said letter is concocted one. Therefore, the dispute arose and the Suit was filed seeking for the relief of declaration and permanent injunction by Sellapappu in respect of the property in Survey No. 124/2, measuring an extent of 1 acre 20 cents.



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4. Before the trial court, both parties adduced oral and documentary evidence. On the side of plaintiff, P.W.1 to P.W.12 were examined and on the side of defendants, 1st defendant was examined as D.W.1 and there is no documentary evidence. Ex.A1 is the sale deed produced on the side of plaintiff in order to prove that she purchased the property in the year of 1960 and she had also produced Patta, Chitta and kist receipts and also produced the cancellation of patta order passed by the revenue officials, which were marked as Ex.A9 and Ex.A10. The plaintiff proved his title through Ex.A1 sale deed. Further, the Ex.A11, which is a re-settlement extract, wherein the vendor of plaintiff Kanchamalai Padayachi was registered in the said extract in respect of property. So, even before the purchase of plaintiff, his vendor is the owner of the property, which was rightly established by the plaintiff. On the other hand, the 1st defendant failed to establish that how they are entitled for a joint patta. Therefore, the revenue officials considered the sale deed as well as resettlement extract and rightly cancelled the joint patta. Thereafter, they have issued the individual patta in favour of plaintiff. Therefore, through Ex.A1, the plaintiff is the absolute owner. So, the plaintiff established that this property



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belong to Ayyavu. Those facts were rightly observed by the courts below.

Now, the plaintiff filed a suit against the 1st defendant. Admittedly, the 3rd defendant has not adduced any evidence before the trial court and there is no explanation offered from him. Furthermore, there is no findings rendered by the trial court in this regard. Hence, there is no question of law involved, thereby this Second Appeal is not maintainable. Accordingly, at the admission stage itself, this Second Appeal is dismissed as no merit and the findings of the courts below in A.S.No. 28 of 2018 on the file of Principal Subordinate Court, Ariyalur and in O.S.No.60 of 2010 on the file of Addl. District Munsif Court, Ariyalur is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

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

The Principal Sub-Judge, Ariyalur.

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