



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.593 of 2014 and
C.M.P.No.9 of 2018 and
M.P.No.1 of 2014

N.Ramesh Babu

... Appellant / Plaintiff

Vs.

1.Thiru.M.Padmanaban
2.Tmt.Pushpammal

... Respondents / Defendants

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.71 of 2011 dated 18.12.2013 on the file of the Subordinate Judge, Gudiyatham, confirming the decree and judgment passed in O.S.No.269 of 2007 dated 08.06.2011 on the file of the District Munsif Court, Gudiyatham.

For Appellant : Mrs.R.T.Sundari for
Mr.R.Margabandhu

For Respondents : Mr.S.Suresh



JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree passed in A.S.No.71 of 2011 dated 18.12.2013 on the file of the Subordinate Judge, Gudiyatham, confirming the decree and judgment passed in O.S.No.269 of 2007 dated 08.06.2011 on the file of the District Munsif Court, Gudiyatham.

2. Heard Mrs.R.T.Sundari, learned counsel for the appellant and Mr.S.Suresh, learned counsel for the respondents and perused the materials available on record.

3. The appellant is the plaintiff. The plaintiff has filed a suit against the defendants for seeking the relief of permanent injunction and he lost the suit before the Trial Court. The First Appeal preferred by the plaintiff was also dismissed by confirming the judgement of the Trial Court.

4. The short facts pleaded in the plaint are as follows:

The suit property was originally belonged to one V.Devaraj who was in possession of the suit property. The Tahsildar has issued patta in the



name of V.Devaraj and he has sold the suit property to the plaintiff on 27.06.2007 through the registered sale deed and thereafter, the plaintiff had taken possession of the suit property and is in enjoyment of the same by paying the house tax etc. The plaintiff has given an application to change patta in his name. The defendants have no manner of right in the suit property and they are third parties. They tried to encroach the suit property and that was prevented by the plaintiff. Since the defendants were trying to disturb the plaintiff's possession over the suit property, he has filed the suit for seeking permanent injunction.

5. The averments stated in the written statement filed by the defendants are as follows:

The suit property was originally belonged to the second defendant and in fact, he has filed a suit before the Sub Court, Vellore in O.S.No.14 of 2001 in respect of the suit property. The plaintiff's vendor V.Devaraj has no title over the suit property and hence, he has got no right to sell the property to the plaintiff. The alleged patta standing in the name of V.Devaraj is a concocted one. The suit property is a vacant site and it does not have any



house as pleaded by the plaintiff. The plaintiff had never been in enjoyment and possession of the suit property and hence, the suit should be dismissed.

6. During the course of the trial, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and Exs.A1 to A4 were marked. On the side of the defendants, two witnesses were examined as D.W.1 & D.W.2 and Exs.B1 to B3 were marked.

7. At the conclusion of the trial and on considering the evidence available on record, the Trial Court has dismissed the suit and the First Appeal preferred by the plaintiff challenging the judgement and decree of the Trial Court also got dismissed by confirming the judgment of the Trial Court. Now, the plaintiff has filed this Second Appeal by raising the following substantial questions of law:

“1. Whether in law the Courts below are right in rejecting Ex.A1 which is the Government grant (patta) which confers title on V.Devaraj and Ex.A2 sale deed dated 27.06.2007 executed by V.Devaraj in favour of the plaintiff?”

2. Whether in law it is right to accept the evidence without pleadings?”



8. The appellant / plaintiff is said to have purchased the suit property from one V.Devaraj in whose name the patta for the suit property is claimed to have been standing. However, during the trial, the Village Administrative Officer who was examined as P.W.2 has stated that the chitta for the suit property has been granted on 20.11.1996 for the S.No.707/4B and S.No.705/19A. Even P.W.3 himself has stated that he is in enjoyment of the suit property only from the year 1999. The Trial Court had noted the discrepancy in the year mentioned in Ex.A4 and the evidence of P.W.3 about his possession over the suit property.

9. Even the original of Ex.A1 has not been produced and the true copy has been produced before the Court. As the plaintiff cannot prove the title in favour of his vendor V.Devaraj, the learned Trial Judge and the First Appellate Judge has observed that the vendor of the plaintiff has no valid title to pass on the plaintiff through the sale deed Ex.A2. As Ex.A1 itself is not an original document which can be admitted in the Court, it is right for the Trial Court and the First Appellate Court to reject it as unreliable. Thus, the first substantial question of law is answered.



10. So far as the submission as to the recording of evidence without pleadings, the learned counsel for the appellant submitted that the defendants were letting evidence about the fact which they have not pleaded in the written statement. So far the plaintiff is concerned, he has got the initial burden to prove that he has title and lawful possession over the suit property to get the relief of permanent injunction. Having not given the proof for the said claim, the plaintiff cannot blame the defendants' evidence. In view of the same, the second substantial question of law also does not arise.

11. In the result, this Second Appeal is dismissed and the judgment and decree passed in A.S.No.71 of 2011 dated 18.12.2013 on the file of the Subordinate Judge, Gudiyatham, is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

29.11.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

1. The Subordinate Judge,
Gudiyatham.

2. The District Munsif Court, Gudiyatham.



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R.N.MANJULA, J.

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