



S.A.No.737 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.11.2024

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

S.A.No.737 of 2024 and
C.M.P.No.23981 of 2024

Ayyaru

... Appellant

Vs

Arumugham

... Respondent

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 14.09.2023 passed in A.S.No.25 of 2017 on the file of the I Additional Subordinate Judge, Cuddalore confirming the Judgment and Decree dated 06.01.2017 passed in O.S.104 of 2010 on the file of the Additional District Munsif Court, Cuddalore.

For Appellant : Mr.D.Baskar

For Respondent : Mr. Adarsh Subramanian
for Mr.Anirudh Krishnan



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JUDGMENT

The unsuccessful plaintiff is the appellant before this Court. Before the Trial Court, the appellant filed a suit for declaration of title and recovery of possession. The suit as well as the first appeal filed by the appellant were dismissed by the Courts below. Challenging the concurrent findings of the Courts below, the appellant/plaintiff is before this Court.

2. For the sake of convenience, the parties herein are referred to as per their rank in the suit.

3. According to the plaintiff, the suit property is a 'natham' property situated in New Survey No.24/8, Old Survey No.24/1 part, measuring an extent of 3766 Sq.feet and it was belonged to him and 2 other beneficiaries based on the patta issued in the year 1994. It was averred by the plaintiff that the above mentioned property was allotted for the landless Adi Dravidars with a condition that the said land should not be alienated for 10 years. It was further averred by the plaintiff that when he borrowed a sum

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of Rs.7000/- from the defendant, he obtained plaintiff's signatures in the blank papers. Thereafter, the defendant took possession of the suit property and put up superstructure and had been residing there for nearly 7 years. When the plaintiff attempted to repay the loan amount and requested to hand over his property, the defendant refused to hand over the same. Hence, the plaintiff was constrained to file a suit for declaration of title and recovery of possession.

4. The defendant filed a written statement denying the pleadings in the plaint. It was averred by the defendant that the plaintiff and his sons executed an unregistered sale deed dated 27.08.2004 in favour of him and therefore, he took possession of the property and constructed a house in the suit property and had been residing with his family. It was also averred by the defendant that the plaintiff has no title over the suit property and the suit was barred by limitation. On these pleadings, he prayed for dismissal of the suit.



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5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to prove his right and title over the suit property. The trial Court also held that the plaintiff has relied upon Ex.A1, notice issued by the Survey Officer and had not produced any other document to establish that he is an absolute owner of the suit property. The trial Court observed that if the plaintiff is entitled to mortgage the property for loan, he is also entitled to redeem the same and that, instead of filing a suit for redemption of mortgage, he had filed the suit for declaration of title.

6. The trial Court also framed an additional issue namely whether the suit is barred for non-joinder of necessary parties since the property was purchased by the defendant's son, who was not added as a party. Hence, the trial Court dismissed the suit for non-joinder of necessary parties. Aggrieved by the said judgment and decree, the plaintiff preferred an appeal in A.S.No.25 of 2017 on the file of the I Additional Subordinate Court, Cuddalore.



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7. The First Appellate Court, on perusal of Ex.A1, notice issued by the Survey Officer for effecting mutation in the revenue records and Ex.A2, Encumbrance Certificate dated 01.03.2010, came to the conclusion that both the documents did not establish the right of the plaintiff over the suit property. However, the first appellate Court also made an observation that if it is a usufructuary mortgage, the plaintiff is entitled to file a suit for redemption of mortgage. Accordingly, the First Appellate Court confirmed the findings of the trial Court and dismissed the first appeal. Assailing the order of the first appellate court, the appellant/plaintiff has come up with this second appeal, on the following grounds:-

i) The appellant submits that the Courts below failed to see that an unregistered sale deed cannot be admitted for any purpose and will not convey any title.

ii) The appellant submits that the courts below failed to see that there is difference between patta property and assigned property.

Iii) The appellant submits that the courts below grossly erred in stating as if patta is not a document of title.

iv) The appellant submits that the courts below



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failed to see that without a legal title deed, title cannot be conferred on respondent/defendant.

v) The appellant submits that the courts below grossly erred in relying upon an unregistered sale deed and stating as if respondent's/defendant's son is the purchaser.

vi) The appellant submits that the courts below failed to see that the respondent/defendant had played a fraud on appellant/plaintiff by taking a sale deed by misrepresenting as if the document was a simple mortgage.

8. This Court formulated the following substantial question of law;

“a. Were not the courts below at gross error in failing to see that the property was assigned property assigned to appellant/plaintiff because he was an Adi-dravida and hence, the alienation within 10 years is invalid ?

b. Were not the Courts below at gross error in failing to see that assignment by government is a document of indumitable title?



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c. Did not the courts below act against the decision of the Hon'ble Supreme Court in placing the burden of proof upon the appellant/plaintiff when he is an illiterate?

c. Were not the Courts below at grave error in admitting Ex.B1 and Ex.B2, unregistered documents and relying upon them when they cannot be looked into at all and that payment of stamp duty and penalty cannot cure the defect?

d) Did not the trial court commit grave error in holding that the suit is bad for non-joinder of the respondent's/defendant's son, without pleading and issues and when the fact came to be known only during the examination of D.W.1?

9. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

10. Admittedly, the plaintiff filed a suit for declaration of his right and title over the suit property. He relied upon only two documents viz., Ex.A1, notice issued by the Survey Officer for effecting mutation in the revenue records and Ex.A2, Encumbrance Certificate dated 01.03.2010.



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The plaintiff is claiming right over the suit property based on the assignment patta granted by the Government for the landless Adi Dravidars with the condition not to alienate the property for 10 years. To prove those facts, no document was produced on the side of the appellant/plaintiff and the same was rightly observed by the Courts below. Therefore, dismissal of the suit needs no interference.

11. Further, when the defendant claimed that the plaintiff and his sons executed a sale deed in favour of defendant's son in the written statement, the plaintiff had not taken any steps to implead the defendant's son. The document relied upon by the defendant was marked as Ex.B2. He claimed that Ex.B2 is an unregistered sale deed. However, there is another claim made by the plaintiff that he borrowed loan from the defendant and at that time, his signature was obtained by the defendant in blank papers towards mortgage of his property. Therefore, the Courts below rightly held that if it is a mortgage, the plaintiff is entitled to file a suit for redemption of mortgage. On the contrary, the plaintiff filed a suit for declaration of title which is un-sustainable in law.



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12. In view of the above, I do not see any perversity in the findings of the Courts below and thus, it needs no interference by this Court. Further, the second appeal does not involve any substantial question of law and hence, deserves dismissal.

13. Accordingly, the second appeal stands dismissed.

a) by confirming the judgment and decree dated 14.09.2023 passed in A.S.No.25 of 2017 on the file of the I Additional Subordinate Judge, Cuddalore confirming the Judgment and Decree dated 06.01.2017 passed in O.S.104 of 2010 on the file of the Additional District Munsif Court, Cuddalore.

b) In the above facts and circumstances of the case, there is no order as to costs.

c) Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
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To

1. The I Additional Subordinate Judge, Cuddalore
2. The Additional District Munsif Court, Cuddalore.
3. The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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