IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09. 2024

CORAM:

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

AS. No.518 of 2022
& CMP No. 19001 of 2022

Sujatha Jayarani ...Appellant

Vs.

A.H.Raja

...Respondent.

PRAYER : This first appeal is filed under section 96 read with Order XLI Rule 1 of the Civil Procedure Code, praying to set aside the judgment and decree dated 03.08.2022 of the III Additional District Court, Vellore, Tirupattur in OS No. 41 of 2018 by allowing the above appeal.

For Appellant : Mr.A.S.Vijayaraghavan

For Respondent : Ms.Mumtaj Surya

JUDGMENT

This first appeal has been filed to set aside the judgment and decree dated 03.08.2022 passed by the III Additional District Court, Vellore, Tirupattur in OS No. 41 of 2018.

2. The appellant herein is the defendant is suit OS no. 41 of 2018, on the file of the III Additional District Court, Vellore, Tiruppatur, filed by the respondent herein/plaintiff for the relief of declaration and delivery of possession in respect of the suit property as described in the suit schedule with an extent of 2550 square feet (30X85) with four boundaries.

3. The contention of the plaintiff is that he purchased the suit property on 28.05.1992 from one Kathoon Bee, who purchased the said property from one Nazeer through sale deed dated 03.07.1978. During the absence of the plaintiff, the defendant unlawfully encroached and put up the construction in the suit property. Hence, the plaintiff filed the suit for the relief of declaration and recovery of possession.

4. The defendant contested the suit stating that suit property was purchased by one Nayeem Basha in the year 2007 through sale deed dated 27.06.2007 from one Sardar as a power of attorney of Tharunizha wife of Jafar Sadik from him one Tamilarasi purchased in the month of July 2007, from that Tamilarasi the defendant/appellant purchased the suit property on 05.11.2007. Thereafter, the defendant put up construction after obtaining necessary approval from the Panchayat since then the defendants was in

possession of the suit property and also the defendant paid the tax regularly. Thereby, the defendant denied the plaintiff's right over the suit property.

5. After considering the Oral and documentary evidence the Trial Court held that as per Ex.B3/partition deed, E schedule properties was allotted to one Nazeer in the year 1974 after that he divided it into house plots and sold to one Kathoon Bee in the year 1978 from her the plaintiff purchased the property in the year 1992 through sale deed dated 28.05.1992 thereby the plaintiff establish his vendor's title and also the Court observed that defendant not produced the proper title deed to establish as to how the plaintiff's vendor's vendor title including the alleged power holder Sardar possession and title over the suit property and all the transactions between the defendant and his vendor was happened within three months in the year 2007 and without perusing the original title purchase made by the defendant as such is not acceptable one and as per the commissioner report the suit property is bounded on all the three sides by other property holder and only the front portion abetting the road is constructed by the defendant herein and also the extent of the property purchased by the defendant is differs from the alleged claim made by the defendant and also not co-relate with the house plots of the suit property, the property also measured as per

the plaint document also tallied with the suit properties with slight variation in the extent alone. Thereby, the plaintiff proved that the suit property belongs to her and also her predecessor in title. On the other hand, the defendant failed to establish her title. Accordingly, the Trial Court directed the defendant to hand over the possession of the property by removing the building in the suit property. Challenging the said findings the appellant preferred this appeal.

6. The learned counsel for the appellant/defendant submits that the Court below erroneously appreciated the oral and documentary evidence decreed the suit. Further, he submitted that the plaintiff failed to prove his predecessor's title and also as to when the one acre land was divided as house sites and what is the plot number assigned to the plaintiff purchased by him. Further, he submitted that plaintiff's vendor Kathoon bee while purchasing the alleged suit property there is no recital about the as to how one acre was converted into house sites nor mentioned about the layout approval or the number of house sites without which the Trial Court erroneously concluded that house plots was purchased by the plaintiff as per the house sites plots made by the predecessor in title as such is erroneous and liable to be set aside. Further, he pointed out that plaintiff is residing six

kilometres away from the suit property but he has not raised any objection while putting up construction in the year 2012 nor produced any documents to show that he was out of the country at that time of putting up the construction., though he aware of the construction, he issued notice in the year 2018 hence his claim is barred by limitation. However, the Trial Court failed to appreciate the same as such is erroneous and liable to be set aside. Further, the Trial Court failed to appreciate the joint patta stands in the name of the plaintiff's vendor and the defendant. There is no proof that the plaintiff possessed and enjoyed the property. The Trial Court failed to appreciate that the defendant's vendor also allotted E schedule property in suit survey number and also established that defendant's predecessor in title but it was not appreciated by the Trial Court. Therefore, he prayed to set aside the findings of the Trial Court by allowing this appeal.

7. The learned counsel for the respondent/plaintiff submitted that in the year 1974 there was partition among the plaintiff's vendor's vendor Nazeer and his brothers in which E schedule property was allotted with an extent of one acre in old S.No. 122 and thereafter same was divided into house plots of which one such plot was purchased by the Kathoon Bee in the year 1978 from her the plaintiff purchased in the year 1992 and to prove the

same he relied Ex.A1 to Ex.A3 through which he established his title as well as predecessor in title and the same was rightly appreciated by the Trial Court and with the help of commissioner report an extent of property also proved through surveyor. On the other hand, the defendant failed to establish his vendor's vendor title. Except Power of attorney the defendant not produced any parent title deed that too he claimed in the year 2007 which is two months prior to the sale deed created in the name of the Nazeer except that there is no other document to show the title of the vendor's vendor. Further, there is no proof that the defendant is the bonafide purchaser nor he measured the property at the time of purchase but in connivance with the local body members he created a plan and put up construction during the plaintiff's absence. Therefore the Trial Court rightly allowed the appeal which needs no interference. Hence, he prays to dismiss this appeal.

8. Heard both sides.

9. The points to be decided is whether the plaintiff proved his title for the relief of declaration as well as entitled for the recovery of possession or defendant is having valid title over the suit property ?

10. A perusal of the records relied by the plaintiff through the title deed of the year 1978 the plaintiff traced his vendor's title as well as through partition deed dated 05.01.1974 partitioned between one Nazeer and his brother through which they divided the property in which E schedule property was allotted to Nazeer along with other properties in suit Suvey No is 122 with an extent of 1 acre with four boundaries. According to the plaintiff, thereafter, it was plotted into house sites which was purchased by the Kathoon bee in the year 1974 through Ex.A2/sale deed, Ex.A2 proves that an extent of 2550 square feet was purchased by Kathoon bee, in turn, the same was sold to the plaintiff in the year 1992 through Ex.A1/sale deed dated 28.05.1992. Hence, the extent of the suit properties is tallied with Ex.A1/Sale deed and Ex.A2/Sale deed. The learned counsel for the defendant/appellant raised objection stating that there is nothing mentioned about the house plots in the sale deeds relied by the plaintiff nor produced any approved plan to prove the division of the plots by the plaintiff. Admittedly, the document produced by the plaintiff not proved the division of the property into house plots. However, during the Trial with the help of the Advocate commissioner the suit property was measured based on the revenue record with the help of the surveyor, who identified the suit

property, though there is a slight difference with respect to the extent. Furthermore, Village Administrative Officer/ P.W.3 gave an evidence that as per A register New S.No. 122-5 is stands in the name of kathoon bee which was marked as Ex.A7/Extract of A Register. Hence, plaintiff's vendor's vendor name found in the A register in respect of the suit property. Therefore, at earliest, plaintiff's vendor's name found in the A Register. Though the defendant claimed that he purchased the suit property through sale deed/Ex.B6, before that her vendor purchased the property which is One month prior, in the month of June 2007 Power of Attorney was given to one Sardar also in the month of June 2007. So also document relied by the defendant was executed in the month of June and July 2007 except those documents there is no title deed produced on the side of the defendant to establish her vendor's title over the property. In fact, the power was given to one Sardar by Thajineesa w/o Mohamed Nazeer in June 2007. In the year 1974, through partition E schedule property was allotted to the plaintiff's vendor and to co-relate with suit property. As discussed above, with help of surveyor, the plaintiff measured and identified the property but the defendant not taken any step to identify the property but the counsel for the appellant/defendant replied that before purchasing the property the defendant verified the encumbrance over the property to that effect he marked the encumbrance certificate in which there is no other encumbrance was mentioned so as a bonafide purchaser the defendant purchased the property.

10. But on perusal of the oral and documentary evidence, at the time of purchase, the defendant has not measured the property and it has not been properly identified. But the Advocate commissioner report reveals that there are 8 houses nearby the suit property as per the boundaries described in the plaint sale deed though there is nothing mentioned in the encumberance. But in the revenue records of the year 1993 itself plaintiff's vendor name was mentioned. The power of attorney as well as the defendant's documents were executed within three months except that there is no parent deed produced on the side of the defendant to establish her vendor's vendor title. On the contrary, plaintiff proved his title as well as his vendor's title which co-relate with the suit property and revenue records, and also identified the same with the help of the Advocate commissioner. Furthermore, mere inclusion of name in the joint patta would not confer any title since it is settled proposition that patta is not a document for title, as discussed above the plaintiff is having title over the suit property therefore

the alleged patta would not confer any title to the defendant. Hence, the findings of the Trial Court needs no interference. Accordingly, issue is answered.

10. In the result, this appeal is dismissed as no merits. No Costs. Consequentially, connected miscellaneous petition is closed.

04.09.2024

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T.V.THAMILSELVI,J.

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To
1. The III Additional District Court, Vellore, Tirupattur.
2.The Section Officer,
V.R Section.

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