



WEB COPY



S.A. No. 771 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A. No.771 of 2024
and
C.M.P.No. 24749 of 2024

Kavery,
W/o. Elumalai

... Appellant

Versus

1. Jayaram
S/o. Somu

2. Thangaraj,
S/o. Somu

... Respondents

Prayer:- Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 19.07.2024 passed in A.S.No.10 of 2018 on the file of Sub-Court at Madurantagam confirming the judgment and decree passed in O.S.No.200 of 2010 on the file the District Munsif Court, Madurantagam.



S.A. No. 771 of 2024

For Appellant : Mr.K.Govi Ganesan

For Respondents : Mr.M.Marimuthu for R1

JUDGEMENT

The appellant, who is the 1st defendant in the suit in O.S.No. 200 of 2010 and challenging the concurrent findings of the courts below rendered in A.S.No. 10 of 2018 on the file of Subordinate Judge, Madurantagam arising out of trial court findings in O.S.No.200 of 2010 on the file of District Munsif, Madurantagam, this Second Appeal was preferred by her.

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

3. Before the trial court, the plaintiff filed a suit for declaration and consequential relief of permanent injunction in respect of suit property to an extent of 6 cents as described in plaint schedule stating that a share was allotted as per the partition held on 12.08.1993 and in that partition, 6 cents in Survey No.180/1J has been allotted to 2nd defendant and the western 6 cents in Survey No.180/1J was allotted to plaintiff. The 2nd defendant sold 6



S.A. No. 771 of 2024

cents to the 1st defendant on 31.12.2001 and in the remaining 6 cents, the plaintiff is entitled for title, but they have fabricated the document on 07.03.2002 without knowledge of plaintiff. Though he is in possession of the property, only in the year of 2009, he came to know that the suit property was conveyed through a sale deed dated 31.12.2001 by the 2nd defendant fraudulently. However, the 2nd defendant would submit that entire extent of 12 cents was allotted into share of 2nd defendant much prior to the partition held on 12.08.1993, accordingly, he sold the property, thereby denied the plaintiff's claim. Furthermore, the 2nd defendant also acquired the prescriptive title over the suit property as if he enjoyed the same from the year of 1980 to the knowledge of plaintiff, it was not proved by D2. Both parties have adduced evidence before the trial court. Accordingly, the trial court framed issues. On considering the facts and evidence on record, finally the trial court granted the relief of declaration and since the plaintiff has not proved the possession, the relief of permanent injunction was not granted. However, the plaintiff has claimed the alternative relief of recovery of possession by way of amendment. Accordingly, it was granted, since the plaintiff is a true owner.



S.A. No. 771 of 2024

WEB COPY

4. Challenging the said findings, the 1st defendant preferred an appeal in A.S.No.10 of 2018, wherein the first appellate court independently analysed the facts and evidence on record and finally held that the plaintiff is entitled to the relief of declaration of his title to the suit property and allowed the appeal by confirming the findings of trial court. However, though the 1st defendant denied the plaintiff's possession, but as a true owner, plaintiff is entitled for relief as prayed for was rightly appreciated by the courts below, which needs no interference of this court. Hence, I do not find any merit in this Second Appeal and the same is liable to be dismissed as there is no question of law involved. Accordingly, this Second Appeal is dismissed as no merit. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

06.11.2024

rpp

To

Sub-Judge,

4/6



Madurantagam.

WEB COPY



S.A. No. 771 of 2024

T.V.THAMILSELVI, J.

rpp

S.A. No. 771 of 2024

06.11.2024

5/6



WEB COPY



S.A. No. 771 of 2024