



S.A.(MD)No.698 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

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- 1.S.Karuppiah
- 2.Karuppaye
- 3.Surulivalu
- 4.Chinna Suriyammal
- 5.Rajendran
- 7.Chamandi
- 8.Seeniyammal
- 9.Chinnathai
- 10.Eswari

...Appellants

-Vs-

- 1.Palani @ Baskaran
- 2.Gopal
- 3.Muniyammal
- 4.Kottayan
- 5.Rajeswari
- 6.Maheswari

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment, dated 10.08.2005 passed in A.S.No.39 of 2004 on the file of the Subordinate Judge, Uthamapalayam confirming the decree and judgment, dated 15.04.2004 passed in O.S.No.684 of 1996 on the file of the District Munsif Court, Uthamapalayam.



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For Appellant : Mr.S.Madhavan

For R3 to R6 : S.Natesh Raja

JUDGMENT

The unsuccessful plaintiffs in a suit for declaration of title and recovery of vacant possession, are the appellants. The suit as well as the first appeal filed by the appellants were dismissed. Challenging the concurrent findings, the plaintiffs are before this Court.

2.According to the appellants/plaintiffs, the suit property originally belonged to the first and second plaintiffs' father Suruliandi and after the death of their father, the plaintiffs succeeded to the property and have been in possession and enjoyment of the same by paying tax to the local authority. It is the further case of the appellant that the first defendant trespassed into the portion of the suit property shown as EBFC in the plaint plan and had put up a superstructure thereon. Since the first defendant had no right over the said portion of the suit property, the present suit has been laid for declaration of title and recovery of



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vacant possession after removal of the superstructure put up by the first defendant. It was also claimed by the appellants/plaintiffs that the portion marked as “BCFG” in the plaint plan was in occupation of the defendants 2 and 3 under permission from the plaintiffs. Since the defendants 2 and 3 attempted to claim title in themselves, the plaintiffs were constrained to file a suit for declaration of title and recovery of possession against them.

3.The first defendant and the defendants 2 and 3 filed a separate written statement and contested the suit by denying the exclusive title of the plaintiffs over the suit property. It was the case of the contesting defendants that the suit property originally belonged to one Palaniandi and he had three sons, namely, Subban, Kumaravel and Mutharasan. The first defendant is the son of Mutharasan. The defendants 2 and 3 are the sons of Kumaravel. The plaintiffs are said to be the sons of Suruliandi son of Subban. It was claimed by the defendants that the relationship between the parties was deliberately suppressed by the plaintiffs. It was also stated that the plaintiffs earlier filed a suit for declaration of title and possession in O.S.No.612 of 1990 and the said suit was withdrawn by the plaintiffs. The filing of the earlier suit was suppressed by the



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plaintiffs deliberately in order to make a false claim over the suit property. It was also averred by the defendants that taking advantage of the fact the revenue documents stand in the name of the person belonging to eldest branch of the family, the plaintiffs filed a suit for declaration of title and possession. The first defendant died pending suit and his legal heirs were brought on record as defendants 4 to 7

4.Before the trial Court, the second plaintiff was examined as PW-1 and yet another witness was examined as PW-2. On behalf of the plaintiffs, six documents were marked as Ex-A1 to Ex-A6. . The fifth defendant was examined as DW-1 and 47 documents were marked as Ex-B1 to Ex-B47.

5.The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs failed to prove their title over the suit property and hence, dismissed the suit. Aggrieved by the same, the plaintiffs filed an appeal in A.S.No.39 of 2004 on the file of the Subordinate Court, Uthamalapalaym The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the plaintiffs have come by way of



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6.The learned Counsel appearing for the appellants submitted that the defendants failed to prove their right over the suit property by producing the partition among the sons of Palaniandi and therefore, when the revenue documents stand in the name of the plaintiffs' grandfather, Subban, the Courts below ought to have granted a decree for declaration of title. The learned Counsel for the appellants further submitted that the defendants have not produced any documents in support of their right over the suit property and in the absence of any title document on the side of both the parties, the Courts below ought to have accepted the revenue documents filed by the appellants/plaintiffs and declared the title in favour of the appellants/plaintiffs.

7.It is settled law that in a suit for declaration, the plaintiff has to stand on his own strength and he cannot pick holes in the defence and merely because, the defendants failed to lead satisfactory evidence in support of various pleas raised by them in their written statement, the plaintiff in a suit for declaration of title is not entitled to succeed. In the case on hand, the plaintiffs came to the Court with



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a specific plea that the suit property originally belonged to the first and second plaintiffs' father Suruliandi, and after this death, the plaintiffs had been in possession and enjoyment of the suit property. In support of the said plea, the plaintiffs failed to produce any title document to prove that the property belonged to the first and second plaintiffs' father Suruliandi either by self acquisition or by succession. The only document filed by the plaintiffs in support of their case is the revenue document, namely, Town Survey Register marked as Ex-A1. A perusal of Ex-A1, would suggest that it stands in the name of Subban and Karuppiah, sons of Suruliandi. The plaintiffs have not produced any documents to show that the property belonged to their father Suruliandi, as per their plaint averment. It is settled that revenue documents will not confer any title. Further, merely because, revenue documents stand in the name of one of the members of the branch of the family, the person in whose name revenue documents stand cannot claim exclusive right over the property. In the case on hand, the defendants claimed that the plaintiffs' Grandfather, Subban and father of the defendants were brother. The appellants/plaintiffs only produced the Town Survey Register, which stands in their name and there is no evidence available on record to show how the plaintiffs got the property. Both the Courts below non suited the



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plaintiffs mainly on the ground that revenue document will not confer any title and in order to succeed in a suit for declaration of title, the plaintiffs must establish their title independently by cogent evidence. The conclusion reached by the Courts below that the plaintiffs failed to prove their title over the suit property is based on proper appreciation of evidence available on record and I do not find any perversity in the findings reached by the Courts below and accordingly, the Second Appeal stands dismissed. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

cmr

To

- 1.The Subordinate Judge, Uthamapalayam.
- 2.The District Munsif Court, Uthamapalayam.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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