



S.A.(MD)No.406 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.406 of 2008

Perumal (Died)

2.Maheswari

3.Minor Amutha

4.Minor Mahalakshmi

... Appellants

(Appellants 2 to 4 are brought on record as Lrs of the deceased sole appellant vide order of Court dated 12.11.2008 made in M.P.(MD)No. 2/2008)

Vs

Pappa

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree in A.S.No.163 of 2002 on the file of the 2nd Additional Subordinate Judge, Tirunelveli dated 04.02.2003 by reversing the judgment and decree passed in O.S.No.565/2000 on the file of the Principal District Judge, Thirunelveli dated 28.06.2002.



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For Appellants : Mr.T.Selvan for
Mr.V.Sri Balaji

For Respondent : Mr.S.Gokularaj

JUDGMENT

The plaintiff is the appellant. He filed a suit for declaration of title and for consequential relief of injunction. The plaintiff also sought for alternative relief of recovery of possession from the defendant in case Court comes to the conclusion that plaintiff was out of possession on the date of suit. The suit was decreed by the trial Court, granting all the reliefs. Aggrieved by the same, the respondent preferred an appeal and the same was allowed by the appellate Court. Challenging the reversing finding, the plaintiff is before this Court.

2. Pending Second appeal, the appellant/plaintiff died and his legal representatives were brought on record as appellants 2 to 4.

3. According to the appellant / plaintiff, the suit property originally



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belongs to Sudalaimadi and after her death, the plaintiff purchased the suit property from her legal representatives under sale deed dated 04.10.1985. It was asserted that plaintiff has been in possession and enjoyment of the suit property right from the date of purchase and the respondent / defendant without having any right over the suit property, attempted to interfere with the plaintiff's possession and hence, he was constrained to file a suit for the above said reliefs.

4. The respondent filed a written statement denying all the averments found in the plaint. It was claimed by the respondent that the suit property originally belongs to father of the plaintiff and father-in-law of defendant viz., Pudhiyavan and he purchased the suit property in the name of his first wife Sudalaimadi. It was also claimed that the plaintiff Perumal and defendant's husband deceased Velayutham were sons of Pudhiyavan's second wife Madathi. After the death of defendant's husband Velayutham, Puthiyavan allowed the defendant and her children to enjoy the property as her own and thus, she had been in possession and enjoyment of the suit property as a owner for more than 25 years. The defendant specifically denied the plaint averments that the plaintiff purchased the suit property under sale deed dated 04.10.1985 and sought



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for dismissal of the suit.

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5. The trial Court, on consideration of evidence available on record, came to the conclusion that the plaintiff proved his right over the suit property under Ex.A1, sale deed dated 04.10.1985. The trial Court also came to the conclusion that the plaintiff proved his possession by producing patta in his name and granted the relief of declaration and injunction. Strangely, the trial Court also granted a decree for recovery of possession, without considering the fact that the relief of recovery of possession will not go along with the relief of injunction. Aggrieved by the same, the respondent filed an appeal in A.S.No.163 of 2002 on the file of II Additional Sub Court, Tirunelveli. The first appellate Court on the basis of evidences of D.W.3 and D.W.4, vendors of plaintiff, came to the conclusion that Ex.A1 sale deed would not convey any title to the plaintiff and reversed the findings of the trial Court. As a necessary consequence, the first appeal was allowed by the first appellate court and aggrieved by the same, the plaintiff is before this Court.

6. The learned counsel appearing for the appellant / plaintiff vehemently contended that the plaintiff proved his title over the suit



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property by producing registered sale deed in his favour under Ex.A1 and the same has been discarded by the first appellate Court without any justifiable reason. The learned counsel further submitted that the defendant claims continuous possession over the suit property for more than 25 years. However, she failed to prove the same by producing any acceptable evidence.

7. The appellant/plaintiff claims right over the suit property under Ex.A1 sale deed. According to him, he purchased the suit property under Ex.A1 from the legal representatives of its original owner Sudalaimadi. A perusal of Ex.A1 would suggest that the same was executed by the plaintiff's father Pudhiyavan and his step brothers Mayandi and Ramaiyaa. The vendor of the plaintiff Mayandi and Ramiyaa were examined as D.W.3 and D.W.4 on behalf of the defendant. They deposed before the Court that they were illiterates and they never executed sale deed in favour of plaintiff under Ex.A1. When the vendors of the plaintiff, who allegedly executed Ex.A1 in his favour, appeared before the Court and denied execution of the sale deed in favour of the plaintiff, it is incumbent on the plaintiff to prove the due execution of the sale deed in his favour under Ex.A1. The vendors of the plaintiff deposed



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that they were illiterates and therefore, they had not signed Ex.A1.

Thumb impression of vendors viz., D.W.3 and D.W.4 are available in Ex.A1. The appellant, in order to prove that Ex.A1 was executed by D.W.3 and D.W.4, could have easily sought for comparison of the thumb impression found in Ex.A1 with the admitted thumb impression of D.W.3 and D.W.4. For the reasons best known to him, the plaintiff failed to take such steps to prove due execution of sale deed in his favour. Therefore, the first appellate Court rightly came to the conclusion that execution of Ex.A1 sale deed in favour of appellant was not proved by him.

8. Further, the first appellate Court also relied on the evidence of plaintiff's own witness P.W.2, who is the Nattamai of the Village, to come to the conclusion that the appellant failed to prove the possession over the suit property also.

9. According to the first appellate Court, P.W.2 in his evidence deposed that the houses in suit property were in possession of the defendant. Based on the admission made by the plaintiff's own witness P.W.2, the first appellate Court came to the conclusion that the plaintiff



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also failed to prove his possession over the suit property. When the plaintiff fails to prove due execution of sale deed in his favour, which was marked as Ex.A1, his claim for title fails and therefore, the first appellate Court rightly dismissed the prayer of the plaintiff for declaration of his title. Once the main relief of declaration is declined, the first appellate Court is also justified in negating the consequential relief. Therefore, I do not find any substantial question of law involved in this second appeal to interfere with the findings of the first appellate Court. Accordingly, the second appeal stands dismissed. There shall be no order as to costs.

16.04.2024

NCC : Yes / No
Index : Yes / No

vsm

To

- 1.The II Additional Subordinate Judge, Tirunelveli.
- 2.The Principal District Judge, Thirunelveli.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,



Madurai.

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