



S.A.(MD)No.166 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2024

CORAM:

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

S.A.(MD)No.166 of 2015

and

M.P.(MD)No.1 of 2015

S.Veluchamy

...Appellant

-Vs-

1.Lakshmana Chettiar
2.Petchiammal
3.Veluchamy
4.Rajmohan
P.K.Suresh Babu (Died)
5.Vijayalakshmi
6.Ashwini

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.70 of 2010, dated 13.10.2014 on the file of the Subordinate Judge, Sankarankovil confirming the judgment and decree passed in O.S.No.186 of 2008, dated 22.07.2010 on the file of the Additional District Munsif Court, Sankarankovil.



S.A.(MD)No.166 of 2015

WEB COPY

For Appellant : Mr.M.Thirunavukkarasu
For R1, R4, R5 and R6 :No appearance
For R2 and R3 : Mr.P.Subburaj

JUDGMENT

The plaintiff in the suit is the appellant herein. The suit was filed for declaration of title and for injunction. The suit as well as the first appeal filed by the plaintiff were dismissed. Aggrieved by the concurrent findings, he is before this Court.

2.According to the plaintiff, the suit property belonged to one Subramaniyan Chettiyar and he died 20 years back leaving behind his only son, Gurusamy Chettiyar, as his legal heir. The said Gurusamy Chettiyar died 15 years back leaving behind his wife Lakshmiammal and one son Seenivasan as his legal representatives. The said Lakshmiammal died four years back leaving her only son Seenivasan as her legal representative. Thus, Seenivasan had been in possession and enjoyment of the suit property as a sole owner. The plaintiff entered into a sale agreement for purchase of the suit property with Seenivasan on 14.05.2007. Subsequently, on 21.05.2008, the plaintiff got the registered sale deed in his favour and acquired the title over the suit property. The defendants



S.A.(MD)No.166 of 2015

WEB COPY

without having any right over the suit property created various self serving documents in their favour and attempted to interfere with the possession of the plaintiff and hence, the suit was filed.

3.The defendants resisted the suit mainly on the ground that Subramaniyan Chettiyar died without any issue and after his death, the suit property devolved on his brother's son Lakshmana Chettiyar, who was arrayed as first defendant. The said Lakshmana Chettiyar has executed a power deed on 31.08.2007 in favour of the third defendant, who in turn, sold the property to the second defendant on 08.04.2008. The defendants in their written statement specifically denied the plaint averments that Subramaniyan Chettiyar had a son by name, Gurusamy Chettiyar. Therefore, the title of the plaintiff's vendor was denied by the defendants.

4.Before the trial Court, the plaintiff was examined as PW-1 and his vendor was examined as PW-2 and on behalf of the plaintiff, 19 documents were marked as Ex-A1 to Ex-A19. The third defendant was examined as DW-1 and no documentary evidence was let in by the defendants.



S.A.(MD)No.166 of 2015

WEB COPY

5.The trial Court, on appreciation of evidence available on record, came to the conclusion that the plaintiff failed to establish that the original owner, Subramaniyan Chettiyar, had a son by name Gurusamy Chettiyar and consequently, dismissed the suit by holding that the plaintiff had failed to establish his vendor's title. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.70 of 2014 on the file of the Subordinate Court, Sankarankovil.

6.Before the first appellate Court, the plaintiff filed two applications in I.A.Nos.104 and 105 of 2014, for reopening of the case and to produce additional evidence. The first appellate Court confirmed the findings of the trial Court and dismissed the appeal along with the applications filed by the plaintiff. Aggrieved by the same, the plaintiff is before this Court.

7.This Court, at the time admitting the Second Appeal, formulated the following substantial questions of law, by order, dated 05.03.2015:

“a)Whether the Courts below are right in dismissing the suit of the plaintiff when he has proved his case by producing title deed and Patta Exs-A1, A2 & A5?

b)Whether the lower appellate Court is right in dismissing the



S.A.(MD)No.166 of 2015

WEB COPY *application filed by the plaintiff under Order 41 Rule 27 of CPC to receive additional documents on the ground that it was filed belatedly?*

c)Whether the courts below are right in holding that Death Certificate, Voter I.D card and Ration Card are not the documents to prove the legal heirship?"

8.The learned Counsel for the appellant submitted that before the first appellate Court, the plaintiff had filed an application for production of additional evidence by producing certified copy of a sale deed, dated 12.06.1951 executed by Gurusamy Chettiyar son of Subramaniyan Chettiyar in favour of Valliammal and the said document clinchingly proves that Gurusamy Chettiyar, plaintiff's vendor's father was the son of Subramaniyan Chettiyar. The first appellate Court without taking into consideration the impact of the additional documents produced by the appellant, erroneously dismissed the petition for reception of additional evidence and consequently, dismissed the appeal. The learned Counsel further submitted that the defendants though claimed that Subramaniyan Chettiyar had a brother, by name, Karuppasamy Chettiyar and after the death of Subramaniyan Chettiyar, the property devolved on his brother's son, Lakshmana Chettiyar, failed to lead any evidence except oral evidence of DW-1 in support of



S.A.(MD)No.166 of 2015

WEB COPY

their plea and therefore, when the defendants failed to establish the plea raised by them, the first appellate Court based on the documents produced by the plaintiff ought have declared the title of the plaintiff.

9.The plaintiff filed a suit for declaration of title in respect of property situated in S.Nos.57/3A and 57/3B with an extent of 0.02.0 and 0.098.5 hectares equivalent to 2 acres and 48 cents. However, Ex-A5, the sale deed in favour of the plaintiff would suggest that he purchased only 1 acre 48 cents from Seenivasan son of Gurusamy Chettiyar. Therefore, there is no evidence available on record that the plaintiff purchased the entire extent of the suit property. Though the learned Counsel for the appellant submitted that the plaintiff entered into a sale agreement in respect of entire extent of the suit property, it is settled law that sale agreement will not create any interest in immovable properties, unless he purchased the property by a registered sale deed. In the case on hand, under Ex-A5, the plaintiff had purchased only 1 acre 48 cents. Therefore, he is not entitled for declaration of title in respect of 2 acres 48 cents.

10.It is the specific case of the defendants that the plaintiff's vendor,



S.A.(MD)No.166 of 2015

WEB COPY

Seenivasan's father Gurusamy Chettiyar was not the son of original owner, Subramaniyan Chettiyar. It was also pleaded by the defendants that Subramaniyan Chettiyar died without any issue and after his death, the property was devolved on his brother's son Lakshmana Chettiyar, namely, the first respondent. The trial Court came to the conclusion that the plaintiff failed to establish that Gurusamy Chettiyar was the son of original owner Subramaniyan Chettiyar. In order to establish the said fact, the plaintiff filed an application to receive additional evidence before the first appellate Court and produced certified copy of sale deed, dated 12.06.1951. A perusal of the sale deed would suggest that one Gurusamy Chettiyar son of Paradesi Chettiyar @ Subamaniyan Chettiyar sold some other property to one Valliammal.

11.From the description of the executant/vendor found in the said document, the learned Counsel for the appellant submitted that the plaintiff's vendor's father Gurusamy Chettiyar was son of Subramaniyan Chettiyar. From description in the said document, we cannot come to a conclusion that the plaintiff's vendor's father Gurusamy Chettiyar was son of Subramaniyan Chettiyar. The plaintiff only produced certified copy of the sale deed and it was



S.A.(MD)No.166 of 2015

WEB COPY

not a document produced from proper custody and hence, the presumption available to the old document cannot be pressed into service in the absence of production of original sale deed and production of the same from proper custody. Any person can get certified copy from the Sub Registrar Office and produce the same before the Court. Therefore, the presumption available in favour of 30 years old document cannot be attached to the document produced by the appellant by way of additional evidence. In the absence of any other evidence to show that the person referred to as Gurusamy Chettiyar son of Paradesi Chettiyar @ Subramaniyan Chettiyar in the said document, is the vendor of plaintiff, the said document may not be of any use for the Court to decide the main controversy involved in this case.

12.The other two revenue documents produced by the appellant along with the petition for reception of additional evidence are not relevant to the suit survey number. Therefore, those documents will not enable to the Court to decide the controversy in any manner. Further, the plaintiff also failed to give any acceptable reasons for his failure to produce these documents before the trial Court. In such circumstances, the first appellate Court rightly dismissed the two



S.A.(MD)No.166 of 2015

WEB COPY

applications for reception of additional evidence and for reopening of the case on the ground that the documents produced by the appellant would not have any impact on the outcome of the case.

13. When the plaintiff was examined as PW-1, he deposed that after the sale in his favour, he applied for legal heirship certificate and found that Gurusamy Chettiyar was son of Subramaniyan Chettiyar. When he was questioned why he failed to produce that legal heirship certificate before the Court, he answered that he was not asked to produce the legal heirship certificate before the Court and therefore, it was not produced. Even before the first appellate Court at the time of filing a petition for reception of additional evidence, the appellant/plaintiff failed to produce the legal heirship certificate to show that Gurusamy Chettiyar was son of Subramaniyan Chettiyar. When the appellant/plaintiff is guilty of suppression of best evidence available with him, the Court is entitled to draw adverse inference against him.

14. Both the Courts below on appreciation of oral and documentary evidence available on record came to the conclusion that the plaintiff miserably



S.A.(MD)No.166 of 2015

WEB COPY

failed to prove that the plaintiff's vendor's father Gurusamy Chettiyar was son of Subramaniyan Chettiyar and therefore, his vendor had no title to convey the suit property under Ex-A5. The said factual conclusion reached by the Courts below requires no interference in the absence of perversity. Accordingly, the substantial questions of law framed at the time of admission are answered against the appellant and in favour of the respondents. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.04.2024

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

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To

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

10/11



WEB COPY



S.A.(MD)No.166 of 2015

S.SOUNTHAR, J.

cmr

S.A.(MD)No.166 of 2015

26.04.2024