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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.NO.1286 OF 2004

Rasu Muthiriyar :Second defendant Appellant/Appellant

.VS.

1.A.Elanjiyam

2.M.Elanjiam

(Service of notice on the second respondent is disposed with as per order of this Court made in S.A.No.1286 of 2004,dated 7.2.2024)

:Ist Defendant/Second Respondents/Second
Respondent

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.11 of 2001, dated 13.10.2003, on the file of Sub-Court,Trichy confirming the judgment and decree made in O.S.No.11230 of 1992, dated 16.11.2000, on the file of District Munsif Court, Trichy.

For Appellant :Mr.P.Thiagarajan
for M/s.T.R.Rajaraman

For Respondent-1 :No Appearance

For Respondent-2 :Notice Dispensed with

**JUDGMENT**

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This Second Appeal is filed against the judgment and decree made in A.S.No.11 of 2001, dated 13.10.2003, on the file of Sub-Court,Trichy, confirming the judgment and decree made in O.S.No. 11230 of 1992, dated 16.11.2000, on the file of District Munsif Court, Trichy.

2.The second defendant in the suit is the appellant. The sister of the appellant namely, first respondent filed the suit for recovery of possession. The same was decreed by the trial Court and the appeal filed by the appellant was also dismissed by the First Appellate Court. Challenging the concurrent findings against him, the appellant has approached this Court by filing this Second Appeal.

3.According to the first respondent/plaintiff, the suit property was originally belonged to her father Sathan Muthiriyar under sale deed, dated 18.02.1964. He in-turn sold the property to the first respondent on 07.05.1979. It was claimed by the first respondent that after the death of her father, the appellant and other respondents committed trespass into the suit property and hence, he was constrained to file a suit for recovery of possession.



4.The second respondent/first defendant remained exparte and the suit was constested only by the appellant by filing a written statement.

5.It is the case of the appellant that the suit property was purchased by his father by utilizing the funds provided by him and hence, he has got title over the same. It was further averred by the appellant that the first respondent could have got the sale deed in her favour by taking advantage of the fragile health of father Sathan Muthiriyar and therefore, the said sale deed would not confer any title on the first respondent. On these pleadings, the appellant sought for dismissal of the suit.

6.Before the trial Court, the husband of the first respondent was examined as P.W.1 and three documents were marked on behalf of the first respondent as Ex.A1 to Ex.A3. The appellant was examined as D.W.1 and one Paramasivam was examined as D.W.2 on behalf of the appellant and six documents were marked as Ex.B1 to Ex.B6.

7.The trial Court, on appreciation of both oral and documentary evidence, came to the conclusion that the appellant failed to prove his plea that the property was purchased in the



name of Sathan Muthiriyar by utilizing the funds provided by the appellant. Therefore, the trial Court upheld the title of the first respondent and dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.11 of 2001, on the file of Sub-Court, Tiruchirappalli. The First Appellate Court also concurred with the findings of the trial Court. Aggrieved by the same, the appellant is before this Court by filing this Second Appeal.

8.The learned counsel for the appellant tried to assail the judgment and decree passed by the Courts below on the ground that the first respondent failed to enter into the box in support of her plea and therefore, the Courts below ought not to have granted the relief as prayed for by her. The learned counsel further submitted that the first respondent failed to prove her title over the suit property by examining the attestor to the sale deed, in her favour, marked as Ex.A2. The learned counsel further submitted that the Courts below failed to consider the plea of adverse possession raised by the appellant. The learned counsel also submitted that a mere suit for recovery of possession simplicitor is not maintainable in the absence of a prayer for declaration.

9.The first respondent filed the suit for recovery of possession



based on title. In order to prove her title, she produced the sale deed, dated 18.02.1964, in favour of father of appellant and first respondent namely, Sathan Muthiriyar. The said sale deed was marked as Ex.A1. A portion of the property purchased under Ex.A1 was sold to the first respondent by Sathan Muthiriyar under Ex.A2, dated 07.05.1979 and the same was marked as Ex.A2. Though the appellant raised the plea that the suit property along with other properties covered under Ex.A1 were purchased in the name of Sathan Muthiriyar out of the funds provided by him, absolutely there is no evidence available on record to prove the said plea. Therefore, both the Courts below based on Ex.A1, rightly came to the conclusion that Sathan Muthiriyar was the original owner of the suit property. Further, after coming into force of Benami Prohibition Act, the appellant is not entitled to raise the plea of benami as a defence. Even otherwise, in the absence of any evidence to support the plea that the property was purchased in the name of Sathan Muthiriyar by utilizing the funds provided by the appellant, I do not find anything to interfere with the findings of the Courts below that Sathan Muthiriyar was the original owner of the suit property. The suit property which is a portion of the property covered by Ex.A1, was sold to the first respondent under Ex.A2 by Sathan Muthiriyar. The learned counsel for the appellant submitted that the first respondent failed to prove the sale in her



favour by examining the attesor to the document. The sale deed is not a document which requires compulsory attestation, as in the case of 'Will', Settlement or Mortgage. Therefore, there is no need to examine the attesor of the sale deed in order to prove the said document. In this regard, reference may be had to ***Karuppiah Moopanar .vs. Muthukaruppan*** reported in ***AIR 1975 Mad 221***. When a registered sale deed is produced by a party to the document and marked before the Court, the same shall be accepted as proved, unless the party challenging the same, lead any evidence to impeach the genuiness of the said document. In this regard, reference may be had to ***Prem Singh .vs. Birbal*** reported in ***2006(5) SCC 353***.

10. In the light of the law settled by the Honourable Apex Court and by this Court in the above mentioned case laws, the contention raised by the learned counsel for the appellant that the first respondent failed to prove the sale deed in her favour by examining the attesor of the document, is not acceptable to this Court.

11. The appellant never admitted the title of the first respondent to enable him to claim adverse possession. It is settled law that a person claiming adverse possession, must admit the



title of the other person and claim hostile possession. In the case on hand, as mentioned earlier, the appellant claim title in himself by raising a plea of benami. In such circumstances, I am unable to accept any of the submissions made by the learned counsel for the appellant. I do not find any question of law much less substantial question of law involved in this Second Appeal and therefore, the Second Appeal stands dismissed. There is no order as to costs.

03.04.2024

Index:Yes
Internet:Yes
NCC:Yes
vsn

To

- 1.The Sub-Judge,
Trichy.
- 2.The District Munsif,
Trichy.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A.NO.1286 of 2004

03.04.2024