



S.A.(MD)No.677 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.677 of 2006

R.Rangasamy

... Appellant

Vs

1.S.Muthuraj

2.Samayan

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the decree and judgment dated 15.12.2003 in A.S.No.45 of 1999, on the file of Sub Court, Periyakulam confirming the decree and judgment in O.S.No.32 of 1996, dated 02.12.1998 on the file of the District Munsif, Periyakulam.

For Appellant : Mr.M.Saravanan

For Respondents : No Appearance



S.A.(MD)No.677 of 2006

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JUDGMENT

The plaintiff in the suit is the appellant. He filed a suit for declaration of title and for the consequential relief of permanent injunction. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first Appellate Court. Aggrieved by the same, the appellant is before this Court.

2. According to the appellant/plaintiff, he purchased 65 cents out of 70 cents of suit property from his brother Rajan, under a sale deed dated 18.09.1973 and has been in enjoyment of the same, as such from that date onwards. It was claimed by the appellant that out of remaining 5 cents, he purchased 4 cents from one S.P.Velusamy and one cent from one S.S.Periyakaruppan under an oral sale. Thus, the appellant claimed right over 70 cents of suit property. It is also claimed by him that he has been paying tax to the Government by obtaining patta in his name and enjoying the suit property as a Coconut Tope. It was further alleged that taking advantage of absence of appellant in the village, the respondents obtained a favourable order for inclusion of their name in the patta in respect of the suit property and based on the said order, the respondents are attempting to interfere with the appellant's possession over the suit



S.A.(MD)No.677 of 2006

property. Hence, he laid a suit for declaration and injunction.

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3. The respondents filed a written statement denying the title and possession of the appellant over the suit property. It was specifically pleaded by the respondents that the vendor of appellant viz., Rajan had no right over the suit property. It was also claimed by the respondents that the suit property was allotted to first respondent in the family partition that had taken place on 31.05.1993 in their family.

4. Before the trial Court, the appellant was examined as P.W.1 and 12 documents were marked on behalf of the appellants as Ex.A1 to Ex.A12. On behalf of the respondents, first respondent was examined as D.W.1 and five documents were marked as Ex.B1 to B5.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant failed to prove his title as well as possession over the suit property and hence, dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.45 of 1999 on the file of Sub Court, Periyakulam. The First Appellate Court also concurred with the findings of the trial Court and dismissed the appeal. Hence, the appellant is before this



S.A.(MD)No.677 of 2006

Court.

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6. The learned counsel appearing for the appellant submitted that the Courts below failed to take into consideration the exhibits marked by the appellant as Ex.A1 to Ex.A4 in proper perspective and hence, the findings rendered by the Courts below, as if the appellant failed to prove his title over the suit property is erroneous. The learned counsel further submitted that respondents failed to produce any document in support of their claim over the suit property and in spite of the same, the Courts below believed their version and non-suited the appellant.

7. It is settled law, in a suit for declaration of title, the plaintiff shall win the case on his own strength and he cannot rely on the weakness of defence. Therefore, the failure of the respondents to lead any evidence in support of their title would not be a ground to give a positive declaration in favour of the plaintiff. In the case on hand, the appellant/plaintiff came to the Court with a definite case that he purchased 65 cents of property from his brother Rajan under sale deed dated 18.09.1973, marked as Ex.A1. He also claimed that he purchased



S.A.(MD)No.677 of 2006

4 cents by way of oral sale from one S.P.Velusamy and one cent by way of oral sale from S.S.Periyakaruppan. It is a settled law, sale of immovable property for a value of Rs.100/- or more shall be by way of registered instrument. In the case on hand, the appellant was relying on oral sale in respect of the portion of the suit property viz., 5 cents. It is not the case of the appellant that the said portion of the property is worthless than Rs.100/-. Further, in order to prove the said oral sale, absolutely there is no evidence available on record except the interest testimony of appellant as P.W.1. Therefore, the claim of the appellant, as if he purchased portion of the suit property viz., 5 cents under oral sale is not acceptable.

8. Though the appellant claimed right over 65 cents of suit property under a registered sale deed executed by his brother Rajan, the respondents in the written statement, specifically denied the right of said Rajan to convey good title to the appellant. The appellant failed to produce any document to show that his brother Rajan was entitled to 65 cents of the suit property to convey good title to him. When the appellant is unable to explain how his vendor Rajan got title over 65 cents of suit property, Ex.A1 sale deed relied on by the appellant is of no



S.A.(MD)No.677 of 2006

use for him to declare his title. Both the Courts below rightly came to the conclusion that when the title of appellant's vendor viz., Rajan was not proved, the appellant is not entitled to claim any right over the suit property.

9. In view of the discussion made earlier, I do not find any question of law much less substantial question of law to interfere with the findings of the Courts below and accordingly, the second appeal shall stand dismissed. There shall be no order as to costs.

04.04.2024

NCC : Yes / No
Index : Yes / No
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S.A.(MD)No.677 of 2006

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- 1.The Sub Court, Periyakulam.
- 2.The District Munsif, Periyakulam.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.677 of 2006

S.SOUNTHAR, J.

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S.A.(MD)No.677 of 2006

04.04.2024