

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4875 OF 2005

KANNIYA PADAYACHI (D) BY LRS. & ANR.

Appellant (s)

VERSUS

JAYARAMA PADAYACHI & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 09/03/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s)

Mr. V. Prabhakar, Adv.
Ms. E.R. Sumathy, Adv.

For Respondent(s)

Mr. S. Ravi Shankar, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(NIDHI CHUGH)
Sr. P.A.

(RENUKA SADANA)
Court Master

(Signed order is placed on the file.)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4875 OF 2005

KANNIYA PADAYACHI (D) BY LRS. & ANR.

... Appellants

VERSUS

JAYARAMA PADAYACHI & ORS.

... Respondents

O R D E R

The appellants were the plaintiffs in the Original Suit No. 212 of 1983 before the Court of Additional District Munsif, Cuddalore. The said Original Suit was dismissed vide judgment dated 19.11.1986. Being aggrieved, the appellants-plaintiffs preferred Appeal Suit No. 189/87 before the Court of subordinate Judge, Cuddalore. The Subordinate Judge vide judgment dated 17.7.1989 set aside the judgment and decree passed by the Trial Court and allowed the Appeal Suit with costs. Being aggrieved and dissatisfied with the same, the respondents herein who were

original defendants before the courts below approached the High Court by filing Second Appeal No. 4 of 1990 which was allowed while setting aside the judgment of the lower Appellate Court and restoring the judgment and decree of the trial court. Hence the this appeal.

The Trial Court after an elaborate consideration of the matter and appreciation of evidence found that the appellants herein could not establish the title in respect of the suit scheduled property admeasuring 76 cents in Survey No. 443/21 in the village Vellakarai, Cuddalore Taluk, Tamil Nadu. The First Appellate Court interfered2.

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with the finding of fact arrived at by the Trial Court and decreed the suit. In the second appeal the High Court having framed the substantial question of law as to whether the plaintiff no. 1/vendor himself had any title to the suit scheduled property so as to pass on the same to the plaintiff no. 2, based on the material available on record the High Court found that the plaintiff no. 1 himself had no title to the suit scheduled property and the same could not have been validly transferred to the plaintiff no. 2. The High Court, accordingly, found that the plaintiffs miserably failed to establish the title to the suit scheduled property and accordingly dismissed their suit for declaration of title and permanent injunction.

The appellants mainly contended that there was a Panchayat held between the parties in which the suit scheduled property had fallen to the share of one Duraikannu Padayachi, the predecessor-in-title of the plaintiff no. 1. The High Court having meticulously examined this contention and found that no documentary evidence has been adduced in this regard by the plaintiffs. The High Court, accordingly, held that the burden to establish the title to the scheduled property was on the plaintiffs and they have miserably failed to establish the same. The High Court mainly relied on Exhibit B-8 to arrive at its conclusion to reject the case of the plaintiffs.

In our considered opinion, the High Court having framed substantial question of law for its consideration rightly decided the same by reversing the judgment of the First Appellate Court which is based on pure surmises. The High Court rightly restored the decree and judgment of the

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Trial Court and accordingly dismissed the suit filed by the appellants-plaintiffs. We find no merit in this appeal. The appeal is, accordingly dismissed.

....., J.
[B. SUDERSHAN REDDY]

....., J.

[SURINDER SINGH NIJJAR]

NEW DELHI;
MARCH 09, 2011.