



S.A.No.689 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.689 of 2012

and

M.P.No.1 of 2012

1.V.Ramakrishnan (died)
2.Amsammal
3.R.Viswakumar
4.Kala
5.R.Parathasarthi
6.maheswari
7.Srinivasan
8.Arumugam
9.Murugammal
10.Kamatchi ... Appellants
(appellants 2 to 10 were brought on record as
legal heirs of the deceased 1st appellant vide
order dated 23.07.2012 in M.P.Nos.1 & 2 of 2015)

vs.

1.Ammasai Ammal
2.S.Murthy
3.S.Durai
4.K.Pushpa
5.S.Ravichandran
6.Nirmala
7.S.Mohanraj
8.The Commissioner
Mettupalayam Municipality
Mettupalayam.

...Respondents



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Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 28.07.2011 in A.S.No.245 of 1999 passed by the Principal District Judge, Coimbatore, confirming the judgment and decree dated 30.09.1999 in O.S.No.543 of 1995 passed by the learned District Munsif, Mettupalayam.

For appellants : Mr.R.Venkatajalapathy
for Mr.Kadarkarai

For respondents 1 – 7 : No appearance
For respondent 8 : Mr.M.Muthusamy
Government Advocate

J U D G M E N T

The first defendant in the suit is the appellant before this Court. Pending this Second Appeal, the sole appellant died and the appellants 2 to 6 were brought on record as his legal heirs.

2. This Second Appeal is preferred as against the judgment and decree dated 28.07.2011 in A.S.No.245 of 1999 on the file of the District Court, Coimbatore, confirming the judgment and decree dated 30.09.1999 in O.S.No.543 of 1995 on the file of the District Munsif Court, Mettupalayam.



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3. For the sake of convenience, the parties will be referred to according to their ranking as before the Trial Court.

The brief facts, which gave rise to this Second Appeal, are that:

4. According to the plaintiffs, the suit property originally belonged to the husband of the first plaintiff, who obtained the right of transfer deed issued by the second defendant/Municipality in Ex.A3. During the period 1974, the second defendant/Municipality granted house sites to the persons, who were in possession and occupation of the sites in S.F.No.191/2, Gandhipuram, Mettupalayam. As the first plaintiff's husband was in possession and enjoyment of the property, the title of the suit property was conveyed by the second defendant in favour of the first plaintiff's husband through right of transfer deed in Ex.A3. Ever since the said transfer order was issued, the plaintiff's husband was in possession and enjoyment of the suit property as the absolute owner and they have been paying the property tax.

5. According to the plaintiffs, prior to the said transfer, even



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during the year 1963, the second defendant granted house patta to many persons and the first defendant was also allotted one such patta bearing house no.6-8-5 and the same was also assessed to property tax under no.3365. The first defendant, who was already granted house site and who had an intention to grab one more site in S.F.No.191/2, made an unsuccessful attempt. On 1980, the first plaintiff's husband died leaving behind the plaintiffs as his legal heirs. Further, the plaintiffs, by exercising their right, mortgaged the property to one Mani and also divided the suit property into three portions and leased out to the third parties. In the meantime, the first defendant, who earlier failed in his attempt to grab the site in S.F.No.191/2, with the help of the second defendant/Municipality, changed his name in the tax receipts over the suit property. Immediately, after a complaint made by the plaintiffs, the second defendant, after conducting an enquiry, passed an assessment order dated 23.10.1991 in Ex.A5 and transferred the assessment order in the name of the plaintiffs and they are in possession and enjoyment of the property by paying necessary taxes. As the first defendant made another attempt at the end of 1983, the plaintiffs issued a legal notice dated 14.12.1993, for which, they received an evasive reply on



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10.02.1994. Therefore, the plaintiffs came up with the suit claiming declaration of title to the suit property, injunction restraining the first defendant from interfering with the possession and also permanent injunction restraining second defendant from transferring the property tax in favour of the first defendant.

6. The first defendant resisted the suit by filing written statement stating that the suit property was originally obtained under Dhargash by the grandfather of the first defendant, one Raghavalu Reddy, as early as in the year 1938 and also, he put up a superstructure and the property tax was also assessed by the second defendant in his name. After the demise of Reghavalu Reddy, the first defendant/son of Raghavalu Reddy got the property through the family arrangements and he was in possession of the same. On 30.06.1963, he sold the property in favour of one Pappannan and again, the said Pappannan subsequently settled the property in favour of the first defendant on 26.03.1971, from which date, the first defendant was in possession.

7. According to the first defendant, Selvaraj/first plaintiff's



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husband was residing in Tirupur and only in the year 1973, he came to
Mettupalayam and on his request, he was allowed to be in



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possession of one portion of the property, as a tenant. After the demise of Selvaraj, the plaintiffs were making false claim.

8. The second defendant/Municipality filed a written statement stating that it is true that right of transfer deed dated 08.11.1974 had been issued in favour of one Selvaraj/the first plaintiff's husband, who obtained the same on the ground that he was the absolute owner and in possession of the property, even for a long time, prior to that date. The second defendant/Municipality further stated that only pursuant to a formal enquiry to that effect, the right of transfer deed was issued in his favour. Subsequently, they came to know that the predecessors of the first defendant were the original owners under Dhargash patta and they put up a superstructure. As such, in view of the request made by the first defendant, the property tax assessment was transferred in his name in the year 1971. The second defendant/Municipality further stated that the payment of taxes could be made by any person, which could only be for and on behalf of the registered owner only and the payment of the property tax cannot confer any title to the property.



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Evidence and documents:

9. During trial, on behalf of the plaintiffs, the second plaintiff examined himself as P.W.1 and two more witnesses *viz.*, Nagappan and Musthafa, as P.W.2 and P.W.3, respectively and also marked Exs.A1 to A19. On the side of the defendants, the first defendant examined himself as D.W.1 and one more witness *viz.*, Rangaiyan as D.W.2 and also marked Exs.B1 to B22.

Findings of the Courts below:

10. The Trial Court, after analysing the oral and documentary evidence, decreed the suit in so far as the declaration and permanent injunction as against the first defendant is concerned and dismissed the suit in so far as the relief as against the second defendant is concerned.

11. The Trial Court found that when admittedly, the second defendant/Municipality issued the right of transfer order in Ex.A3 in favour of the first plaintiff's husband as early as in the year 1974 and that order issued in their favour still stands good, pursuant to the death of



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Selvaraj, naturally the plaintiffs are entitled to the suit property. Further, with the mere changing of tax receipts in the name of the first defendant, no right will be accrued in his favour.

12. Aggrieved by the judgment and decree, the first defendant filed an appeal before the District Munsif Court, Coimbatore. After reappraising the evidence and documents, the Lower Appellate Court, by judgment and decree dated 28.07.2011, dismissed the appeal.

13. Aggrieved by the concurrent finding of fact, the first defendant is before this Court in this Second Appeal.

Substantial questions of law:

14. This Court, by order dated 03.12.2012, framed the following substantial questions of law:

“1. Whether the Courts below have committed an error in upholding the alleged title of the plaintiff on the basis of Ex.A3 patta issued in the year 1974 in the absence of clear pleading as to how did Selvaraj, in whose favour Ex.A3 patta was issued, derive title to the



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suit property, especially when the first defendant has pleaded that his father got the property in a family arrangement and thereafter, dealt with the property as absolute owner as evidenced by Ex.B5?

2. *Whether the Courts below have committed an error in upholding the title of the plaintiff without considering the effect of the documents produced by the first defendant as Exs.B2 to B6?*

3. *Whether the Courts below have wrongly cast the burden on the first defendant to prove his title rather than considering the evidence adduced on the side of the plaintiff to find out whether the plaintiff did establish title?"*

Submissions on both sides:

15. The learned counsel for the first defendant/appellant contended that originally the first defendant's grandfather Raghavalu Reddy was in possession and enjoyment of the suit property and he was granted Dhargash patta as early as in the year 1938, based on which, he had put up a superstructure. The learned counsel further contended that



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Selvaraj/husband of the first plaintiff is none other than the son of Raghavalu Reddy and the first defendant is the son of one Venkatesan.

16. According to the learned counsel, there was a partition among the family members and the suit property was vested with the share of the first defendant. Since there was a mortgage in respect of the suit property, the first defendant's father had filed a suit for redemption and also based on that decree, execution proceedings were filed and also the possession was taken. Thereafter, the first defendant inherited the property and he had also sold the property in favour of one Pappannan in Ex.B5 and later, the same was re-transferred in favour of the first defendant through Ex.B6.

17. The learned counsel further contended that Selvaraj, who is the husband of the first plaintiff, returned to Mettupalayan in the year 1973 and he was only permitted to occupy a portion of the property, as a tenant. However, in the meantime, the right of transfer deed was executed by the second defendant/Municipality in favour of Selvaraj and only they came to know about that, at a later point of time. However, an



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application was made and tax assessment had been changed in the name of the first defendant. The learned counsel further contended that both the Courts below have not considered the documents filed by the first defendant in proper prospective and have arrived at a finding, which is perverse and sought for allowing this Second appeal.

18. There is no representation on the side of the respondents 1 to 7.

19. Mr.M.Muthusamy, learned Government Advocate, appearing for the 8th respondent submitted that even though the right of transfer deed has been executed in favour of the first plaintiff's husband Selvaraj through Ex.A3 and the tax assessment was also made in their name, subsequently, on the representation made by the first defendant stating that his grandfather was in prior occupation of the property, transferred the assessment in the name of the first defendant. However, by relying on the written statement filed, he submitted that the right of transfer deed issued in favour of Selvaraj in Ex.A3 still stands good and the payment of tax by anyone, does not create any separate right, unless



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and until the grant is vested with the first defendant.

20. Heard the learned counsel on either side and perused the materials on record.

21. This Court has given its anxious consideration on the submissions made on both sides.

Analysis of the submissions:

22. Admittedly, the suit property originally belonged to the second defendant/Municipality and both the parties admitted that the Municipality is the paramount title holder. Since the Municipality is the paramount title holder of the suit property, they have exercised their right and have granted the right of transfer deed 08.11.1974 in Ex.A3 in favour of one Selvaraj, who is the husband of the first plaintiff and the father of the plaintiffs 2 to 7. A perusal of Ex.A3 shows that the Municipality has conducted a formal enquiry and found that Selvaraj was the absolute owner and in possession and enjoyment of the suit property, even for a long time, prior to that date and based on which, the



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measurements of the property were noted and a plan was drawn and also the right of transfer deed in favour of Selvaraj was issued by the Municipality. In fact, the second defendant/Municipality filed a written statement also reiterating the same position and stated that right of transfer deed dated 08.11.1974 in Ex.A3 had been issued in favour of one Selvaraj and the same was granted, since he was the absolute owner and was in possession of the property, even for a long time, prior to that date. Further, only after proper inspection and enquiry to that effect, the deed was issued in favour of Selvaraj.

23. The learned counsel for the first defendant/appellant contended that the first defendant's grandfather was in possession of the property from 1938 and as it was given to him by Dhargash patta and he had also put up a superstructure. Further, the first plaintiff's husband was allowed to occupy a portion of the property only as a tenant and as per the documents executed and filed by the first defendant, he is the owner of the property. However, this Court is not persuaded by the said submission.



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24. The first defendant and also the second defendant/Municipality admitted that the second defendant, being the paramount owner, has exercised its right and after a formal enquiry found that Selvaraj was the owner and he was in possession of the property and after by due resolution passed by the Municipality, the right of transfer order in Ex.A3 dated 08.11.1974 was issued in favour of Selvaraj. The plaintiffs inherited the property after the death of Selvaraj and they are in possession of the suit property and also the right of transfer deed issued in Ex.A3 still stands good and the same has not been cancelled in a manner known to law. As such the claim of the first defendant that as per the documents, he is the owner of the suit property, cannot be sustained.

25. The learned counsel for the first defendant/appellant relied upon the decision of this Court in the case of ***Kammavar Sangam, through its Secretary R.Krishnasamy vs. Mani Janagarajan*** reported in ***1999 (3) LW 727*** for the proposition that in the absence of evidence as to how title was acquired by the plaintiff and when the relief is claimed based on possessory title, the person, who is having a better title, will



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succeed and a party claiming right of possessory title cannot get injunction. There is no quarrel about this settled proposition. As far as the present case is concerned, it is admitted by both the parties that the second defendant/Municipality is the paramount owner and the second defendant/Municipality, by exercising their right, passed due resolution and as per the scheme, they issued patta *i.e.*, right of transfer deed in Ex.A3 in favour of Selvaraj. When the plaintiffs have filed document in Ex.A3 proving their title to the property, in so far as the first defendant is concerned, both the Courts below have rightly found that the plaintiffs have title to the property and have declared their title. As both the Courts below concurrently found that the possession of the property is with the plaintiffs, injunction has also been granted in favour of the plaintiffs.

26. As long as the grant made by the second defendant/Municipality stands in the name of Selvaraj, which has now been inherited by the plaintiffs, the first defendant cannot make a claim over the suit property contrary to the right of transfer deed in Ex.A3, merely on the ground that the tax receipts have been mutated in his name. The first defendant, even after coming to know about the right of



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transfer deed executed in favour of Selvaraj as early as in the year 1974, till date, has not made any claim over the suit property or challenged the grant made in favour of Selvaraj. That being the factual position, the first defendant's claim that in spite of the grant made in Ex.A3, still he has a right over the property based on other documents, cannot be sustained.

27. The finding of fact arrived at by both the Courts below are based on materials on record and are not perverse. In such circumstances, the substantial questions of law are answered as against the appellant and in favour of the respondents.

28. In the result, this Second Appeal is dismissed by confirming the judgment and decree passed by both the Courts below. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

15.02.2024.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd



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To

1. The Principal District Judge, Coimbatore.
2. The District Munsif, Mettupalayam.
3. The Section Officer, V.R.Section, High Court, Madras.

G.ARUL MURUGAN,J

apd/drl



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