

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal Nos. 1274 to 1276 & 1069 of 2014 and
M.P.Nos.1 of 2014 in
Second Appeal Nos. 1274 to 1276 & 1069 of 2014

1.Sivaraman
2.Mani
3.Murugan

.... Appellants in S.A.No.1274/2014

Mani

.... Appellant in S.A.No.1275/2014

Sivaraman

.... Appellant in S.A.No.1276/2014

Murugan

.... Appellant in S.A.No.1069/2014

vs.

1.Subramaniyan

2.The Sub-Registrar
Sub-Registration Office,
Kalsapakkam,
Polur Taluk (Now Kalasapakkam Taluk),
Thiruvannamalai District.

3.The Tahsildar,
Taluk Office,
Polur Taluk (Now Kalasapakkam Taluk),

4.The District Collector,
Collectorate,
Thiruvannamalai District.

... Respondents in S.A.No.1274/2014

Subramaniyan

... Respondent in S.A.Nos.1275 to 1276/2014 &
SA.No.1069 of 2014

Prayer in S.A.No.1274/2014:- This appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 26.02.2014 passed in A.S.No.93 of 2012 on the file of the learned Subordinate Judge, Arni confirming the judgement and decree dated 25.08.2012 passed in O.S.No.56 of 2004 on the file of the learned District Munsif, Polur.

Prayer in S.A.No.1275/2014:- This appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 26.02.2014 passed in A.S.No.94 of 2012 on the file of the learned Subordinate Judge, Arni confirming the judgement and decree dated 25.08.2012 passed in O.S.No.369 of 2009 on the file of the learned District Munsif, Polur.

Prayer in S.A.No.1276/2014:- This appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 26.02.2014 passed in A.S.No.96 of 2012 on the file of the learned Subordinate Judge, Arni confirming the judgement and decree dated 25.08.2012 passed in O.S.No.394 of 2009 on the file of the learned District Munsif, Polur.

Prayer in S.A.No.1069/2014:- This appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 26.02.2014 passed in A.S.No.95 of 2012 on the file of the learned Subordinate Judge, Arni confirming the judgement and decree dated 25.08.2012 passed in O.S.No.370 of 2009 on the file of the learned District Munsif, Polur.

For Appellants in
All Second Appeals : Mr.E.P.Senniyangiri

For First Respondent in
S.A.No.1274/2014 and
respondent in all other
Second Appeals : Mr.A.Bharathi

COMMON JUDGEMENT

There are four appeals. Mr.Subramaniyan, the first respondent in S.A.No.1274 of 2014 and respondent in all the other appeals is one and the same person. Mr.Subramaniyan filed O.S.No.56 of 2004 on the file of the learned District Munsif, Polur in Thiruvannamalai District against the appellants herein namely, Mr.Sivaraman, Mani & Murugan as well as the Sub Registrar, Kalasapakkam, Polur Taluk, the Tahsildar, Taluk Office, Polur Taluk and the District Collector, Collectorate, Thiruvannamalai District. In that suit, Mr.Subramaniyan contended that the suit property measuring 3.33 acres comprised in S.No.260/03 at Kalasapakkam Village, Polur Taluk in Thiruvannamalai District was originally owned by one Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu. Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu had settled down permanently in Malaysia. According to Mr.Subramaniyan, Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu had come down to Tamil Nadu and sold away the suit property namely the entire extent of 3.33 acres of land to him by means of registered sale deed dated 13.12.2001. By virtue of the said document, according to him, Mr.Subramaniyan/respondent herein has become the absolute owner of the entire extent of the suit property. He further contended in the suit that the defendants Mr.Sivaraman, Mani & Murugan had trespassed

into the suit property during the year 2004 thereby dispossessing Mr.Subramaniyan. According to his further case, they were also making further attempts to make further encumbrance in respect of the suit property and also to change the patta in their names. With these allegations, Mr.Subramaniyan, filed O.S.No.56 of 2004 on the file of the learned District Munsif, Polur praying for declaration of title, for delivery of possession, for mesne profits and for permanent injunction to restrain the defendants 1 to 3 therein from making any further encumbrance over the suit property and for permanent injunction against the fourth defendant therein thereby restraining him from registering any document pertaining to the suit property and permanent injunction against the defendants 5 & 6 therein from effecting any change in the patta in respect of the suit property.

2.Mr.Sivaraman, the first defendant in O.S.No.56 of 2004 filed O.S.No.394 of 2009 on the file of the learned District Munsif, Polur for declaration of title in respect of 1.11 acres of land out of the total extent of 3.33 acres of the land which is the suit property in O.S.No.56 of 2004. According to him, the original vendor Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu did not execute any sale deed in respect of the suit property in favour of Mr.Subramaniyan, the plaintiff in O.S.No.56 of 2004 on 13.12.2001. His further specific case is that the said sale deed dated 13.12.2001 upon which Mr.Subramaniyan claims title is a forged document. It is his further case that Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu the original owner of the land had come down to Tamil Nadu only during the year 2002 and had executed sale deed in respect of 1.11 acres of land out of 3.33 acres of land on 22.11.2002. Thus, according to him, he has become absolute owner of 1.11 acres of land by virtue of the said sale deed dated 22.11.2002 and he has been in possession and enjoyment of the same.

3.Similarly, Mr.Mani, the second defendant in O.S.No.56 of 2004 has filed O.S.No.369 of 2009 before the learned District Munsif, Polur contending that out of the total extent of 3.33 acres of land, he has purchased 1.11 acres from Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu by means of registered sale deed dated 22.11.2002. By virtue of the same, according to him, he has become absolute owner of the 1.11 acres and he has been in possession and enjoyment of the same. He filed the said suit for declaration of title and for permanent injunction to restrain Mr.Subramaniyan/plaintiff in any manner interfering with his alleged peaceful possession and enjoyment of the suit property.

4.Similarly, Mr.Murugan, the third defendant in O.S.No.56 of 2004 on the file of the learned District Munsif, Polur has filed O.S.No.370 of 2009 before the same Court claiming that he has purchased 1.11 acres of land out of the total extent of 3.33 acres which is the subject matter of O.S.No.56 of 2004 and by virtue of the said sale deed dated 22.11.2002, he has become the absolute owner of

the same and he is in possession and enjoyment of the same. Thus, he has filed the said suit for declaration of title in respect of 1.11 acres of land and for permanent injunction to restrain Mr.Subramaniyan from in any manner interfering with his alleged peaceful possession and enjoyment of the same.

5.Thus, according to the plaintiffs in O.S.Nos.369, 370 and 394 of 2009, the total extent of property 3.33 acres of land which is the subject matter in O.S.No.56 of 2004 was never sold by Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu to the plaintiff/Mr.Subramaniyan and thus, Mr.Subramaniyan, the plaintiff in O.S.No.56 of 2004 is not at all the owner of the said land and therefore, he is not entitled for any relief.

7.For the sake of convenience, hereafter, Mr.Subramaniyan, the plaintiff in O.S.No.56 of 2004 is referred to as "the plaintiff" and the plaintiffs in O.S.Nos.369, 370 & 394 of 2009 who are the defendants in O.S.No.56 of 2004 are referred to as "the defendants 1 to 3".

8..By consent of both parties, the trial Court conducted joint trial of all the four suits. Based on the above pleadings, the trial Court framed appropriate issues in all the four suits. Evidence was recorded in O.S.No.56 of 2004. During trial, on the side of the plaintiff Exhibits A.1 to A.28 were marked and four witnesses were examined as P.Ws.1 to 4. On the side of the defendants Exhibits B.1 to B.27 were marked and 9 witnesses were examined as D.Ws.1 to 9. Having considered all the above, the trial Court decreed the suit in O.S.No.56 of 2004 and dismissed the suit in O.S.Nos.369, 370 and 394 of 2009. Aggrieved over the same, the defendants 1 to 3 have filed a total number of four appeals in A.S.Nos.93 to 96 of 2013 respectively, before the learned Subordinate Judge, Arni. The First Appellate Court heard all the appeals and by separate decrees and judgements dated 26.02.2014 dismissed all the appeals thereby confirming the decrees and common judgement of the trial Court. Aggrieved over the same, the defendants 1 to 3 namely, Mr.Sivaraman, Mani & Murugan are before this Court with these second Appeals.

9.I have heard the learned counsel for the Appellants/defendants 1 to 3 and the learned counsel for the first respondent/plaintiff and I have also perused the records carefully. No notice is ordered in these appeals to the respondents 4 to 6 herein in S.A.No.1274 of 2014 as they are only formal parties.

10.By consent of the available parties, all the appeals were heard together and they are disposed of by way of this common judgement.

11. Admittedly, the total extent of 3.33 acres of the land which is the subject matter in O.S.No.56 of 2004 was originally owned by one Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu. Admittedly, Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu who is the original owner of the land was born and brought up in Tamil Nadu and then he permanently settled down in Malaysia. According to the plaintiff, Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu came down to Tamil Nadu in the year 2001 and executed the sale deed (Ex.A.1) dated 13.12.2001 in favour of the plaintiff and thus, the plaintiff Mr.Subramaniyan is the absolute owner of the suit property.

12. The case of the defendants 1 to 3 is that Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu did not visit Tamil Nadu in the year 2001 at all and the sale deed namely Ex.A.1 dated 13.12.2001 is a forged document. Thus, the crux of the issue is as to whether Ex.A.1 is a forged document or not.

13. For any reason, if the Court holds that Ex.A.1 is a genuine document, then after the execution of Ex.A.1 dated 13.12.2001, Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu had no further interest or title in the property and therefore, even assuming that Exs.A.8 to A.10 dated 22.11.2002 were all executed by Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu that would not convey any title in favour of the defendants 1 to 3. Therefore, the claim for title made by them cannot be sustained. In the event, it is found that Ex.A.1 dated 13.12.2001 is a forged document, then, the claim for title made by the plaintiff, Mr.Subramaniyan cannot be sustained. Mr.Subramaniyan, the plaintiff in O.S.No.56 of 2004 would contend that the sale deeds namely Exs.A.8 to A.10 are all forged documents and they were not at all executed by Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu. But, the Courts below have held that Ex.A.1 was executed only by Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu, the real owner of the property.

14. During the course of pendency of this litigation, Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu died. In these appeals, it is the contention of the learned counsel for the appellants that the Courts below did not endeavour even to compare the thumb impressions or the signatures found in Ex.A.1, Exs.A.8 to A.10 with the admitted signatures and thumb impressions found in the passport namely Ex.B.12. Ex.B.13 is the visa in the name of Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu.

15. The learned counsel for the appellants would contend that the First Appellate Court ought to have taken steps to compare the disputed documents in order to come to the conclusion as to whether Ex.A.1 was really executed by Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu or the sale deeds in the name of the defendants dated 22.11.2002 were executed by Mr.Perumal Naidu s/o Mr.Varatha Rajalu

Naidu.

16. But, the learned counsel for the respondent/ plaintiff would contend that the two Courts below, on facts, have held that Ex.A.1 is the genuine document and having been executed by Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu. He would submit that the Attester to the said document has clearly deposed that Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu had come down to Tamil Nadu in the year 2001 and he has only executed the said document in his presence.

17. One cannot go only by the said evidence of the Attester because, the Attester to the sale deeds in favour of the defendants 1 to 3 has also been examined and he has also stated that Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu had come down to Tamil Nadu and he has only executed the said documents in his presence. In those circumstances, in my considered opinion, the following substantial questions of law emerges for consideration by this Court.

"1. Whether the Courts below were right in holding that Ex.A.1 has been proved to have been executed by Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu in the absence of any document or any other evidence to show that Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu had visited Tamil Nadu during the year 2001 ?

2. Whether the Courts below were right in coming to the conclusion that Ex.A.1 was executed by Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu, the original owner of the land without even comparing the thumb impressions and signatures of Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu with the admitted signatures and thumb impressions of him ?

3. Whether the Courts below were right in disbelieving Exs.B.12 and B.13 which are the authenticated documents on the ground that the father's name of Mr.Perumal Naidu mentioned in the said sale deeds differs from the name mentioned in Ex.A.1 ? (In Ex.A.1, Mr.Perumal Naidu's father's name has been mentioned as Mr.Varatha Rajalu Naidu whereas, in the passport (Ex.B.13) his father name has been mentioned as Mr.Varadharajo Naidu)"

18. The learned counsel on either side made their submissions. In my considered opinion, all these questions are to be answered only in favour of the appellants/defendants 1 to 3. In my considered opinion, it is the burden of the first respondent/ plaintiff to prove that by means of documentary evidence that Mr.Perumal Naidu s/o Mr.Varatha

Rajalu Naidu had visited Tamil Nadu during the year 2001 and executed Ex.A.1. Similarly, it is the burden of the plaintiff to prove that the thumb impressions and signatures found in Ex.A.1 are that of Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu.

19. Similarly, it is the burden of the defendants 1 to 3 to prove that the thumb impressions and signatures found in Exs.A.8 to A.10 are that of Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu. For that, the defendants 1 to 3 have to prove Exs.B.12 and B.13. Further, it is the onus of the plaintiff to disprove that the thumb impressions and signatures found in Exs.A.8 to A.10 are not that of Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu. It is the onus of the defendants 1 to 3 to prove that the thumb impressions and signatures found in Ex.A.1 are not that of Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu. But, the defendants 1 to 3 have failed to do so.

20. In those circumstances, in my considered opinion, in the absence of evidences, it will not possible for the Court to declare as to whether the plaintiff has got title or the defendants 1 to 3 have got title. In other words, this Court is not in a position to find as to whether the sale deed namely Ex.A.1 is the genuine document or sale deeds in favour of the defendants 1 to 3 are the genuine documents. For this purpose, in my considered opinion, the separate judgments and decrees passed by the First Appellate Court are liable to be set aside and the same need to be remitted back to the First Appellate Court with liberty to the parties to produce documents containing the admitted thumb impressions and signatures of Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu the original owner of the land and then, it will be for the First Appellate Court to send the same for opinion by the Forensic Expert. In my considered opinion, it will be appropriate for the First Appellate Court to allow the parties to lead further evidence either oral or documentary in order to substantiate their respective contentions. Thereafter, it would be appropriate for the First Appellate Court to decide all the appeals based on the evidences already available and the evidences to be received in addition. Thus, I answer all the substantial questions of law in favour of the appellants.

21. In the result, the second appeals are allowed and the separate judgments and decrees passed by the learned Subordinate Judge, Arni in A.S.Nos.93 to 96 of 2012 are set aside and the said appeals are remitted back to the First Appellate Court for fresh disposal. The parties concerned are at liberty to lead additional

evidence, if any, before the First Appellate Court and also to produce documentary evidence containing the admitted signatures and thumb impressions of Mr.Perumal Naidu s/o Mr.Varatha Rajalu Naidu for the comparison by an Expert. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CSIII)
Dated:16.02.2015

True Copy

Sub-Assistant Registrar

To
1.The Subordinate Judge,
Arni.

2.The District Munsif,
Polur.

+1 cc to Mr.E.P.Senniyangiri Advocate sr.3743
+1 cc to M/s.A.Bharathi Advocate sr.3047

S.A.No 1274 to 1276 & 1069 of 2014

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