

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2015

Coram:

The Hon'ble Mrs. Justice PUSHPA SATHYANARAYANA

Second Appeal No.348 of 2009
and
M.P.No.2 of 2015

1.Athayae Ammal (Died)
2.Duraisamy.
3.S.Kannan
4.V.Savithri

(Appellants 3 and 4 are brought on record as LRs of the deceased first appellant vide order dated 27.04.2015 made in M.P.No.1 of 2015) ... Appellants/Defendants

vs.

Vasantha

... Respondent/Plaintiff

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 19.10.2004 passed in A.S.No.10 of 2004 on the file of the learned Additional Subordinate Judge, Salem, confirming the Judgment and Decree dated 16.02.2004 passed in O.S.No.111 of 2003 on the file of the learned Principal District Munsif, Salem.

For Appellants : Mr.P.Jegadeesan

For Respondent : Mr.A.Tamilvanan

JUDGMENT

The unsuccessful defendants in the suit, aggrieved by the unanimous decision of the Courts below, have filed the Second Appeal.

2. The defendants are the appellants herein. During the pendency of the second appeal, the first appellant/first defendant died. Hence, the legal heirs of the deceased first appellant have been brought on record as appellants 3 and 4.

The plaintiff is the respondent herein. The plaintiff filed a suit in O.S.No.111 of 2003 for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property and costs.

3. The case of the plaintiff/respondent is that one Kandappa Chetty is the original owner of the suit property and he had three sons viz., Mani Chetty, Umayan Chetty @ Palani Chetty and Arumugam Chetty, who had divided the property under a registered partition deed Ex.A1, dated 11.06.1925. Subramania Chetty, one of the son of Umayan Chetty, had sold a portion of the property in favour of one Sidhayee Ammal, under Ex.A.2 registered sale deed dated 11.02.1985. After the death of said Sidhayee Ammal, her son Ayyavu along with two others sold the property to the plaintiff under Ex.A.3, registered sale deed dated 07.12.2001. From the day of purchase, the plaintiff is in possession and enjoyment of the suit property. Subsequent to the purchase, mutation of all the revenue records had also effected. Property Tax, Water Tax etc., also stand in the name of the plaintiff. The defendants, who are the neighbours, have been trying to interfere with the possession of the plaintiff. Hence, the suit has been filed against the defendants.

4. The case of the defendants/appellants is that the extent of the suit property, the boundaries and survey numbers given in the plaint are denied. The appellants contended that the vendor of the plaintiff did not have right to sell the land to an extent of 332 sq.ft. Subramania Chetty was only the joint owner of the suit property and he could not have sold that specific extent. According to the defendants/appellants, the sale deed executed in favour of Sidhayee Ammal dated 11.02.1985 and sale deed dated 07.12.2001 executed in favour of the plaintiff are all fraudulent documents and they are not binding on them.

5. Before the trial Court, on the side of the plaintiff P.W.1 and P.W.2 have been examined and Exs.A.1 to A.8 were marked and on the side of the defendants, D.W.1 has been examined and Exs. B.1 to B.4 were marked.

6. Based on the above facts and after elaborate consideration of the oral and documentary evidence adduced on either side, the Courts below have found that the plaintiff is entitled to the property and decreed the suit. Aggrieved the same, the present second appeal has been filed.

7. At the time of admission of the above second appeal, the following substantial questions of law were framed by this Court:

"1.Whether the suit for permanent injunction is maintainable without declaration of title, when the title of the plaintiff was disputed by the defendants?

2.Whether the Courts below are right in placing burden of proof as to Exs.A.1 to A.3 upon the defendants?"

8. Heard Mr.P.Jegadeesan, learned counsel appearing for the appellants and Mr.A.Tamilvanan, learned counsel appearing for the respondent.

9. When the suit is filed only for bare injunction excepting the factum of possession, the question of title need not be gone into.

10. Though the learned counsel for the appellants submitted that the plaintiff had not purchased the suit property from the true owners and the vendors of the plaintiff, viz., Subramaniya Chetty and the legal heirs of Kandasamy, are the legal heirs of one of the sons of Kandappa Chetty, no such pleading has been taken in the written statement. Besides, the suit is one for injunction. With regard to the question of possession, the plaintiff to substantiate his possession has filed Ex.A.4 - the notice sent from the Tahsildar office, Salem Municipality with respect to change of patta, Ex.A.5 - the house tax receipt and Ex.A.7 - the proceedings of the Deputy Tahsildar No.2, Salem, in respect of change of patta in favour of the plaintiff. Apart from the above, the plaintiff also filed Ex.A.1, partition deed dated 11.06.1925 under which, the suit property has been divided and allotted to the sons of Kandappa Chettiar and also the sale deed Ex.A.2, dated 11.02.1925 under which, his immediate vendor had purchased the property. The purchase of the property by the plaintiff is in the year 2001 under Ex.A.3. From the date of purchase, the plaintiff has been in possession and enjoyment of the property, after effecting change of her name in the revenue records. The defendants, who are the neighbours of the plaintiff, have not been in possession of the suit house, whereas the plaintiff filed Ex.A.1 sale deed to show his possession of the property. Only on the basis of the above documents, the Courts below have come to the conclusion that the plaintiff is entitled to the suit property and granted permanent injunction.

11. The learned counsel for the appellants has submitted that the appellants have filed a separate suit for cancellation of the sale deed, which is standing in the name of the plaintiff. As the suit is filed only for bare injunction, both the Courts below have correctly held that the plaintiff is in possession, as sufficient proof has been shown by the plaintiff. With regard to the suit filed for cancellation of the sale deed,

the appellants/defendants have to separately try the suit in the respective trial Court.

12. In view of the above, the Second Appeal is dismissed. The judgments and decrees passed by both the Courts below are confirmed and the suit is decreed in favour of the plaintiff. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cla

To

1.The Additional Subordinate Judge
Salem.

2.The Principal District Munsif,
Salem.

3.The Section Officer,
V.R. Section,
High Court, Madras.

+1 cc to Mr.P.Sathish Advocate sr.53529
+1 cc to Mr.P.Jagadeesan Advocate sr.53230

S.A.No.348 of 2009

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