

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.06.2015

CORAM

THE HONOURABLE MS. JUSTICE R. MALA

S.A.No.704 of 2000

Judgment reserved on 11.06.2015	Judgment pronounced on 18.06.2015
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1.Ramachandra Naidu (died)
2.Selvaraj
3.Thilagam
4.R.Yuvaraj
5.Ezhilarasan
6.Akilan

...Appellants/defendants 1 to 3

(Appellants 4 to 6 are brought on record as legal heirs of the deceased 1st appellant vide order of this Court dated 10.07.2009 made in CMP.No.646 of 2009)

Vs

1.Alamelu
2.Lakshmi Ammal (died)
(Recorded the first respondent as legal heir of the deceased 2nd respondent vide order of this Court dated 05.08.2009 made in Memo Sr.No.61486/2009 dated 29.07.2009)

...Respondents/Plaintiffs

Prayer: Second appeal filed under Section 100 of CPC against the judgment and decree dated 31.01.2000 made in A.S.No.101 of 1997 on the file of the II Additional District Court-cum-Chief Judicial Magistrate, Krishnagiri, confirming the judgment and decree dated 29.10.1997 made in O.S.No.75 of 1992 on the file of the District Munsif Court, Krishnagiri.

For Appellants : Mr.D.Veerasekaran
For R1 : Mr.P.Mani
R2 : Died (steps taken)
R3 : Given up

JUDGMENT

The second appeal arises out of the judgment and decree dated 31.01.2000 made in A.S.No.101 of 1997 on the file of the II Additional District Court-cum-Chief Judicial Magistrate, Krishnagiri, confirming the judgment and decree dated 29.10.1997 made in O.S.No.75 of 1992 on the file of the District Munsif Court, Krishnagiri.

2.The averments made in the plaint are as follows:-

(i) The suit properties and other properties are originally belonged to the joint family property of Duraisami Naidu and his two sons namely, Sriramulu and the first defendant namely, Ramachandra Naidu. In an oral partition effected during the life time of Duraisami Naidu about 30 years ago, the suit properties were allotted to the share of Sriramulu and he has been in possession and enjoyment of the same. Sriramulu has also got patta and paid kist. The first and second plaintiffs are the daughter and wife of the said Sriramulu.

(ii) Sriramulu settled a common half share in item Nos.1 to 4 of the suit properties and some other lands in favour of the first plaintiff under a registered gift deed dated 26.06.1972. He retained the remaining common half share with himself. The first plaintiff and Sriramulu were in joint possession and enjoyment of the same. Sriramulu obtained electricity service connection for the well situated in Item No.5 of the suit property and he is drawing water in the well situated in Item No.5 of the suit property by baling out the same. The first defendant had been allowing Sriramulu to bale out water since he was aware that Sriramulu was entitled to item No.5 of the suit property and he has common half share in the well. Sriramulu died in the year 1980 leaving behind him the plaintiffs as his legal heirs to succeed his half share in Item Nos.1 to 4 of the suit properties and also item No.5 of the suit property.

(iii) The plaintiffs have been in possession and enjoyment of the suit properties and they paid kists after the death of Sriramulu. The first plaintiff filed a petition before the Tahsildar, Krishnagiri to update the patta by joining her name along with second plaintiff and

accordingly, patta was issued.

(iv)Whiles, the defendants 1 and 2 have also planned to sell the suit lands in their favour. Consequently, they attempted to trespass upon the suit lands and prevent the plaintiffs from drawing water from the well situate in the suit lands. Hence, the plaintiffs constrained to file the suit for declaration of title and permanent injunction restraining the defendants 1 and 2 and their men from interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties or alternatively, directing the defendants to deliver possession of such items of suit lands found to be in possession of the defendants to the plaintiffs. Therefore, the plaintiffs prayed for decree.

3.The gist and essence of the written statement filed by the defendants are as follows:

(i) There was another son namely, Kesavalu Naidu, who died before his father in about 1944. Sriramulu, Kesavalu Naidu and first defendant/Ramachandra Naidu are brothers. The first defendant permitted Sriramulu to bail out water in the well in suit lands out of love and affection. Sriramulu died in the year 1980 and the plaintiffs are his legal heirs. The patta even if any granted to the plaintiffs without notice to the defendants by the Revenue Officer will not bind the defendants. The plaintiffs are not entitled to any wet land in the suit properties, because Sriramulu has sold away the same.

(ii)Insofar as S.No.175/1 is concerned, the first plaintiff along with her father Sriramulu had entered into an agreement with the first defendant agreeing to sell the same for Rs.10,500/- on 05.08.1975. Similarly she had entered into a sale agreement on 01.06.1977 in respect of the lands comprised in S.No.176/1. The first defendant had paid full amounts of sale consideration and he has been in absolute possession and enjoyment of the said properties.

(iii)Further, the first defendant had agreed to sell the lands comprised in S.No.152 and 1/4th right in a well situated in S.No.185 to the second defendant's wife Thilagam. Similarly, the first plaintiff has entered into an agreement to sell an extent of about 22 cents in S.Nos.175 and 176 with the second defendant's wife Thilagam on 12.02.1991. There is no cause of action for the suit. Therefore, they prayed for dismissal of the suit.

4.The gist and essence of the additional written statement filed by the defendants are as follows:

(i)In pursuance of the sale agreement executed by Sriramulu and his daughter/1st plaintiff, first defendant and his son namely, Yuvaraj are in possession and enjoyment of the suit property for the past twenty years. So the plaintiffs ought to have impleaded the said

Yuvaraj as one of the defendants. Likewise, the first plaintiff executed a sale deed in respect of 22 cents in favour of Thilagam, wife of second defendant. But the plaintiffs failed to implead the said Thilagam as one of the defendants. On the basis of sale agreement dated 12.02.1991, after getting amount, the plaintiffs handed over the possession to the second defendant and his wife. Likewise, on the basis of the sale agreement dated 01.06.1977, the first defendant is in possession and enjoyment of the suit property and he has also paid kists.

(ii) Further, the first plaintiff and her father sold two acres and $\frac{1}{4}$ share well in Item No.5 of the suit property to one Palanivasan. Since the plaintiffs suppressed the real measurement of the suit properties, they have not come to the Court with clean hands. Hence, the defendants prayed for dismissal of the suit.

5. The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel, has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1 to P.W.4, D.W.1 to D.W.3 and Exs.A1 to A15 and Exs.B1 to B17, decreed the suit. Aggrieved against the judgment and decree passed by the trial court, the defendants preferred an appeal in A.S.No.101 of 1998 on the file of the II Additional District Court-cum-Chief Judicial Magistrate, Krishnagiri.

6. The learned First Appellate Court has considered the arguments advanced on either side, framed necessary point for consideration, confirmed the Judgment and Decree passed by the Trial Court. Against the Decree and Judgment passed by the first Appellate Court, the present second appeal has been preferred by the defendants/appellants.

7. At the time of admission, the following substantial questions of law have been framed:

"1. Whether the judgment and decree of the Courts below are sustainable in law, when the first appellant was given possession of the suit properties covered under the agreements of sale Exs.B1 and B2, whose genuineness and execution have not been disputed by the plaintiffs?

2. Whether the findings of the Courts below are sustainable in law when the appellants have proved their possession and claimed protection under Section 53(A) of Transfer of Property Act pursuant to the execution of agreements of sale Ex.B1 and B2 as observed in the order of this Court in CRP.699 of 1999 filed by the respondents?"

8. Challenging the concurrent findings of both the Courts below, learned counsel for the defendants/appellants raised a plea that

during the life time of Sriramulu, he himself and her daughter entered into a sale agreement with the defendants/appellants and in pursuance of the sale agreements, possession has been handed over to them, which were evidenced by Exs.B1 to B4. Hence, the plaintiffs/respondents are not entitled to declaration of title and recovery of possession. But the trial Court decreed the suit except 22 cents in the suit properties, which was handed over to the wife of second defendant namely, Thilagam, who got that property vide Ex.B4 sale agreement and the same has been confirmed by the first appellate Court. He further submits that both the Courts below have not considered other documents filed by the defendants viz., Exs.B1 to B3/sale agreements and Panchayat Muchalika. In pursuance of the sale agreement, the defendants were put in possession and patta has been changed in their names and they have also paid kists. Therefore, the defendants/appellants prayed for allowing the second appeal.

9.Resisting the same, learned counsel for the first respondent submits that suit property has been allotted to Sriramulu and during his lifetime, he executed a settlement deed in favour of his daughter/first plaintiff/first respondent herein under Ex.A2 dated 26.06.1972 in respect of $\frac{1}{2}$ share in the suit properties and the same was accepted and acted upon. Attestation and execution of the settlement deed are proved by way of examining P.W.3/attestor. Since Sriramulu died intestate, both the plaintiffs/respondents herein, who are his daughter and wife inherited the suit properties and now they are in possession. They accepted Ex.B4/sale agreement which was executed by the first plaintiff/Alamelu in favour of Thilagam, wife of second defendant. So the trial Court has rightly dismissed the suit in respect of 22 cents in S.Nos.175/1 and 166/1. Hence, he prayed for dismissal of the second appeal.

10.Considered the rival submissions made on both sides and perused the materials available on record.

11.Originally, the suit properties and other properties belonged to one Duraisami Naidu, who had three sons namely, Sriramulu, Kesavalu Naidu and Ramachandra Naidu. A release deed came into existence between Sriramulu, Ramachandra Naidu and Saradha ammal, wife of Kesavalu Naidu on 17.12.1966 under Ex.A15. In pursuance of the same, they have been in possession and enjoyment of the suit properties. There was also a settlement deed executed by the sons of Raja Naidu namely, Sampangi Naidu, Vijayaranga Naidu and Minor Varadarajulu in favour of Kesavalu Naidu, Ramachandra Naidu, Sriramulu under Ex.B7. As per Ex.A1, patta has been changed in favour of Sriramulu in respect of his share in the suit properties, he executed a settlement deed in favour of his daughter Alamelu/first

plaintiff/first respondent herein in respect of ½ share in the suit properties. After the death of Sriramulu, other half share in the suit properties has been inherited by the respondents/daughter and wife of Sriramulu and they are in possession and enjoyment of the same. Whiles, the defendants/appellants attempted to interfere with the plaintiffs' peaceful possession and enjoyment of the suit property, hence the plaintiffs/respondents constrained to file the suit for declaration of title and injunction, alternatively for recovery of possession.

12. According to the defendants/appellants, the first plaintiff and his father Sriramulu had entered into a sale agreement with the first defendant and in pursuance of the same, the defendants are put in possession and enjoyment of the suit properties, to prove the same, they have filed Exs.B1 to B3. But the defendants/appellants have not disputed the title of Sriramulu Naidu.

13. It is pertinent to note that the first respondent herein has put forth her title in respect of ½ share in the suit properties under Ex.A2/settlement deed. Admittedly, Ex.A2 settlement deed came into existence on 26.06.1972 and it was executed by her father Sriramulu during his lifetime. To prove the same, P.W.3/Chinnasamy, attester was examined. On perusal of the evidence of P.W.3, it reveals that his evidence inspires confidence, so there is no reason for discarding his evidence.

14. Furthermore, on perusing the evidence of P.W.1 to P.W.4, it clearly reveals that execution of settlement deed under Ex.A2 is valid under law and it is duly attested, accepted and acted upon by way of examining settler/P.W.1/first plaintiff. Therefore, as per Ex.A2, first respondent/first plaintiff is the owner of ½ share in the suit properties, which has electricity service connection and bale out water in the well situated in item No.5 of the suit properties. To prove the same, the plaintiffs have filed Ex.A3/order of Tahsildar, Ex.A4/patta, Exs.A5 to A9/kist receipts, Exs.A10 to A14/receipts of electricity consumption charges.

15. On perusing the judgments of both the Courts below, it would reveal that both the Courts below dismissed the suit in respect of 22 cents by accepting Ex.B4 and decreed the suit by disbelieving Exs.B1 to B3. Ex.B1 is the sale agreement executed by Sriramulu and his daughter/first plaintiff in favour of the first defendant; Ex.B2 is the sale agreement executed by the first plaintiff and her father Sriramulu in favour of first defendant; Ex.B3 is the Panchayat muchalika executed between second defendant and first plaintiff. On the basis of Exs.B1 to B3, the appellants/defendants are claiming

title over the suit properties. But both the Courts below disbelieved the documents under Exs.B1 to B3 stating that sale agreements which executed much before Panchayat muchalika, as the defendants are claiming title over the suit properties only as per Ex.B3, however, the survey numbers in Ex.B3 were added later by using different ink after Muchalika was written and no explanation was assigned by the defendants. Both the Courts below after considering the evidence of P.W.1 concurrently held that document was obtained by force and the respondents/plaintiffs are entitled to declaration of title and recovery of possession. In such circumstances, I am of the view, both the Courts below have rightly disbelieved the documents under Exs.B1 to B3 and decreed the suit. It is well settled principle of law that the first appellate Court is a last fact finding Court unless the judgment of the first appellate Court is perverse, this Court cannot interfere with the findings, even though the judgment is erroneous. Thus, substantial questions of law 1 and 2 are answered against the defendants/appellants.

16.For the foregoing reasons, both the Courts below have considered all the aspects in proper perspective and rightly came to the conclusion. Hence, the judgment and decree passed by both the Courts below does not suffer any illegality or irregularity and they does not warrant any interference and they are hereby confirmed.

17. In fine,

- Second Appeal is dismissed with costs.
- The decree and judgment passed by both the Courts below are hereby confirmed.
- Two months time is granted to the defendants/appellants to hand over the possession of the suit property to the first plaintiff/first respondent.
- Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge
cum Chief Judicial Magistrate
Krishnagiri.

2.The District Munsif,
Krishnagiri.

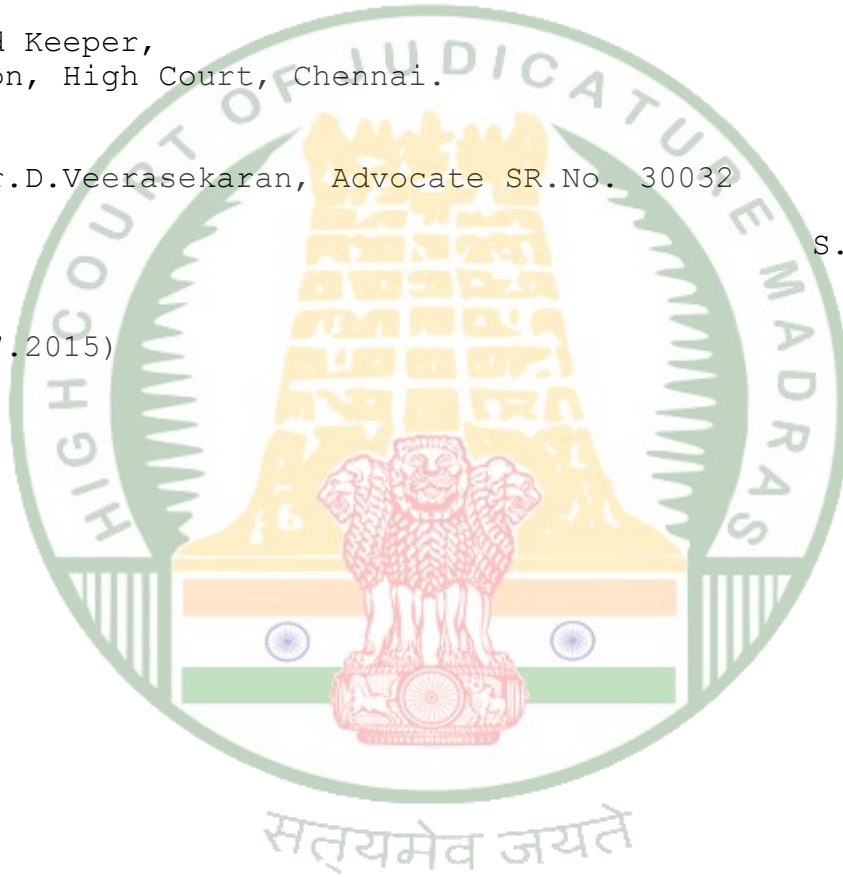
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The Record Keeper,
V.R.Section, High Court, Chennai.

1 CC to Mr.D.Veerasekaran, Advocate SR.No. 30032

S.A.No.704 of 2000

SAI (CO)
PSI (14.07.2015)



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