

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11 - 12 - 2015

Coram

The Hon'ble SMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal Nos. 1033 and 1242 of 2009
and

M.P. Nos. 1 and 1 of 2009 in S.A. Nos. 1033 and 1242 of 2009

S.A. No. 1033 of 2009:-

Govindan .. Appellant/Plaintiff

vs.

1. Karuppannan
2. Ariyammal .. Respondents/Defendants

S.A. No. 1242 of 2009:-

Karuppannan .. Appellant

vs.

1. Govindan
2. Thathan .. Respondent

Appeals filed under Section 100 of the Code of Civil Procedure against the common judgment and decree dated 28.11.2008 in A.S. No. 3 of 2008 and 59 of 2007 respectively on the file of the Principal Subordinate Judge, Krishnagiri, confirming the common judgment and decree dated 29.06.2007 made in O.S. No. 125 of 2004 and 154 of 2004 respectively on the file of the District Munsif - cum - Judicial Magistrate, Pochampalli.

For Appellant in : Mr. S.N.J. Hariharan
S.A. No. 1033 of 2009 for Mr. V. Nicholas
& R 1 in
S.A. No. 1242 of 2009

R 2 in S.A. No. 1033 of 2009 : remains exparte
For Appellant in : Mr. M. Muruganantham
S.A. No. 1242 of 2009 for Mr. V. Raghavachari
& R 1 in
S.A. No.1033 of 2009

COMMON JUDGMENT

Since the issue involved in these appeals is one and the same between the same parties, they are disposed of by this common judgment.

2. These appeals arise out of the common judgment and decree dated 28.11.2008 passed by the Principal Subordinate Judge, Krishnagiri, in A.S. Nos. 3 of 2008 and 59 of 2007 respectively confirming the common judgment and decree dated 29.6.2007 passed by the District Munsif - cum - Judicial Magistrate, Pochampalli, in O.S. Nos. 125 of 2004 and 154 of 2004 respectively.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the trial Court in O.S. No. 125 of 2004.

4. Both the parties claim right over 0.35 Cents and 0.31 Cents respectively in S. No. 52 Solarahalli Village in Krishnagiri District.

5. The claim of the plaintiff / Appellant in S. A. No. 1033 is based on a sale deed dated 30.12.2002 marked as Ex. A.3. According to him, one Thathan was the absolute owner of the suit property from whom he had purchased the same and claims to be in possession from the said date. His vendor Thathan's name was entered in the revenue records and he had been paying kists. After the sale on 30.12.2002, patta was transferred to the plaintiff's name. The only document relied on by the plaintiff is Ex. A.3 sale deed in which he had purchased only 0.35 cents from out of 0.94 Cents owned by his vendor.

6. The defendants on the other hand, based their title on the sale deed dated 07.12.1976 marked as Ex. B.2. The defendants also said to have sold an extent of 0.04 Cents on 26.5.1989 under Ex. B.3 to the plaintiff's father Chinnaraj. The first defendant claims to have purchased from his vendor one Annamalai. It is the case of the defendant that the plaintiff who is the paternal uncle's son had played fraud and secured a sale deed from Thathan, who is the paternal uncle for both the plaintiff and the first defendant. It is the contention of the defendant that Ex. A.3 is a fraudulent document which is obtained from Thathan on the pretext of attesting a document without passing of any consideration as recited.

7. The Courts below, on consideration of the materials placed thereon and after hearing the submissions made by the learned counsel for the parties, concurrently, dismissed the suits. Hence, the present appeals by both the plaintiff and the defendant.

8. Heard the learned counsel appearing for the parties and perused the records.

9. In S.A. 1033 of 2009, only notice was issued. The point that has to be considered in this Second Appeal is whether the title deed produced by the plaintiff is true and whether he has acquired title based on the same.

10. S.A. No. 1242 of 2009 was admitted by this Court on 24.11.2009 on the following substantial questions of law:-

- (i) Whether the Courts below are right in dismissing the suit, having concluded that the sale deed executed by the second defendant in favour of the first respondent is a fabricated one?
- (ii) Whether the findings of the Courts below are not mutually contradictory and destructive as regards the issue of title and possession?

11. Though the plaintiff had claimed that Thathan was the owner of the property, in his evidence as P.W.1, he had stated that it belonged to Thathan and Muniammal jointly. A perusal of Ex. A.1 sale deed makes it clear that the suit property was purchased in their joint names. Even presuming that Thathan had right over 0.94 Cents of undivided land, the plaintiff had not established his purchase within the specified boundaries. The Courts below have found that even if it was an undivided extent, one of the boundaries should certainly be Thathan's land whereas the boundary description given in Ex. A.3 is different. Hence, the Courts below rejected Ex. A.3.

12. Secondly, Ex. A.3 is said to be attested by the defendants whereas the same is denied. Ex. B.1 is the xerox copy of Ex. A.3 and Ex. B.6 is certified copy of Ex. A.3. According to the defendant, his signature was not found in Ex. A.3. It is seen that the attestors in Ex. A.3 are G. Rajendran, Paun and Karuppannan whereas in the served copy of the same marked as Ex. B.1, the signature of the first defendant is not found. Even on Ex. B.6 certified copy, the signature of the first defendant does not find place. From the above, it can safely be concluded that Ex. A.3 is not a genuine document and created for the purpose of the case.

13. Thirdly, when admittedly the properties were mortgaged by Thathan on the date of his purchase itself, there is no evidence to show as to whether the mortgage was redeemed.

14. For the above reason, Ex. A.3 based on which the plaintiff claimed title, is not a genuine document and cannot be relied upon. Even the description of property in the plaint is incorrect.

15. The only other ground left to be decided is whether the defendant is entitled to the relief of declaration as claimed by him in his suit in O.S. No. 154 of 2004. In this connection, he has taken support of sale deed Ex. B.2 dated 07.12.1996 for his title and possession. Though he had purchased an extent of 0.35 Cents originally, subsequently, sold an extent of 0.04 Cents in favour of the plaintiffs' father Chinnaraja. The Courts below, after considering the documents available, have come to the correct conclusion that the description of the property in the plaint filed in O.S. No. 154 of 2004 is wrong. Admitting the mistake, the defendants had also filed a petition to amend the suit schedule property by filing I.A. No. 59 of 2007. Though the said petition was allowed, the defendant had not cared to amend the plaint and allowed it to lapse. Therefore, having given a wrong description in the plaint, the defendant cannot claim title over the property. Thus the Courts below were right in dismissing both the suits.

16. Merely because the plaintiff in O.S. No. 125 of 2004 had failed in his suit, it will not automatically entitle the defendant for title. However, for having filed a separate suit with a wrong description of property, the defendant also had to fail in his suit in O.S. No. 154 of 2004. O.S. 154 of 2004 filed by the defendant and dismissing the same, is to be upheld.

For the foregoing reasons, both the Second Appeals fail and the same stand dismissed confirming the concurrent findings of the Courts below. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gri

To

1. The Principal Subordinate Judge
Krishnagiri
2. The District Munsif
Pochampalli

+2 ccs to Mr.V.Nicholas, Advocate, sr.60784 & 66783
+2 ccs to Mr.V.Raghavachari, Advocate, 66532, 66533

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