

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.04.2015

Coram:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A.Nos.538 and 894 of 2007  
and MP.Nos.1,1 and 2 of 2007 and 1 and 1 of 2011

SA.No.538 of 2007

Chennai Nadar Munnetra  
Elainzhar Kazhagam  
represented by its President  
Secretary and Committee Members .. Appellant/2nd defendant

vs.

1.A.Murugavel  
2.M.Chockalingam .. Respondents/Plaintiffs  
1st Defendant

SA.No.894 of 2007  
M.Chockalingam .. Appellant/1st Defendant

vs.

1.A.Murugavel  
2.M/s.Chennai Nadar Munnetra  
Illaingar Kazhagam  
represented by its President,  
Secretary and  
Committee Members .. Respondents/Plaintiff &  
2nd Defendant

The Second Appeals are filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 29.12.2006 made in A.S.No.522/2005 on the file of the Additional District and Sessions Judge/Fast Track Court No.5, Chennai reversing the judgment and decree dated 8.3.2005 made in O.S.No.842 of 2000 on the file of the Court of XIII Assistant City Civil Court, Chennai.

SA.538/2007

For Appellant : Mr.N.S.Sivakumar

For Respondents : Mr.V.Manohar (R1)  
Mr.T.S.Baskaran (R2)

SA.894/2007

For Appellant : Mr.T.S.Baskaran

For Respondents : Mr.V.Manohar (R1)  
Mr.N.S.Sivakumar (R2)

COMMON JUDGMENT

The defendants 1 and 2 are the appellants herein. Both the second appeals are arising out of the judgment and decree made in AS No.522 of 2005 reversing the judgment and decree made in O.S.No.842 of 2000.

2.The plaintiff who is the first respondent in both the second appeals, filed the suit OS.842/2000 for declaring the registered settlement deed dated 31.01.2000 executed by the first defendant in favour of the second defendant in respect of the superstructure at door no.29, Andiappa Mudali Street, Old Washermanpet, Chennai-600 021 as null and void and not binding on the plaintiff and for consequential permanent injunction restraining the second defendant, its agents, servants or others acting on its behalf from demolishing the superstructure or dealing in any manner with the schedule mentioned property.

3.It is the case of the plaintiff that the land in Door nos.11 and 12, present Door nos.28 and 29, Andiappa Mudali Street, Old Washermanpet, Chennai-21 comprised in R.S.no.1082/Part Tondiarpet was purchased by one P.Annamalai Nadar through public auction held on 27.9.1948 by City Civil Court, Chennai and even prior to the same, the superstructure standing thereon was purchased by the said Annamalai Nadar, who is none else than the father of the plaintiff from Ramasami Nadar by a sale deed dated 15.8.1929. Since the date of purchase, Annamalai Nadar was in absolute possession and enjoyment of the same and after his death on 26.2.1967, his wife, three sons and a daughter succeeded to the same. The plaintiff's mother, two other brothers and his sister executed a release deed dated 26.11.1970 in favour of the plaintiff, thereby relinquishing their right, as such, the plaintiff became the absolute owner of the entire property by obtaining patta. While so, the first defendant in collusion with the second defendant executed a registered settlement deed dated 31.1.2000 in favour of the second defendant in respect of the suit property without any right to do so and on the strength of such settlement deed, the second defendant has been attempting to evict the plaintiff from the suit property and demolishing the superstructure and the same compelled the plaintiff to come forward with the suit for the relief stated supra.

4.The suit relief was resisted by the defendants 1 and 2 by denying the plaintiff's title in respect of the suit property and by setting up title upon the first defendant in respect of the same. According to the defendants, the plaintiff has no right over the superstructure in Door no.29 and what was purchased by the plaintiff's father through court auction is only a vacant site and not the superstructure and the patta issued was only in respect of the vacant site and not in respect of the superstructure and the settlement deed executed by the first defendant in favour of the second defendant is a true, genuine and valid document and after the settlement, the property has been in possession and enjoyment of the second defendant by paying property tax and by collecting rent from the tenant etc.

5.Both the parties in support of their respective claims adduced oral and documentary evidence before the trial court. The trial court on the basis of the same, arrived at a conclusion that Ex.A2 sale certificate is in respect of the land bearing door nos.11 and 12, present door nos.28 and 29 and Ex.A1 sale deed is in respect of door no.28 and not 29, whereas Exs.B1 to B9 documents adduced on the defendants' side would show that the property originally belonged to Alameluammal, who vide Ex.B1 document, settled the same in favour of her brother and thereafter the first defendant, who is his son succeeded to the same, who inturn executed a settlement deed in respect of the same in favour of the second defendant and the same is true, valid and genuine and accordingly dismissed the suit. Aggrieved against the same, the plaintiff preferred AS.522/2005. The lower appellate court found that both the plaintiff and the defendants failed to prove their ownership in respect of schedule mentioned superstructure and the plaintiff having been the owner of the vacant site, is the owner of the superstructure and the settlement deed executed in respect of the same by the first defendant in favour of the second defendant is hence not valid and accordingly allowed the appeal by setting aside the judgment and decree of the trial court. Hence, these two second appeals by the defendants 1 and 2 before this court.

6.The second appeals are admitted on the following substantial questions of law:

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(i)Whether the Lower Appellate Court is correct in law in casting the burden upon the appellant/defendant to prove his title to the suit property?

(ii)Whether the Lower Appellate Court is correct in law in overlooking the admission of PW1/plaintiff that apart from Exs.A1 and A2, there is no other documents to show that he is having title and possession to the suit property?

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Whether the learned First Appellate Judge was right in holding that the plaintiff is entitled to a decree as the defendants failed to prove their case?

7. Heard the rival submissions made on both sides and perused the records.

8. It is true that the plaintiff, who comes to court is bound to prove his case. The trial court, on the failure of the plaintiff to prove his case and by accepting the defence raised on the side of the defendants through Exs.B1 to B9 documents, dismissed the suit. Whereas the lower appellate court reversed the findings of the trial court by casting the burden on the defendants to prove their case and on their failure to do so, rightly accepted the plaintiff's case and granted the suit relief. Such course adopted by the lower appellate court cannot be found fault with for the following reasons.

9. Here is the case, wherein, the plaintiff is admitted to be the owner of entire vacant site bearing door nos.11 and 12, present door nos.28 and 29 and is admitted to be the owner of the superstructure in door no.28. What was denied by the plaintiff is his ownership in respect of the superstructure in the land bearing no.29. Though the plaintiff produced Ex.A1 sale deed relating to the suit property, the same is held to be relating to different door number and not to door no.29 by the trial court. The lower appellate court at the same time, not accepted Ex.B1 settlement deed to be in respect of the suit property. Thus, having regard to the fact that the plaintiff is the owner of the entire vacant site and also the owner of the superstructure in one of the door numbers on the failure of the defendants to prove their case, the lower appellate court thought it fit to accept the claim of the plaintiff over the superstructure in respect of other door number and accordingly decreed the suit, in favour of the plaintiff, thereby reversing the judgment and decree of the trial court. This court hence finds no error in the lower appellate court in rendering such findings.

10. Regarding the claim of the plaintiff on merits, the suit relief claimed is in respect of superstructure in the land bearing door no.29. As per Ex.A2 sale certificate, the plaintiff's father purchased the land bearing nos.11 and 12, Andiappa Mudali Street, Old Washermanpet, Chennai-21. It is not in dispute that the corresponding new door numbers for the land bearing old nos.11 and 12 are door nos.28 and 29. That means, the land bearing old door nos.11 and 12 having corresponding new door nos.28 and 29 was purchased by the plaintiff's father through public auction under Ex.A2 sale certificate. The suit relief is not sought for in respect of superstructure bearing Door no.29 but the same is in respect of the land bearing door no.29 with the superstructure, which is according to the plaintiff, purchased by the plaintiff's father under Ex.A1 sale deed dated 15.8.1929. The description of Ex.A1 schedule of property would clearly show that the same is in respect of the

superstructure in door no.11, having New S.No.1082 and R.S.No.1082/12. Ex.B1 settlement deed dated 5.4.1940 executed by Alameluammal in favour of her brother Chokkalingam is also in respect of the land in R.S.No.1082/12 and in respect of superstructure put up in Door nos.12 and 13. In all these documents, the door number given is in respect of the land and not superstructure. Thus, the combined reading of all these documents would clearly go to show that the relief sought for is in respect of superstructure in Door No.12 with corresponding new door no.29, which was purchased by the plaintiff's father under Ex.A1. When Ex.A1 is much earlier in point of time than Ex.B1 and when the documents produced on the side of the plaintiffs are sufficient enough to show that the superstructure in the land bearing Door no.12 new Door No.29 belongs to the plaintiff's father under Ex.A1 dated 15.8.1929, the burden shifts to the defendants to trace out the source of title of Alameluammal who is the settlor under Ex.B1. Though the settlor Alameluammal referred to a sale deed executed in her favour, the copy of the same is not produced on the side of the defendants to substantiate the same. Further, the recitals contained in Ex.B1 settlement deed read as if the settlee except doing charity, from and out of the income derived from the property, was not entitled to create any encumbrance or claim right over the same by effecting sale over the same. When the first defendant failed to prove his right over the suit property, he had no right to convey any right in favour of third party and the settlement deed executed by the first defendant in favour of the second defendant is hence not legally valid. It is nobody's case that the first defendant's father and thereafter the first defendant and thereafter the second defendant have been continuously doing charity. Thus, having regard to the nature of the property in respect of which the relief is claimed and having regard to the documents produced on the side of the plaintiffs to prove the title of the original plaintiff in respect of the property in question and on the failure of the defendants to prove their claim, the lower appellate court has rightly upheld the plaintiffs' claim and accordingly granted the relief as sought for in the suit. This Court finds no reason to interfere with such findings rendered by the lower appellate court and the substantial questions of law are hence answered in favour of the plaintiffs.

11.In the result, both the second appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge/  
Fast Track Court No.5, Chennai.

2.The XIII Assistant City Civil Court, Chennai.

+2ccs to M/s. T.S. Baskaran, Advocate, S.R.No.24382 &24383

+2ccs to Mr.V. Manohar, Advocate, S.R.No.24392

+1cc to Mr.N. S. Sivakumar, Advocate SR.No.24652

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RJ(CO)  
Eu 07.09.15



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