

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02 - 09 - 2015

Coram

The Hon'ble SMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 526 of 2009

and

M.P. No. 1 of 2012

1. Karunanithi
2. Jayarama Padayachi
3. Palanivel
4. Kathirvel
5. Sakthivel

.. Appellants/Respondents/
Defendants

vs.

Thangarasu

.. Respondent/Appellant/Plaintiff

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 13.11.2008 in A.S. No. 3 of 2007 on the file of the Principal Subordinate Judge, Villupuram, confirming the judgment and decree dated 30.6.2005 made in O.S. No. 396 of 2000 on the file of the First Additional District Munsif - cum Judicial Magistrate No. 1, Ulundurpet.

For Appellants : Mr. S. Krishnasamy

For Respondent : Mr. T. Dhanyakumar

JUDGMENT

The instant appeal has been preferred by the defendants against the impugned judgment and decree dated 13.11.2008 passed by the Principal Subordinate Judge, Villupuram, in A.S. No. 3 of 2007 decreeing the suit filed for the relief of declaration of title and injunction and subsequently, amended for recovery of possession thereby reversing the judgment and decree dated 30.6.2005 passed by the learned First Additional District Munsif - cum Judicial Magistrate No. 1, Ulundurpet, in O.S. No. 396 of 2000.

2. The facts which are necessary to dispose of the appeal are recapitulated as under:

(a) The appellants were defendants in the suit and the respondent was the plaintiff.

(b) The plaintiffs filed a suit contending that the property in question, which is the ancestral property of the defendants 2 to 4, enjoyed by the second defendant and also as a guardian of minor defendants 3 to 5, was sold in his favour for a sum of Rs.3500/- by registered sale deed dated 06.8.1979. It is stated that at the time of purchase by him, the suit property was given in mortgage to one Govindasamy Naidu by registered deed dated 16.7.1974 for a sum of Rs.1000/- by the second defendant and thereafter, the same was discharged by the plaintiff on 29.7.1980 and from then onwards, he has been in possession and enjoyment of the same by paying taxes. The further case of the plaintiff is that at the time when the suit property was mortgaged to said Govindasamy Naidu, the S. No. was wrongly mentioned as 55/6C instead of 55/6A. Alleging that the first defendant claimed illegal right over the same, the plaintiff sought for the declaration of title and injunction and also for recovery of possession by way of the suit.

(c) Denying the suit allegations as well as the right claimed by the plaintiff in respect of the suit property, the first defendant contended that the property in issue is to an extent of 2.12 Cents in S.No. 55/6A and he purchased the same by sale deed dated 18.5.1998. It is his case that the property claimed to have been purchased by the plaintiff is a separate property in S. No. 55/6C. According to the first defendant, he has been in possession and enjoyment of the suit property from the date of purchase by him.

(d) The trial Court before which the parties examined themselves and marked documents, dismissed the suit holding that the plaintiff has not proved his entitlement in respect of the suit property. On appeal, the Lower Appellate Court, on appreciation of the evidence and materials placed thereon, finding that an error has occurred in respect of Survey Number, reversed the judgment of the trial Court and accordingly, decreed the suit. Aggrieved by the same, the defendants have preferred the present Second Appeal.

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

4. At the time of admission of this Second Appeal, this Court formulated the following substantial questions of law for consideration:

- (a) The agreement of sale Ex. B.1, dated 23.4.1998 came to be entered into between the first defendant on the one hand and the defendants 2 to 5 on the other hand. As per that the period fixed for the completion of sale deed is one year. But the sale deed Ex. B.2 was executed and completed on 18.5.1998 within a period of one month. Whether the Lower Appellate

Court is correct in holding that since Ex. B.2 was executed within one month and not within one year, Ex. B.2 is liable to be set aside?

- (b) Whether the Lower Appellate Court is correct in holding that no rectification deed is required in law for amending that S. No. in the registered sale deed Ex. A.1?

5. Learned counsel appearing for the defendants / appellants contended that the defendants 2 to 5 never sold the land in S. No. 55/6A measuring 2.13 cents to the plaintiff at any point of time and the property sold to the plaintiff was with regard to S. No. 55/6C which was only 33 Cents. According to the learned counsel, the said property alone was mortgaged under Ex. A.3 and, therefore, according to him, it has nothing to do with the suit property. In support of his contention, learned counsel for the defendants relied on Exs. B.1 and B.2, viz., agreement of sale dated 23.4.1998 and sale deed dated 18.5.1998 respectively.

6. According to the learned counsel appearing for the respondent / plaintiff, since the defendants / appellants attempted to trespass into the suit property, the plaintiff sought for recovery of possession.

7. The first defendant / first appellant claims to have purchased the suit property from second defendant under Ex. B.2 dated 18.5.1998. Besides, the first appellant / defendant, in support of his contention, also relied on Ex. B.1 agreement of sale dated 23.4.1998.

8. It is an admitted fact that the suit property situate in S.No. 55/6A to an extent of 0.85.5 Acres originally belonged to defendants 2 to 5 and the second defendant, who was also the guardian of defendants 3 to 5, who were minors at that time, was in possession and enjoyment of the same. From the materials available on record, it is seen that the suit property was purchased by the plaintiff / respondent under Ex. A.1 dated 06.8.1979 from the second defendant. It is not disputed that at the time of purchase of the said property by the plaintiff, the same was under usufructuary mortgage with one Govindasamy as seen from Ex. A.3 dated 16.7.1974 and that subsequent to the purchase, the plaintiff had discharged the same under Ex. A.4 dated 29.7.1980 and had taken possession of the property from one Kuppusamy, son of original mortgagee Govindasamy. Thereafter, the plaintiff has also obtained patta under Ex. A.2 dated 23.5.1997.

9. Be that as it may. The contention put forth by the plaintiff that when the property was mortgaged to Govindasamy, the Survey Number and extent were wrongly mentioned, was assailed by the first defendant on the ground that no steps were taken to rectify the same and that it is a different property and has nothing to do with the suit property, viz., S. No. 55/6A. The fact remains that the patta in respect of the suit property, viz., S. No. 55/6A was given No. 350. Both the plaintiff and the first defendant have produced patta bearing No. 350 under Ex. A.2 dated 23.5.1997 and Ex. B.3 dated 03.3.2003 respectively. As such, it is clear that both the plaintiff and the first defendant claim to have purchased the suit property from the same vendor in an interval of six years. When the parties are claiming title under the same vendor and the purchase by the plaintiff is prior in point of time, it is to be held that the plaintiff has got valid title to the suit property.

10. Furthermore, it is seen that Ex. B.1 agreement of sale was entered into only on 23.4.1998 and even in Ex. B.1, there is a mention with regard to payment of balance amount of Rs. 45,000/- to be paid by him before 22.4.1999, which is subsequent to Ex. A.2, ie., after patta No. 350 was obtained by the plaintiff. Therefore, it is clear that the said documents have been cooked up by the defendants with a view to grab the suit property from the plaintiff. It is also pertinent to note that the first defendant has not obtained any proceedings from the Revenue Department with regard to change of his name in the patta.

11. As regards the mistake that had crept in mentioning the survey Number, the second defendant vendor himself has accepted in his deposition that it has been wrongly mentioned as S. No. 55/6C instead of S. No. 55/6A. Therefore, as rightly held by the Lower Appellate Court, since the property has already been sold under Ex. A.1, the rectification deed with regard to the same is not necessary.

12. In substance, in any Civil case, the preponderance of probabilities of the facts and circumstances leads to the conclusion. As the plaintiff has established his right, title and possession to the suit property and since the Lower Appellate Court, final fact finding authority, has clearly recorded a finding on the claim of title to the suit property made on behalf of the plaintiff, in the opinion of this Court, the second appeal does not involve any question of law, much less, substantial question of law warranting interference by this Court under section 100 of the Code of Civil Procedure.

For the foregoing reasons, the Second Appeal fails and the same stands dismissed confirming the judgment and decree of the Lower Appellate Court. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar (CSII)
dt:09/10/2015

True Copy

Sub-Assistant Registrar

gri

To

1. Principal Subordinate Judge
Villupuram
2. First Additional District Munsif
- cum - Judicial Magistrate No. 1
Ulundurpet

+1 cc to Mr.S.Krishnasamy, Advocate sr.47135

+1 cc to Mr.T.Dhanyakumar, Advocate sr.47467

S.A. No. 526 of 2009

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