

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.324 of 2013

B.Ravi

... Appellant/Ist Respondent

Vs.

1.Krishnaveni

2.B.Chandran

3.Chandra

4.Raman

5.Minor Sudha

6.Minor Cheeranjevi

7.Kamalakshmi Ammal ... Respondents/Plaintiffss/Defendants 2 to 6
(Minors 5 & 6 represented by next friend and mother
3rd Respondent)

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 03.03.2004 made in O.S.No.268 of 2002 on the file of the learned District Munsif Krishnagiri as confirmed by judgement and decree dated 28.04.2006 and made in A.S.No.102/2004 on the file of the learned II Additional Subordinate Judge (Trainee District Judge), Krishnagiri.

For Appellant : Mr.N.A.Nissar Ahmed
For RR1 & 2 : Mr.V.Nicholas

JUDGEMENT

The first defendant in O.S.No.268 of 2002 on the file of the learned District Munsif, Krishnagiri is the appellant herein. The respondents 1 and 2 herein are the plaintiffs in the suit. The first respondent is the wife of the second respondent. The second respondent is the brother of the appellant herein. The third respondent is the wife of the appellant and the respondents 4 to 6 are the children of the appellants herein. The seventh respondent is the mother of the appellant. The plaintiffs filed the said suit for declaration of title and for injunction to restrain the defendants from in any manner interfering with the peaceful possession and enjoyment of the suit property. The suit was partly decreed by the learned District Munsif by decree and judgement dated 03.03.2004. As against the declaration of title the trial Court declared that the first plaintiff is the absolute owner of all the items of suit property. So far as the consequential relief of permanent injunction is concerned, the trial Court granted permanent injunction in respect of all the suit properties except Item Nos. 2 and 6 alone in Item No.II of the suit property. Accordingly, dismissed the prayer for injunction in respect of Item Nos.2 and 6 alone in Item No.II of the suit property.

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2.As against the denial of the decree for permanent injunction

in respect of Item Nos.2 and 6 in Item No.II of the suit property, neither there was first appeal nor was there any cross appeal filed by the plaintiffs. Thus, the denial of decree for permanent injunction in respect of Item Nos.2 and 6 in Item No.II of the suit property has become final. In respect of all the items, so far as the decree for declaration of title and for injunction in respect of the other items except item Nos.2 and 6 alone in Item No.II of the suit property, the appellant herein filed an appeal in A.S.No.102 of 2004 on the file of the learned II Additional Subordinate Judge, Krishnagiri. By decree and judgement dated 28.04.2006 the First Appellate Court has dismissed the appeal thereby confirming the decree and judgement of the trial Court. That is how the appellant is before this Court with this second appeal.

3.The case of the plaintiffs is that the Item No.I of the suit property was the self acquired property of the first defendant. The first plaintiff purchased the same from the first defendant for a valuable consideration and in the said document, the first defendant has said that the sale has been executed by the first defendant on his behalf and on behalf of the defendants 3 to 5 namely his minor children also. Thus, according to the first plaintiff, from 04.08.2000 onwards namely, the date of purchase, she has been in possession and enjoyment of Item No.I of the suit property. So far as the Item No.II is concerned, it was purchased by the first plaintiff from one Mr.Babu for the valuable consideration of Rs.43,000/- on 06.11.2000 and thus, according to the first plaintiff, she has been in possession and enjoyment of the property as the absolute owner from the above date of purchase onwards. In Item No.II, there are 6 properties. As I have already pointed out, in respect of the Item Nos.2 & 6 in Item No.II of the properties, the decree for permanent injunction was denied. According to the plaintiffs, the first plaintiff has been in possession and enjoyment of the suit property and she has got absolute title.

4.The defendants 1 and 6 have filed a joint written statement wherein, in essence, they have contended that during the year 2000, the second plaintiff stood as surety for the first defendant when he has raised loan from the Bank of Baroda. Thus, the first defendant had reposed lot of confidence in the plaintiffs. Taking advantage of the said circumstances, namely, the misunderstanding between the first defendant and his family members, the plaintiffs took the first defendant to Veppanapalli Sub Registrar Office, in the month of August 2000 under the guise of making registered document, so as to put an end to the illegal relationship of the first defendant with one Shanthi. Later on, he came to know about the sham and nominal sale deed created by the plaintiffs on 04.08.2000. Thus, the said sale deed is false which has not conveyed any title to the first plaintiff.

5.So far as the Item No.II is concerned, according to the first defendant, Mr.Babu himself had no title and the first defendant is in exclusive possession and enjoyment of the suit property and thus, the first plaintiff has got no title.

6.The defendants 2 to 5 represented by their mother, the second

defendant in the suit, filed a separate written statement, wherein, she has stated that Item No.I of the suit property is an ancestral property over which, the first defendant had no independent title to convey under any sale deed executed in favour of the first plaintiff.

7. Based on the above pleadings, the trial Court framed appropriate issues and called upon the parties to let in evidence both oral as well as documentary evidence. On the side of the plaintiffs as many as five witnesses were examined and 21 documents were exhibited. On the side of the defendants as many as two witnesses were examined and 16 documents were exhibited.

8. Having considered the above, the trial Court decreed the suit in part as stated above and the First Appellate Court has also confirmed the same. That is how the appellant/first defendant is before this Court with this second appeal.

9. This second appeal has come up today for admission. The respondents 1 and 2 have made appearance through their learned counsel. I have heard the learned counsel for the appellant and the learned counsel for the respondents 1 and 2 and I have also perused the records carefully.

10. In this second appeal, it is contended by the learned counsel for the appellant that the First Appellate Court was not right in stating that so far as Item No.I is concerned, the burden is upon the defendants to prove that the said property is an ancestral property of the plaintiffs over which, the appellant/first defendant has got no independent title to convey the same to the first plaintiff. The learned counsel would further submit that the first plaintiff has not proved that the sale deed executed by the appellant/first defendant is valid.

11. In my considered opinion, absolutely, there is no question of law much less a substantial question of law involved in this second appeal warranting admission. There are several reasons for this conclusion.

(i) The first one is that the appellant herein had only executed sale deed in respect of Item No.I of the suit property in favour of the first plaintiff. He has not challenged the validity of the document by filing any suit.

(ii) Though, it is the case that Item No.I of the suit property is the ancestral property, the appellant/first defendant has not explained to the Court as to why he executed sale deed in favour of the first plaintiff by binding his minor children also. In the suit, the minor children were represented only by the appellant/first defendant. It is not known as to how the mother of the minor children namely, the second defendant could file written statement in the suit when they are represented only by the appellant herein.

(iii) Above all, two Courts below have held that the first plaintiff has proved the possession in respect of Item No.I of the

suit property. Thus, in my considered opinion, on facts, the Courts below have found that the first plaintiff has become the owner of the property under the sale deed executed by the appellant herein and the plaintiffs have also proved that the first plaintiff is in possession and enjoyment of Item No.I of the suit property.

12.Coming to the Item No.II of the suit property, there are 6 items. So far as the title is concerned, it is the case of the plaintiffs that one Mr.Babu was the absolute owner and he sold the property to the first plaintiff. Neither appellant nor any other person have challenged the validity of the said claim.

13.The appellant/first defendant in his written statement has made a very vague statement that he is in possession and enjoyment of the said property and Mr.Babu had no title to convey. Absolutely, there is no evidence to substantiate the contention of the appellant. Therefore, the Courts below have held that the first plaintiff is the owner of all the items of properties under Item No.II described in the plaint.

14.So far as the possession is concerned, the Courts below have held that the plaintiffs have proved that they are in possession in respect of the Item No.II of the suit property. This is also factual finding warranting no admission of this second appeal.

15.In view of the foregoing discussions, I hold that there is no substantial question of law involved in this second appeal warranting admission of this second appeal. I do not find any infirmity in the decree and judgement of the Courts below. Thus, I find no merit at all in this appeal warranting admission.

16.In the result, the second appeal fails and accordingly, the same is dismissed. There shall be no order as to cost.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

1.The II Additional Subordinate Judge,
Krishnagiri.

2.The District Munsif,
Krishnagiri.

1 cc to Mr. V.Nicholas,Advocate, SR.No.5477

1 cc to Mr. N.A.Nissar Ahmed,Advocate, SR.No.5684