

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.3.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

S.A.No.412 of 2013

1.M.Jayalakshmi
2.Sitalakshmi
3.KUmarasamy
4.Santhi
5.M.Venu
6.M.Vengadessane
7.M.Suganandham
8.V.Gnanamazhi

...Appellants

vs.

1.Rajamani
2.Karthikeyan
3.Kalaivanan
4.Kalaiselvi
5.Murugan
6.Gunasundari

...Respondents

Second Appeal preferred against the judgement and decree dated 6.9.2007 in A.S.No. 336 of 2006 passed by the Principal District Judge, Pondicherry, confirming the judgement and decree dated 15.09.1999 passed by the Additional Subordinate Judge, Pondicherry, in O.S.No.14 of 1999.

For appellants : Mr.T.P.Manoharan

JUDGEMENT

The respondents are the plaintiffs in O.S.No.14 of 1999, on the file of the learned Principal Subordinate Judge, Pondicherry. One Mr.Manickasamy was the sole defendant in the suit. The said suit was filed for declaration of title and for recovery of possession. The trial Court, by judgement and decree dated 15.09.1999, decreed the suit as prayed for. As against the same, Mr.Manickasamy filed an appeal in A.S.No.336 of 2006. During the pendency of the appeal,

Manickasamy passed away and these appellants, who are the legal representatives, were therefore brought on record as appellants 2 to 9. The lower appellate Court, by decree and judgement dated 6.9.2007 dismissed the appeal, thereby confirming the decree and judgement of the trial Court. As against the same, the appellants are before this Court with this second appeal.

2. The second appeal has come up today for admission.

3. I have heard the learned counsel for the appellants and also I have perused the records carefully.

4. The case of the plaintiffs is that the suit property was originally owned by one Mr. Subramania Pathar. By means of a notarial sale deed, dated 15.5.1918, Mr. Subramania Pathar sold away the suit property to one Appavou Pathar, Vaithilinga Pathar and Velayutha Pathar, who were all brothers. Thus, by virtue of the said sale deed, these three brothers became the absolute owners and they were enjoying the suit property peacefully and jointly. The plaintiffs are the lenial descendants of Mr. Velayudha Pathar. The available lenial descendants of Appavou Pathar and Vaithilinga Pathar are one Azhagappan, Shanmugam and Arunagiri. They have executed release deed in favour of the plaintiffs, thereby relinquishing their right and title over the suit property. Thus, according to the plaintiffs they are the absolute owners of the suit property, over which the defendant has got no right whatsoever.

5. The case of the defendant is that it is true that the suit property was originally owned by Subramania Pathar. But the execution of the notarial sale deed, dated 15.5.1918, is denied. According to the defendant, the legal heirs of Subramania Pathar have sold away the suit property to the defendant on 12.2.1982 and from that date onwards, the defendant has been in enjoyment and possession of the suit property as absolute owner. According to the defendant, the plaintiffs have got no right whatsoever in the suit property.

6. Based on the above pleadings, the trial Court framed appropriate issues.

7. Before the trial Court, on the side of the plaintiffs, two witnesses were examined and 25 documents were exhibited and on the side of the defendant, two witnesses were examined and 12 documents were exhibited. Exs. C1 and C2 were marked as Court documents.

8. Having considered all the above materials, the trial Court decreed the suit, which was confirmed by the lower appellate Court.

That is how the defendants are before this Court with this second appeal.

9. The learned counsel for the appellants would submit that the genealogy given in the plaint, by which the plaintiffs trace title as absolute owners, materially differs from the real genealogy. Thus, the claim of the plaintiffs that they have become absolute owners should have been turned down by the Courts below. The learned counsel further submits that the notarial sale deed of the year 1918, said to have been executed by Mr.Subramania Pathar, is not true and therefore, the sale deed executed in favour of the defendant alone is valid. Thus, according to the learned counsel, the Courts below have erred in holding that the plaintiffs have got title and they are entitled for recovery of possession.

10. I have considered the above submissions.

11. In my considered opinion, there are no substantial questions of law involved in the second appeal, warranting interference. All the questions raised by the learned counsel for the appellants are only on facts. A perusal of the judgement of the trial Court as well as the appellate Court would go to show that the Courts below, for sound reasons, have decreed the suit as prayed for, in which, I do not find any perversity.

12. It is the admitted case of the parties that the original owner of the suit property was Mr.Subramania Pathar. It is the case of the plaintiffs that Subramania Pathar executed a notarial sale deed, under Ex.A5, whereby, selling the suit property to the three brothers mentioned above. Though it is contended by the defendant that the said sale is not true, the Courts below have found that the sale deed is valid, by which Mr.Subramania Pathar had parted away his title in the year 1918. In this conclusion arrived at by the Courts below, I do not find any perversity. Once it is so held that in the year 1918, under Ex.A5, Subramania Pathar had parted away the suit property, there would have been no title inherited by his sons and other legal heirs to convey to any one.

13. Here in this case, long after the demise of Subramania Pathar, the defendant is said to have purchased the suit property from the legal heirs of Mr.Subramania Pathar under Ex.B1, dated 12.02.1982. Since Subramania Pathar himself had no title to convey, the sale deed executed by his legal heirs is invalid and the same would not convey title to the defendant. This conclusion is inescapable and the same has been rightly arrived at by the Courts below.

14. So far as the patta is concerned, patta has been obtained by the defendant even before the sale deed of the year 1982. This has not been explained. According to the plaintiffs, the defendant is an encroacher. Since the defendant has not proved his title, it is to be held that he is only a trespasser and therefore, he is liable to be vacated. Thus, the Courts below were right in decreeing the suit as prayed for. At any rate, as I already stated, since there is no substantial question of law involved in this second appeal, the question of admitting the second appeal does not arise.

15. In the result, the second appeal fails and the same is accordingly dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

msk

To

1.The Principal District Judge,
Pondicherry

2.The Additional Subordinate Judge,
Pondicherry

+1cc to Mr.T.P.Manoharan,Advocate SR.No. 15325

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VSN [co]
PSI 08.04.2015