

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1015 of 2015

Marithomani

..Appellant/Respondent/2nd Defendant

Vs.

Chinnathambi

..Respondent/Appellant/Plaintiff

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Appeal under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 23.10.2013 in A.S.No.13 of 2012 on the file of the Principal Sub Court, Villupuram, reversing the judgment and decree dated 17.11.2011 made in O.S.No.424 of 2005 on the file of the Principal District Munsif, Ulundurpet.  
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For Appellant : Mr.T.Gandhi

For Respondent : Mrs.A.Nilophar  
For Mrs.R.Meenal

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J U D G M E N T  
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The second defendant in O.S.No.424 of 2005 on the file of the learned Principal District Munsif, Ulundurpet, is the appellant herein. The plaintiff in the suit is the respondent herein. The first defendant one Mrs.Radha was not impleaded as a party in the first appeal and consequently, in the second appeal also. The suit was filed for recovery of possession of the 'C' Schedule property measuring 20 cents. By decree and judgment dated 17.11.2011, the trial Court dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.13 of 2012. By decree and judgment dated 23.10.2013, the lower Appellate Court allowed the appeal and decreed the suit as prayed for. As against the same, the second defendant is before this Court, with this second appeal.

2. This second appeal has come up today for admission. I have heard the learned counsel for the appellant and the learned counsel for the respondent and also perused the records carefully.

3. The admitted case of the plaintiff is that the first defendant was the owner of the entire extent of 1.95 acres comprised in survey No.171/9 at Sendhamangalam Village, Thirunavalur, Cuddalore District. One Venkatesan purchased the land of an extent of 1 acre from the first defendant, by means of a registered sale deed dated 04.3.1993. Subsequently, Venkatesan sold the same to the plaintiff, by way of registered sale deed dated 04.6.1999. Thereafter, the plaintiff purchased 33 cents from the first defendant, by means of yet another sale deed dated 06.8.1999. Thus, according to the plaintiff, he has purchased an extent of 1.33 acres with the specified four boundaries in survey No.171/9 and from that time onwards, he was in possession and enjoyment of the same.

4. The second defendant purchased an extent of 62 cents from the first defendant in the same survey number, on 03.9.1999. Without the knowledge of the plaintiff, according to him, the second defendant/ appellant herein purchased an extent of 41 cents in the same survey number from the first defendant on 29.3.2000. According to the plaintiff, the first defendant, after executing the sale deed dated 06.8.1999 in favour of the plaintiff, could have retained title only in respect of 62 cents. That 62 cents was purchased by the second defendant by means of the registered sale deed dated 03.9.1999. But, the second defendant, by creating sale document dated 29.3.2000 in respect of 41 cents as though title for possession was conveyed to him by the first defendant, encroached upon 20 cents of the land purchased by the plaintiff under the sale deed dated 06.8.1999. Therefore, the suit has been filed for recovery of possession of that 20 cents, which is covered under the sale deed dated 06.8.1999.

5. The case of the second defendant is that he has been in possession and enjoyment of 1.03 acres by virtue of two sale deeds dated 03.9.1999 and 29.3.2000, for which he has got absolute title. Therefore, according to him, the suit is liable to be dismissed.

6. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, three witnesses were examined and nine documents were marked. On the side of the defendants, one witness was examined and six documents were marked. Ex.X1 was marked as a third party document. Having considered all the oral and documentary evidence let in, the trial Court dismissed the suit. However, the same was reversed by the lower Appellate Court. That is how the second defendant is before this Court with this second appeal.

7. In this second appeal, the learned counsel for the appellant would submit that as per the sale deeds dated 03.9.1999 and 29.3.2000, the appellant has been in possession of the suit property as the absolute owner and therefore, the lower Appellate Court was not right in decreeing the suit for recovery of possession.

8. But, I do not find any substance at all in the said argument. There is no controversy before this Court that the total extent of land owned by the first defendant in the suit survey number was only 1.95 acres. One Venkatesan purchased 1 acre from the first defendant on 04.3.1993 and thereafter, the same was purchased by the plaintiff on 04.6.1999. Subsequently, the plaintiff has purchased 33 cents from the first defendant 06.8.1999. Thus, there can be no dispute that the plaintiff has got title for 1.33 acres of land. After the above sale deeds were executed, the first defendant would have had title only for the remaining portion of 62 cents. Rightly, by means of sale deed dated 03.9.1999, the first defendant had sold the said 62 cents to the appellant. But, it is not explained to Court as to how yet another sale deed was executed by the first defendant in favour of the second defendant on 29.3.2000 in respect of an extent of 41 cents in the suit survey number, after 03.9.1999, when the first defendant had no interest or title. There is no dispute as of now that the suit property forms part of the property purchased by the plaintiff under the sale deed dated 06.8.1999. Admittedly, the plaintiff is in possession of the 'C' Schedule property measuring 20 cents. Therefore, the lower Appellate Court was right in decreeing the suit as prayed for. The plaintiff has proved his title for the 'C' schedule property beyond any doubt. It is also brought to my notice that the decree of the lower Appellate Court has been executed and possession has been delivered to the plaintiff and the same is also recorded.

9. In view of the foregoing discussion, I do not find any perversity in the judgment of the lower Appellate Court. I also do not find any substantial question of law involved in this second appeal. Therefore, the second appeal deserves only to be dismissed. In the result, the second appeal is dismissed, confirming the decree and judgment of the lower Appellate Court. No costs. Consequently, M.P.No.1 of 2015 is also dismissed.

kpl

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Principal Sub Court, Villupuram.

2. The Principal District Munsif Court, Ulundurpet.

+ 1 cc to Mr.T.Gandhi, Advocate Sr 67698

+ 1 cc to Mrs.R.Meenal, Advocate Sr 67563

COPY TO;- The Section Officer, V.R.Section, High Court, Mds.

KR/25/2/16

S.A.No.1015 of 2015



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