

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal Nos.1040 to 1042 of 2015 and
M.P.Nos.1 & 2 of 2015

N.Valliammal (dead)

N.Nagalingam

... Appellants in S.A.Nos.1040 to 1042
of 2015/Plaintiffs

Vs.

M.Kanniah

... Respondent in S.A.No.1040 of
2015/Defendant

1. Paramasivam

Thanumurthy (deceased)

2. Muthukaruppan

3. Dhanalakshmi

4. I.Sivasubramanian

5. T.Geetha

6. T.Hari

7. Santha

8. Ramalakshmi

9. M.Kanniah

10.Swinder Singh

... Respondents in S.A.No.1041 of 2015/Defendants

Swinder Singh

... Respondent in S.A.No.1042 of 2015/Defendant

Prayer in S.A.No.1040 of 2015:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 01.04.2015 in A.S.No.98/2014 on the file of the learned Subordinate Judge, Poonamallee confirming the judgment and decree passed in O.S.No.204 of 2009 dated 14.10.2014 on the file of the learned Principal District Munsif, Poonamallee.

Prayer in S.A.No.1041 of 2015:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 01.04.2015 in A.S.No.96/2014 on the file of the learned Subordinate Judge, Poonamallee modifying the judgment and decree

passed in O.S.No.808 of 1996 dated 14.10.2014 on the file of the learned Principal District Munsif, Poonamallee.

Prayer in S.A.No.1042 of 2015:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 01.04.2015 in A.S.No.97/2014 on the file of the learned Subordinate Judge, Poonamallee modifying the judgment and decree passed in O.S.No.202 of 2009 dated 14.10.2014 on the file of the learned Principal District Munsif, Poonamallee.

For Appellant
in all Second Appeals : Mr.S.Kothandaraman

COMMON JUDGEMENT

The suit in O.S.No.808 of 1996 on the file of the learned Principal District Munsif, Poonamallee was filed by one Mrs.N.Valliammal. There are 11 defendants in the suit. The second defendant is no more and in his place, his legal representatives have been added as parties. It was a suit filed by Mrs.N.Valliammal for declaration of title and for permanent injunction against the defendants therein from in any manner interfering with her peaceful possession and enjoyment of the suit property.

2.During the pendency of the said suit in O.S.No.808 of 1996, a suit in O.S.No.202 of 2009 was filed by one Mr.Suvindar Singh against Mrs.N.Valliammal and his son Mr.Nagalingam. The said suit was filed for permanent injunction to restrain the defendants therein from in any manner interfering with the peaceful possession and enjoyment of the suit property described therein.

3.Similarly, during the pendency of the suit in O.S.No.808 of 1996, a suit in O.S.No.204 of 2009 was filed by one Mr.Kannaiah, against Mrs.N.Valliammal and his son Mr.Nagalingam. This suit was filed for permanent injunction to restrain the defendants therein from in any manner interfering with the peaceful possession and enjoyment of the suit property described therein.

4.On a request made by the parties to the said three suits, joint trial was held by the learned Principal District Munsif, Poonamallee and common evidence was recorded in O.S.No.808 of 1996. Mrs.N.Valliammal, the sole plaintiff in O.S.No.808 of 1996 and the first defendant in O.S.Nos.202 and 204 of 2009 died even before conclusion of the trial of these three suits. But, the same was not reported to the learned Principal District Munsif, Poonamallee. After the death of Mrs.N.Valliammal, the trial was concluded and all the three cases were reserved for judgment and finally, by a common judgment dated 14.10.2014, the

trial Court dismissed the suit in O.S.No.808 of 1996 and decreed the suits in O.S.Nos.202 & 204 of 2009 as prayed for.

5.As against the said common judgment and decrees passed, Mr.Nagalingam filed three different appeals. A.S.No.96 of 2014 was filed against the decree in O.S.No.808 of 1996; A.S.No.97 of 2014 was filed against the decree in O.S.No.202 of 2009 and A.S.No.98 of 2014 was filed against the decree in O.S.No.204 of 2009. The learned Subordinate Judge, Poonamallee by a common judgment dated 01.04.2015, dismissed all the three appeals. As against the dismissal of A.S.No.96 of 2014, Mr.Nagalingam has come up with S.A.No.1041 of 2015; as against the dismissal of A.S.No.97 of 2014, Mr.Nagalingam has come up with S.A.No.1042 of 2015 and as against the dismissal of A.S.No.98 of 2014, Mr.Nagalingam has come up with S.A.No.1040 of 2015. That is how all these three second appeals are before this Court for admission.

6.I have heard the learned counsel for the appellant in all the three appeals and I have also perused the records carefully.

7.The case of the appellant/Mr.Nagalingam, in common, in all the three second appeals is as follows:-

The suit property in O.S.No.808 of 1996 is comprised in S.No.45/2 of No.102, Ramapuram Village, Saidapet Taluk, Chengalpet MGR District. According to the appellant, his mother, Mrs.N.Valliammal had purchased 68 cents each under Exs.A.1 and A.2 in the year 1966 and 1968 respectively. Thus, the total extent of the land purchased on these two sale deeds was 1 acre 36 cents. From the date of purchase, Mrs.N.Valliammal was in possession and enjoyment of the entire extent of 1 acre 36 cents, as absolute owner. While so, on 27.09.1983, Mrs.N.Valliammal along with his sons including the appellant herein Mr.Nagalingam, had executed a general power of attorney in favour of one Mr.S.Dhanu Murthy thereby empowering him to sell the property measuring 1 acre 21 cents comprised in S.No.45/2 in Ramapuram, Saidapet Taluk, Chengalpet MGR District. In the deed of power of attorney, the property has been described by four boundaries as well. To make it clear, according to the appellant, the extent of the property for which, power was given was only 1 acre 21 cents. Thus, according to him, his mother Mrs.N.Valliammal and her sons had retained 15 cents out of the total extent of 1 acre 36 cents and gave power to Mr.Dhanu Murthy only for 1 acre 21 cents. Mr.Dhanu Murthy the Power Agent converted the said property into plots and sold away the same to various persons. But, while laying plots and while selling the same, the Power Agent has created document as though, he has got power to sell the entire extent of 1 acre 36 cents.

8. When Mrs.N.Valliammal came to know about the same, she made a paper publication on 30.11.1995 in 'Makkal Kural' Tamil daily stating that she has gave power to Mr.Dhanu Murthy only to the extent of 1 acre 21 cents and not 1 acre 36 cents. Even thereafter, since, an attempt was made by the defendants in O.S.No.808 of 1996 to trespass into the suit property, namely 15 cents retained by Mrs.N.Valliammal and her sons, Mrs.N.Valliammal filed the said suit in O.S.No.808 of 1996 for declaration of title and for permanent injunction to restrain the defendants therein from in any manner interfering with her peaceful possession and enjoyment of the suit property.

9. The suit property in O.S.No.202 of 2009 is comprised in S.No.45/2A3 measuring 2370 sq.ft at Ramapuram Village. According to the plaintiff in the said suit, this plot was purchased by him from one Mrs.Rajalakshmi. Mrs.Rajalakshmi is the purchaser of the plot from the Power Agent of Mrs.N.Valliammal and her sons. Thus, from the date of purchase, according to the plaintiff in O.S.No.202 of 2009, he has been in possession and enjoyment of the said property, over which, Mrs.N.Valliammal and the appellant herein have got no right whatsoever. Since, they attempted to disturb his possession, according to him, he filed the said suit in O.S.No.202 of 2009 for permanent injunction.

10. Similarly, during the pendency of the said suit in O.S.No.808 of 1996, the plaintiff in O.S.No.204 of 2009 purchased the suit property. The said property is comprised in S.No.45/2A2 measuring 2390 sq.ft. This is yet another plot which was sold by the Power Agent of Mrs.N.Valliammal and her sons and from the purchaser, the plaintiff Mr.Kannaiah had purchased the same. Thus, from the date of purchase, according to the plaintiff in O.S.No.204 of 2009, he has been in possession and enjoyment of the said plot over which, Mrs.N.Valliammal and her sons have got no right whatsoever. Since an attempt was made to disturb the possession of the plaintiff in O.S.No.204 of 2009, the said suit came to be filed by Mr.Kannaiah for permanent injunction to restrain the defendants therein from interfering with his peaceful possession and enjoyment of the suit property.

11. In O.S.No.808 of 1996, the first defendant Mr.Paramasivam, in his written statement has stated that he has nothing to do with the suit property and any of the transactions mentioned therein. The third defendant Mr.Muthukarupan also stated in his written statement that he has nothing to do with the suit property.

12. Mr.Dhanu Murthy, the Power Agent of Mrs.N.Valliammal and her sons died during the pendency of the suit in O.S.No.808 of 1996 and in whose place, the defendants 4 to 7, the legal representatives of Mr.Dhanu Murthy were impleaded. The

defendants 8 to 11 are the subsequent purchasers. According to the purchasers, the second defendant Mr.Dhany Murthy, Power Agent of Mrs.Valliammal and her sons, sold away the property to them, for which he was given power by Mrs.N.Valliammal and her sons. After laying plots, it is their further case that neither Mrs.N.Valliammal nor her sons retained any portion of the property covered under Exs.A.1 and A.2.

13.Based on the above pleadings in all the three suits, appropriate issues were framed; joint trial was held and common evidence was recorded in O.S.No.808 of 1996. On the side of the plaintiff two witnesses were examined and 9 documents were exhibited. On the side of the defendants, 10th defendant was examined as D.W.1 and as many as 21 documents were exhibited. During the pendency of the trial, an Advocate Commissioner was appointed and whose report was marked as Ex.C.1 and his plan was marked as Ex.C.2.

14.Having considered all the above, the trial Court dismissed the suit in O.S.No.808 of 1996 and decreed the suits in O.S.Nos.202 and 204 of 2009. The appeals preferred by the appellant were also dismissed and that is how the appellant/Mr.N.Nagalingam is before this Court with these second appeals.

15.The learned counsel for the appellant would submit that Mrs.N.Valliammal, the sole plaintiff in O.S.No.808 of 1996 and the first defendant in O.S.Nos 202 & 204 of 2009 died even before the conclusion of the trial however, her legal representatives were not brought on record. Thus, the decree passed in all the three suits by the trial Court against the dead person is void. He would further submit that under Exs.A.1 and A.2, Mrs.N.Valliammal had purchased only 1 acre 36 cents whereas, the power was given to Mr.Dhanu Murthy to sell only 1 acre 21 cents of land and thus, Mrs.N.Valliammal and her sons have retained 15 cents of land which is the suit property in O.S.No.808 of 1996. The learned counsel would further submit that the Advocate Commissioner's report would also go to substantiate the said contention. But, the Courts below have failed to appreciate these facts properly and have held against the appellant herein. Thus, according to the learned counsel for the appellant, all the three appeals are liable to be admitted and finally allowed.

16.But, I am not persuaded by the said submissions of the learned counsel for the appellant for many reasons, which I am going to deal with a little later. At the outset, I should say that there is no question of law much less a substantial question of law involved in any of these appeals warranting admission of the same.

17.The learned counsel for the appellant would submit that Mrs.N.Valliammal, the sole plaintiff in O.S.No.808 of 1996 and the first defendant in O.S.Nos.202 & 204 of 2009 died on 30.08.2014. On the date of demise of Mrs.N.Valliammal, the trial did not get concluded. Admittedly, the arguments of the learned counsel on either side was concluded only on 07.10.2014 and the common judgment was pronounced on 14.10.2014. According to the learned counsel, the suit in O.S.No.808 of 1996 did not abate whereas, according to the First Appellate Court, as per the conclusion arrived at in paragraph No.13, the said suit is abated.

18.In my considered view, there is no substance in the argument of the learned counsel for the appellant. The appellant, the son of Mrs.N.Valliammal was the second defendant in O.S.Nos.202 and 204 of 2009, the trial was held in all the three suits jointly. He examined himself as P.W.1. It is not as though he was not aware of his mother's death who was the sole plaintiff in O.S.No.808 of 1996. But, he did not either implead himself as a party to the suit or the other sons of Mrs.N.Valliammal came on record as legal representatives of Mrs.N.Valliammal in O.S.No.808 of 1996. Knowing fully well that Mrs.N.Valliammal died even before the conclusion of the hearing of the case, the plaintiff did not come on record as the legal representatives of the deceased Mrs.N.Valliammal. Therefore, the First Appellate Court has held that the suit in O.S.No.808 of 1996 stood abated since, the legal representatives of Mrs.N.Valliammal were not brought on record and accordingly, the First Appellate Court has concluded that Order 22 Rule 6 C.P.C., is not applicable in the case because, Mrs.N.Valliammal, died even before the final hearing of the case and before the case was reserved for judgment.

19.Assuming that the suit had not abated, even then, it makes no difference at all against the appellant herein who was prosecuting the joint trial in all the three cases as party to the above three suits and also contested the cases. Therefore, the decree passed in O.S.No.808 cannot be stated to be invalid. Therefore, I do not find any substance in the argument of the learned counsel that the decree passed by the trial Court as against a dead person is void.

20.Similarly, in the other two suits in O.S.Nos.202 & 204 of 2009, Mrs.N.Valliammal died, her legal representative namely the appellant herein was very much on record. After all, the suits in O.S.Nos.202 & 204 of 2009 are only the suits for bare injunction. Assuming that these two suits have been abated against Mrs.N.Valliammal on her demise, that would not have any barring against the decrees passed against the present appellant in O.S.Nos.202 & 204 of 2009. Therefore, the non impleading of the legal representative of Mrs.N.Valliammal in O.S.Nos.202 &

204 of 2009 would not in any manner affect the validity of the decrees passed in these two suits.

21.Now, turning to the facts of the case, the appellant has to lose these appeals mainly on two grounds. As has been dealt with by the Courts below, it is common knowledge that when the property is described by means of survey number and four boundaries though, there is some discrepancy in the extent of the land, four boundaries would prevail upon the extent of the land. Here, in this case, admittedly, under Exs.A.1 and A.2, Mrs.N.Valliammal, had purchased 1 acre 36 cents in one single survey number. Had it been true that she retained any portion out of the said land owned by her, the portion so retained by her should have been mentioned in the four boundaries at least as one of the four boundaries of the property which was covered under the general power of attorney. But, a perusal of the general power of attorney would go to show that the entire extent purchased under Exs.A.1 and A.2 is covered in the general power of attorney by means of four boundaries. Thus, the extent of the land purchased under Exs.A.1 and A.2 is 1 acre 36 cents. Though, the deed of general power of attorney mentions the extent of the land as 1 acre 21 cents, going by the four boundaries in the deed of general power of attorney, it is crystal clear that Mrs.N.Valliammal and her sons had not retained any portion of the land covered under Exs.A.1 and A.2. In other words, the land covered under Exs.A.1 and A.2 with the specific four boundaries are the one and the same mentioned in the deed of power of attorney given by Mrs.N.Valliammal and her sons to the power agent to sell the property. Therefore, though, there is some discrepancy in respect of the extent of the land, that will not prevail upon as the four boundaries will prevail upon.

22.Nextly, the suit property in O.S.No.808 of 1996 has been described by means of survey number, extent as well as four boundaries. It is stated that the extent of the land is 15 cents comprised in S.No.45/2 of No.102 Ramapuram Village, Saidapet Taluk, Chengalpet MGR District. The four boundaries are:-

"North by :	Land in S.No.45/1
South by :	Remaining Land in S.No.45/2
East by :	Remaining Land in S.No.45/2
West by :	Land in S.No.45/3"

23.Had it been true that the land which was given power to dealt with by Mr.Dhanu Murthy is on any one side of the suit property, the same should have been mentioned as one of the four boundaries. The learned counsel for the appellant is not in a position to explain to the Court as to what does it mean by the remaining land of S.No.45/2 on the South and the East of the suit property. When a specific query was made to the learned

counsel for the appellant, as to how the suit property could be identified, the learned counsel would state that from the description made in the plaint, it is difficult to identify the suit property. To be specific, when this Court posed a question on the learned counsel for the appellant to explain to the Court as to which portion of the property measuring 15 cents out of the total extent of 1 acre 36 cents was retained by Mrs.N.Valliammal and her sons and whether 15 cents described in the plaint is identifiable and traceable to the documents, the learned counsel was unable to answer this question.

24.As I have already pointed out, there is no indication in the general power of attorney that any portion in and out of 1 acre 36 cents was retained by Mrs.N.Valliammal and her sons. Similarly, the description of the property made in the plaint in O.S.No.808 of 1996 also does not indicate as to where this property lies out of the total extent of 1 acre 36 cents. It is common knowledge that when a suit is filed for declaration of title and for permanent injunction, the property should be identified specifically. If the property could not be identified, then the decree which may be passed by the Court will be unworkable. The decree passed by any Court in respect of the property which has not been described would lead to further confusion because, the parties may not be in a position to obey the decree of the Court. That is the reason why the law expects that the suit property should be described in an identifiable manner. Here, in this case, the suit property has not been described in an identifiable manner. At any rate, as I have already pointed out, absolutely, there is no evidence that any portion of the land out of the total extent of 1 acre 36 cents was retained by Mrs.N.Valliammal and her sons. The Courts below have considered these evidences properly.

25.The learned counsel would further submit that the Advocate Commissioner's report would go to show that more extent than 1 acre 21 cents has been sold by the power agent of Mrs.N.Valliammal and her sons. It may be true. But, as I have already pointed out, it is not the extent of the land prevail upon four boundaries but, it is only four boundaries which will prevails upon the extent. Therefore, this argument also does not persuade me at all.

26.In a case where, the plaintiff has sought for declaratory decree in respect of title and for permanent injunction to protect his alleged possession, it is for him to plead and to prove the same. It is for him to describe the property properly. Here, in this case, the appellant has not proved his case in O.S.No.808 of 1996 at all. Therefore, the Courts below were right in dismissing O.S.No.808 of 1996.

27.Now, turning to the suit properties in O.S.Nos.202 & 204 of 2009, admittedly, the plaintiffs therein are the purchasers of the plots. The plots were laid by the power of attorney of Mrs.N.Valliammal and her sons, out of the land covered under Exs.A.1 and A.2 in exercise of the power conferred under the general power of attorney. Two Courts below have held that the plaintiffs in O.S.Nos.202 & 204 of 2009 are in possession and enjoyment of their respective suit property. In this factual finding, I do not find any infirmity and accordingly, I am not inclined to interfere with the same.

28.In view of the foregoing discussions, I do not find any merit in these second appeals. Further, there is no substantial question of law at all warranting admission of these second appeals.

29.In the result, the second appeals fail and accordingly, they are dismissed and the decree and judgment of the First Appellate Court is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

jbm

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Poonamallee.

2.The Principal District Munsif,
Poonamallee.

+ 3 ccs to Mr.S.Kothandaraman, Advocate SR 66041

ksj (co)
prk29/1

S.A.Nos.1040 to 1042 of 2015

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