

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1052 of 2015 and
M.P. No.1 of 2015

M.S.Ravikumar

.. Appellant/Appellant/
Defendant

-Vs-

R.Chinnappa Chetty

.. Respondent/Respondent/
Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 17.10.2014 in A.S.No.60 of 2011 on the file of the Principal District Judge, Salem, confirming the judgment and decree dated 01.06.2011 in O.S.No.181 of 2005 on the file of the Principal Subordinate Judge, Salem.

For Appellant : Mr.P.Sathish

For Respondent : Mr.T.Murugamanickam

J U D G M E N T

The defendant in O.S.No.1052 of 2015 on the file of the learned Principal Subordinate Judge, Salem is the appellant herein. The respondent is the plaintiff in the suit. The respondent filed the said suit for declaration that the sale deed dated 18.02.1991 under Document No.392/1991 executed by one Bagiyam Ammal in favour of the defendant is null and void and for an injunction to restrain the defendant and his family members from alienating or encumbering the suit property in any manner and also for a declaration that the plaintiff has got the absolute title for the suit property and for consequential direction to remove the unauthorised construction made in the suit property. The trial court by decree and judgment dated 01.06.2011 decreed the suit. As against the same, the defendant filed an appeal in A.S.No.60 of 2011 on the file of the learned Principal District Judge, Salem. By decree and judgment dated 17.10.2014, the lower appellate court dismissed the appeal. Challenging the same, the defendant is before this Court with this Second Appeal.

2. The Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and the learned Counsel for the respondent. I have also perused the records carefully.

3. The case of the plaintiff in brief is as follows:

The suit property is comprised in Survey No.196/21 at Azhagapuram Pudur Taluk in Salem District which was subsequently sub-divided as Survey No.196/21 A. According to the plaintiff, the suit property was purchased from one Mr.Amirthalingam. He had earlier purchased the same from one Kuppusamy under Document No.3958/80 dated 02.07.1980 vide Ex.A.1. As a matter of fact, before the said sale, Mr.Kuppusamy had laid plots on the suit survey number and the same was named as Kailash Nagar. It was approved by the Regional Deputy Director of Town Planning, Salem. There were 64 house plots so plotted out. Mr.Amirthalingam purchased the Plot No.49. The plaintiff purchased the same from Amirthalingam under Ex.A.2 dated 31.10.1983. From the said date onwards, the plaintiff has been in possession and enjoyment of the same. The defendant has got no right whatsoever over the suit property. But the defendant has previously created a sale deed under Ex.B.2 in his favour executed by one Bagiyam Ammal and others on 18.02.1991 as though Bagiyam Ammal and others had acquired title by means of a settlement deed executed by one Perumayee Ammal, the mother of Bagiyam Ammal on 16.11.1964. According to the plaintiff, Perumayee Ammal, Bagyam Ammal and others had no title to convey to the defendant under the Sale Deed dated 18.02.1991. He has further contended that the sale deed dated 18.02.1991 has been created only to disturb the title of the plaintiff. As a matter of fact, according to the plaintiff, the defendant himself has purchased Plot No.40 from Mr.Kuppusamy. Thus, according to the plaintiff, the sale deed dated 18.02.1991 (Ex.B.2) is null and void and consequently, the plaintiff is entitled for other reliefs sought for in the plaint.

4. The defendant took the plea that Perumayee Ammal was the owner of the property and she in turn has executed a Settlement Deed in favour of his daughter Bagyam Ammal under Ex.B.6. This Ex.B.6 from whom the defendant purchased the suit property under the sale deed dated 18.02.1991. Thus, according to the defendant, he has got absolute title for the suit property.

5. Based on the above pleadings, the trial court framed appropriate issues. In order to prove his case, on the side of the plaintiff, six witnesses have been examined and as many as 34 documents have been marked. On the side of the defendant, the defendant himself has been examined as D.W.1 and as many as 7 documents have been marked. The Advocate Commissioner's Report and Plans have been marked as Ex.C.1 to Ex.C.3 and third

party documents have been marked as Ex.X.1 to Ex.X.6. Having considered all the above, the trial court decreed the suit and the same was confirmed by the lower appellate court. That is how the appellant is before this Court with this Second Appeal.

6. In this Second Appeal, the learned Counsel for the appellant would submit that Ex.B6, the Settlement Deed dated 16.11.1964 is an ancient document which cannot be doubted. According to him, the mother of Bagyam Ammal had absolute title which was conveyed under the settlement deed dated 16.11.1964. The learned Counsel for the appellant would further submit that Bagyammal had title to convey under the sale deed dated 18.02.1991 in favour of the defendant and thus, the defendant is the absolute owner of the suit property. The learned Counsel for the appellant would also submit that the courts below have failed to appreciate both the oral and documentary evidence in their proper perspective.

7. The learned Counsel for the respondent would submit that having purchased the Plot No.40 in the very same survey number from Kuppusamy, it is too late in the day for the defendant to claim title. According to him, absolutely, there is no evidence to show that the mother of Bagyammal had any trace of title in the suit property so as to convey the same under Settlement deed to her. At any rate, according to the learned Counsel for the respondent, there is no substantial question of law involved in this Second Appeal.

8. I have considered the above submissions.

9. At the outset, I should say that in this Second Appeal, I find no question of law much less a substantial question of law warranting admission of this Second Appeal. There is no perversity also in the findings of the courts below. As rightly pointed out by the learned Counsel for the respondent, absolutely, there is no evidence to show that the mother of Bagyammal had any title to convey under Ex.B6. There is also no evidence to show that after Ex.B6 dated 16.11.1964 Bagyammal was in possession and enjoyment of the property to claim title over the suit property.

10. Per contra, it is in evidence that Kuppusamy laid plots which were approved by the Regional Deputy Director of Town Planning. This is not under dispute at all. The Plot No.49 was purchased by one Amirthalingam from Kuppusamy and from Amirthalingam, the plaintiff has purchased the same. Equally, the defendant has purchased plot No.40 under the Sale Deed dated 06.09.1979 from Kuppusamy. Therefore, it is not as though the defendant had no knowledge that Bagyammal had no title to convey. The learned Counsel for the appellant would submit that the defendant is an innocent purchaser. But, I find it

difficult to accept the said contention because having purchased the Plot No.40 from Kuppusamy as early as on 06.09.1979, it is not known as to what made him to again purchase the entire extent of the property comprised in suit survey number which includes Plot No.40 also. All these facts have been clearly analysed by the courts below to come to the conclusion that the defendant has created these documents only to disturb the possession of the various purchasers of the plots. Thus, the courts below have rightly come to the conclusion that the sale deed dated 18.02.1991 is null and void and the plaintiff is entitled for the other reliefs as prayed for. In this finding, I do not find any perversity. As I have already pointed out that there is no substantial question of law also involved warranting admission of the Second Appeal. Therefore, the Second Appeal has to necessarily fail.

11. In the result, the Second Appeal fails and the same is according dismissed. The decree and judgment of the lower appellate court is confirmed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

tsi

To

1.The Principal District Judge, Salem.

2.The Principal Subordinate Judge, Salem.

+ 1 cc to Mr.P. Sathish, Advocate SR.64949

+ 1 cc to Mr.t. Murugamanikam, Advocate SR.65015

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GJ(CO)

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