

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.896 of 2015

1.Mahalakshmi
2.Jayaraman

... Appellants/Defendants
2 & 3

-Versus-

1.Ramakrishnan Naidu

Venkatachalapathy Naidu (Died)

2.Damodara Naidu
3.Sarojammal
4.Murali
5.Ravi
6.Varalakshmi
7.Chinnammal
8.Venkatesan
9.Geetha

[Respondents 7 to 9 were impleaded as respondents as per order dated 28.10.2014 in I.A.No.139 of 2014 in A.S.No.24 of 2012 before the first appellate court]

... Respondents/Plaintiffs

This second appeal is filed against the judgment and decree dated 10.02.2015 made in A.S.No.24 of 2012 by the learned Subordinate Judge, Poonamallee, confirming the judgement and decree dated 29.10.2011 made in O.S.No.55 of 1999 by the learned District Munsif, Poonamallee.

For Appellants : Mr.V.Bhiman for Mr.V.Mani

JUDGMENT

The appellants are the defendants 2 and 3 in O.S.No.55 of 1999 on the file of the learned District Munsif, Poonamallee. Originally, the suit was filed by nine plaintiffs. Pending suit, the 2nd plaintiff - Doorvasalu Naidu died and as such the plaintiffs 5 to 9 were recorded as the legal heirs of the deceased 2nd plaintiff. Subsequently, the 8th plaintiff-Gajendran also died and hence, plaintiffs 5 to 7 and 9 were recorded as the legal heirs of the deceased 8th plaintiff. The respondents are plaintiffs 1, 4, 5, 6, 7 and 9 in the suit. The deceased one Venkatachalapathy Naidu was the 3rd plaintiff. The said suit was filed for declaration of title and for recovery of possession of the suit properties and also for mesne profits. Similarly, during pendency of the suit, the sole defendant - Ponnusamy died and as such, the defendants 2 and 3, who are the appellants herein, were brought on record. By decree and judgement, dated 29.10.2011, the trial court decreed the suit thereby declaring the title of the plaintiffs and also for recovery of possession of the suit properties from the defendants. However, so far as the plea for mesne profits was concerned, the trial court negatived the claim made by the plaintiffs. Aggrieved by the said decree and judgement, the defendants 2 and 3 have preferred an appeal in A.S.No.24 of 2012 on the file of Subordinate Judge, Poonamallee. The learned Subordinate Judge, Poonamallee, by decree and judgement dated 10.02.2015 dismissed the appeal thereby confirming the decree and judgement of the trial court. Challenging the same, the defendants 2 and 3 are now before this court with this second appeal.

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

3. The case of the plaintiffs in brief is as follows:- Admittedly, the suit properties were originally owned by one Sri.Nagamma Naidu. Sri.Nagamma Naidu died many decades before intestate leaving behind his only son-Sri.Munusamy Naidu. Sri.Munusamy Naidu inherited the suit properties and enjoyed the same as absolute owner till his death around the year 1953. After the demise of Sri.Munusamy, the plaintiffs, being his legal heirs, have become the absolute owners of the same. The plaintiffs were, in fact, cultivating the suit lands for some

years. Since the cultivation was not very profitable, they left the lands barren and went in search of better job outside. Utilizing the absence of the plaintiffs, the 1st defendant, who is the father of the appellants herein, trespassed into the suit properties in the year 1997. When the plaintiffs demanded him to handover the vacant possession, the 1st defendant declined to do so. Therefore, the plaintiffs filed the present suit for the above reliefs. During pendency of the suit, the 1st defendant died and the defendants 2 and 3 were brought on records as his legal representatives.

4. The 1st defendant had filed a written statement wherein he contended that the plaintiffs had agreed to sell an extent of 5 Acres of land in suit survey No.64/4 at Padur Village, Poonamallee Taluk, to him and they duly executed an agreement of sale dated 23.07.1962, after receiving a sum of Rs.950/- as advance. The entire extent of 5 Acre was delivered to the 1st defendant on the same day. Thus, the 1st defendant was in possession and enjoyment of the entire extent of 5 Acres as per the above sale agreement. It was further contended by the 1st defendant that on the ill advise of somebody, the plaintiffs had sold away an extent of 3 Acres out of 5 Acres to one Sri. Sriramulu Naidu. Though the 1st defendant was not agreeable for the same, since the purchaser made fervent requests to him, he handed over the possession of 3 Acres of land to Sri. Sriramulu Naidu. Thus, the 1st defendant continued to be in possession of the remaining 2 Acres of the land in suit survey number. It was further pointed out that the 1st defendant had perfected his title for the suit properties by adverse possession. The plaintiffs were fully aware of the said claim of the 1st defendant. Thus, according to the 1st defendant, the plaintiffs had lost their title for the suit properties and thus, they do not have any locus standi to maintain the suit and they are not entitled to any relief.

5. But, unfortunately, before the trial could commence, the 1st defendant died. The appellants/defendants 2 and 3 were brought on record as legal representatives of the deceased 1st defendant. On their appearance, they filed a written statement afresh. In the said written statement, the appellants/defendants 2 and 3 told a new story. They have admitted that Sri.Nagamma Naidu was the absolute owner of the suit properties. Sri. Nagamma Naidu's daughter was one Smt.Rajammal. The said Smt.Rajammal was married to Sri. Venkalabady Subha Naidu. According to the appellants, Sri. Nagamma Naidu had executed a

Will dated 06.04.1927 thereby bequeathing the suit properties in favour of his son-in-law Sri. Venkalabady Subha Naidu and daughter Smt.Rajammal. After the demise of Sri. Nagamma Naidu, the Will came into force by which Sri. Venkalabady Subha Naidu was in possession and enjoyment of the suit properties without any body's hindrance. It is the further case of the appellants that Sri.Venkalabady Subha Naidu and Rajammal were the absolute owners of the suit properties and after the demise of Sri.Venkalabady Subha Naidu, Smt.Rajammal became the absolute owner of the suit properties. It is further alleged that Smt.Rajammal executed a Will on 01.04.1977 in favour of her daughter one Smt.Kumari and her daughter Ms.Girija. Ms.Girija died unmarried at the age 17 years due to severe illness. After the demise of Smt.Rajammal, as per the above said Will Smt.Kumari became the absolute owner of the suit properties and she was enjoying the same. The patta and other revenue records also were changed in the name of Smt.Kumari.

6. It is further contended by the defendants 2 and 3 that subsequently, the 3rd defendant purchased the suit properties by means of a registered sale deed dated 23.07.1997 from Smt.Kumari for valuable consideration. From the said date onwards, the 3rd defendant has been in possession and enjoyment of the suit properties and he has been cultivating the same. Thus, the 3rd defendant alone has got title for the suit property and the plaintiffs have got nothing to do with the same.

7. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiffs, 3 witnesses were examined and 2 documents were exhibited. P.W.1 is the 4th plaintiff; P.W.2 is an Assistant in the Taluk Office; and P.W.3 is the Tahsildar, Poonamallee Taluk. Ex.A1 is the registration copy of the sale deed executed by one Sri.Vishwanatha Chetty in favour of Sri.Nagamma Naidu dated 15.02.1923. As per this document, Sri.Nagamma Naidu became the absolute owner of the suit properties. Ex.A.2 is the sale deed executed by Sri.Ramakrishna Naidu and others in favour of Sri.Sriramulu Naidu dated 13.08.1962. On the side of the defendants, 3 witnesses were examined and Ex.B.1 to B.27 were exhibited on their side. D.W.1 is the 3rd defendant. Besides the above, Exs.X-1 to X-5 were marked as Public Documents.

8. Having considered all the above, the trial court decreed the suit as mentioned in the first paragraph of this judgement which was later on confirmed by the first appellate court. That

is how, the defendants 2 and 3 in the suit are now before this court with this second appeal.

9. In this second appeal, the learned counsel for the appellants would submit that by virtue of the sale deed dated 01.04.1977 executed in favour of the 3rd defendant by Smt.Kumari, the 3rd defendant has become the absolute owner. The learned counsel has traced title of Smt.Kumari from Smt.Rajammal and the title of Smt.Rajammal from Sri.Nagamma Naidu. The learned counsel would submit that the courts below have failed to appreciate these facts in their proper perspective.

10. So far as the contrary stand taken by the 1st defendant is concerned, the learned counsel would submit that the defendants 2 and 3 were free to take their own defence and they were not bound by the statement made by the 1st defendant. The learned counsel would further submit that the courts below have failed to appreciate the oral as well as the documentary evidence in their proper perspective.

11. I have considered the above submissions carefully.

12. This second appeal has been filed against the concurrent findings of two courts below. Having considered the submissions of the learned counsel for the appellants and having perused the records, at the outset, I should say that I do not find any substantial question of law at all involved in this second appeal warranting admission of the same. The reasons are many. First of all, as held by the courts below, the appellants / defendants 2 and 3, who were brought on record as the legal representatives of the 1st defendant cannot take a quite contrary plea to the plea which was taken by the 1st defendant. According to the 1st defendant, he was all along in possession and enjoyment of the suit properties on the strength of sale agreement entered into by him with the plaintiffs on 23.07.1962. It is his further case that he took possession of total extent of 5 Acres and he was cultivating the same. The 1st defendant has admitted the sale deed executed by the plaintiffs in favour of one Sri.Sriramulu Naidu on 13.08.1962 in respect of 3 Acres of land. Had it been true that Sri. Nagamma Naidu had executed a Will in favour of his son-in-law Sri. Venkalabady Subha Naidu and his daughter Rajammal, Sri. Venkalabady Subha Naidu and Rajammal would have been in possession of the properties as it is stated in the written statement filed by the defendants 2 and 3. But, the father of

the defendants 2 and 3 namely, the 1st defendant, had claimed that he was in possession of the suit properties by virtue of the sale agreement. This clearly falsifies the present case of the appellants/defendants 2 and 3. After the sale deed dated 13.08.1962 (Ex.A.2), possession of land in respect of 3 Acres was taken by Sri.Sriramulu Naidu. The 1st defendant did not oppose the same. This would again go to show that the entire extent of the suit properties were owned only by the plaintiffs and out of the same, they have sold 3 Acres of land and they retained title for balance of 2 Acres of land. Though it is alleged that the 1st defendant was in possession of the suit properties by virtue of the sale agreement dated 23.07.1962 no such document has been produced in evidence. Therefore, it is crystal clear that the plaintiffs retained the title for the remaining extent of properties after the sale made in favour of Sri.Sriramulu Naidu.

13. Now, it is the case of the appellants/defendants 2 and 3 that by virtue of the Will dated 06.04.1927 allegedly executed by Sri.Nagamma Naidu, Sri. Venkalabady Subha Naidu and Smt.Rajammal had become the absolute owners. But, the said Will dated 06.04.1927 has not been produced in evidence at all. If once the story that there was a Will executed by Sri.Nagamma Naidu in favour of Sri.Venkalabady Subha Naidu and Smt.Rajammal is found to be false then, subsequent events as alleged by the appellants/defendants 2 and 3 that by virtue of sale Sri. Venkalabady Subha Naidu and Smt.Rajammal became owners of the suit properties are all to be disbelieved. If the title for Smt.Rajammal itself has not been established, then, the so-called Will dated 01.04.1977 executed by Smt.Rajammal in favour of her daughters Smt.Kumari and Miss.Girija could not convey any title in their favour. If once, it is so held that Smt.Kumari and Miss.Girija had no title then, the sale deed executed by Smt.Kumari in favour of the 3rd defendant would also not convey any title. Thus, it is crystal clear that both the courts below on appreciating the facts have come to the right conclusion that the plaintiffs have got no title to the suit properties. So far as the possession is concerned, the plaintiffs have admitted that the defendants are in possession. Since the defendants have got no legal right to continue to be in possession of the suit properties, the plaintiffs are entitled for recovery of possession.

14. In view of the foregoing discussions, I find that on appreciating the facts both facts in issue and the relevant

facts, the courts below have rightly come to the conclusion that the plaintiffs are the absolute owners of the suit properties and that they are entitled for recovery of possession. This being the factual findings, I do not find any question of law, much less, a substantial question of law warranting admission of the second appeal. In such view of the mater, I do not find any merit at all in this second appeal and the same must fail.

15. In the result, the second appeal is dismissed and the decree and judgement of the trial court and confirmed by the first appellant court are hereby confirmed. However, there shall be no costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Subordinate Judge,
Poonamallee.

2.The Direct Munsif,
Poonamallee.

+1cc to Mr.V.Mani, Advocate, S.R.No.63035

Second Appeal No.896 of 2015

TEJ(CO)
CA(27/01/2016)

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