

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.733 of 2013 and M.P.No.1 of 2013

Narayanan

.. Appellant/Defendant

-Vs-

V.Venu

.. Respondent/Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree passed in A.S.No.33 of 2011 dated 28.02.2013 on the file of the learned Subordinate Judge, Hosur in confirming the judgment and decree made in O.S.No.179 of 2007 on the file of the learned District Munsif, Denkanikottai dated 29.06.2011.

For Appellant : Mr.R.Subramanian
for M/s.MA.P.Thangavel
For Respondent : Mr.R.Rajaraman

J U D G M E N T

The defendant in O.S.No.179 of 2007 on the file of the learned District Munsif, Denkanikottai is the appellant herein. The respondent is the plaintiff in the suit. The respondent filed the said suit for declaration of title and for permanent injunction to restrain the defendant from in any manner interfering with his possession and enjoyment of the suit property. The suit was decreed as prayed for by the trial court by decree and judgment dated 29.06.2011. As against the same, the defendant filed an appeal in A.S.No.33 of 2011 before the learned Subordinate Judge, Hosur. By decree and judgment dated 28.02.2013, the lower appellate court confirmed the findings of the lower appellate court. As against the same, the appellant is before this Court with this Second Appeal.

2. 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 was originally owned by one Sakkan. Sakkan died intestate leaving behind his only son Mudhappa. Mudhappa along with his elder son Muthan @ Muthappa sold away the suit property to

the plaintiff by means of a registered Sale Deed dated 30.4.2007 for valuable consideration. By virtue of the said sale deed, according to the plaintiff, he has become the absolute owner of the suit property and he is also in possession of the same. Thus, according to the plaintiff, he is entitled for declaration of title and also for permanent injunction.

4. The defendant is none else than the second son of Mudhappa, S/o.Sakkan. According to him, the property was assigned to Sakkan by the Government because he belongs to Scheduled Caste and a landless poor on condition that the land shall not be sold to any non Scheduled Caste person. According to the defendant, since the plaintiff does not belong to Scheduled Caste, the sale made by his father and his brother on 30.04.2007 is not valid. It is further contended that even assuming that the sale is valid, that would convey only an undivided share of Mudhappa and Muthan and not the undivided share of the defendant. Thus, at any rate, according to the defendant, the plaintiff is not entitled for declaration of title. It was also contended that the plaintiff is not in possession of the suit property.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, 3 witnesses were examined and as many as 9 documents were exhibited. On the side of the defendant, 3 witnesses were examined and as many as 8 documents were exhibited. Having considered all the above, the trial court decreed the suit which 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 following substantial questions of law have arisen for consideration:

1. Whether the courts below were legally right in granting decree for declaration, when there is no dispute that the suit property was at the hands of Mudhappa, as an ancestral property, in which by birth, Muthan and the defendant have got undivided share?

2. Whether the suit property, which is an ancestral property, belongs to the coparcenary consisting of Mudhappa and his sons, namely, the defendant and Muthan? and

3. Whether the courts below were right in holding that the sale deed dated 30.04.2007 is valid?

7. The learned Counsel for the appellant would submit that assuming that the sale deed dated 30.4.2007 was executed by Mudhappa and Muthan for valuable consideration that would convey only the undivided share of Mudhappa and Muthan and not that of the defendant. He would further contend that Mudhappa, Narayanan (defendant) and

Muthan had formed a Hindu Coparcenary and that Coparcenary had the suit property and therefore, the share of the defendant would not have been conveyed by Mudhappa and Muthan, since the defendant was not a party to the sale deed dated 30.04.2007. It is further contended that the sale deed dated 30.04.2007 itself is not valid because the sale was made in contravention of the condition imposed by the Government to a non-scheduled caste man.

8. The learned Counsel for the respondent would submit that it is true that the property originally belonged to one Sakkan. But, according to him, there was no bar imposed by the Government for the sale of the property in favour of the plaintiff that he does belong to a non Scheduled Community. He would further submit that since the sale was made for valuable consideration, the same is valid and the same binds the defendant also. The learned Counsel for the respondent would further submit that the defendant is in possession and enjoyment of the suit property and therefore, the same should also be protected.

9. I have heard the above submissions.

10. So far as the question as to whether the sale deed dated 30.04.2007 is valid or not is concerned, as of now, no document has been produced by the appellant to show that such a condition has been imposed by the Government that the sale of the property should not be made to a person belonging to a non Scheduled Caste. Therefore, this contention of the learned Counsel for the appellant that the sale made in favour of the non Scheduled Caste man is not valid, deserves only to be rejected.

11. Now turning to the other substantial questions of law, it is not in dispute that the property was assigned to Sakkan, that means, on the demise of Sakkan, Mudhappa held the property as his ancestral property and not as his self-acquired property. By birth Muthan and the defendant have become the members of Coparcenary and thus, they have got right to have equal share in the suit property. There are also daughters of Mudhappa. But they are not parties to the present suit. Thus, the sale deed dated 30.04.2007 can at the most convey only the undivided share of Mudhappa and Muthan and not that of the defendant. Therefore, the claim of the plaintiff that he has got absolute right over the suit property cannot be accepted. Therefore, the decree for declaration of absolute title in favour of the plaintiff deserves to be interfered with. To that extent, this other substantial questions of law deserve to be answered in favour of the appellant.

12. Now, turning to the question of possession, by virtue of the sale deed dated 30.04.2007, the plaintiff has been in possession, it is contended. On facts, on appreciating the oral and documentary evidence, two courts below have held that the plaintiff is in

possession of the property. Since this is a factual finding, I do not want to interfere with the same since there are no materials placed before me by the appellant to assail the said factual findings recorded by the two courts below. Since, it is a concurrent finding which does not reflect any infirmity, I am not inclined to interfere with that part of the decree granting injunction in favour of the plaintiff not to interfere with his possession, but it does not mean that the defendant has got no right over the suit property. As I have already pointed out, the defendant has got undivided share in the suit property and he can work out his remedy separately in the manner known to law and also for mesne profits, if he is so advised.

13. In view of the foregoing discussions, the Second Appeal is partly allowed in the following terms:

1. The decree of the trial court and confirmed by the lower appellate court declaring that the plaintiff is the absolute owner of the suit property alone is set aside;

2. That part of the decree of the trial court confirmed by the lower appellate court granting permanent injunction to the plaintiff restraining the defendant from interfering with the peaceful possession and enjoyment of the plaintiff is confirmed; and

3. The parties are at liberty to work out their remedies for partition in the manner known to law.

No costs. Consequently, connected Miscellaneous Petition is also closed.

-s/d-

Assistant Registrar (CS-V)

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Sub-Assistant Registrar

To

1. The Subordinate Judge, Hosur.
2. The District Munsif, Denkanikotta.

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High Court, Madras.

+ 1 cc to M/s.Ma.P.Thangavel, Advocate SR 15756

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