

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2016
PRONOUNCED ON : 09.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.251 of 2011
&
M.P.No.1 of 2011

Arjunan ... Appellant/Respondent/
Defendant

Vs.

Ponnusamy ... Respondent/Appellant/
Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 25.08.2010 made in A.S.No.45 of 2009 on the file of the learned Principal Subordinate Judge, Krishnagiri, reversing the judgment and decree dated 24.04.2009 made in O.S.No.280 of 2006 on the file of the learned District Munsiff at Krishnagiri.

For Appellant : Mr.J.Hariharan
for V.Nicholas

For Respondent : Mr.S.Kanniah

JUDGMENT

Challenge in this Second Appeal is made by the defendant against the Judgment and decree dated 25.08.2010 made in A.S.No.45 of 2009 on the file of the Principal Subordinate Judge, Krishnagiri, reversing the judgment and decree dated 24.04.2009 made in O.S.No.280 of 2006 on the file of the District Munsiff at Krishnagiri.

2.Suit for declaration and possession.

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

The suit 'A' schedule property was originally owned by the sons of G.Ponnusamy Naidu namely (i) Narayanasamy (ii) Durairaj and the plaintiff was cultivating the suit 'A' schedule property for the past 10 years and purchased the same from them for consideration under a Sale Deed dated 26.05.2005. The defendant had attempted to purchase the suit property. However,

as the property was sold to the plaintiff, the defendant aggrieved over the same in the first week of December 2005 encroached the western side of the suit 'A' schedule property to an extent about 12.5 cents, which has been described in the suit 'B' schedule property and also put up a fence and there by the defendant is in unlawful possession and enjoyment of the suit 'B' schedule property. The defendant despite legal notice did not hand over the possession of the 'B' schedule property to the plaintiff, who is the owner of the suit 'A' schedule property. Hence, the plaintiff has been necessitated to file the suit.

4.The case of the defendant is as follows:

The suit not maintainable either in law or in facts. Denying all the averments put forth by the plaintiff in the plaint, according to the defendant, the suit property belonged to one K. Munusamy, S/o.Kuppusamy. The above said person filed a suit in O.S.No.275 of 65 and brought the suit property and other properties for sale in REA No.1100 of 69 in REP No.668/68 and accordingly he had also purchased the properties in court action and thereafter the real owners of the properties concerned challenging the sale, preferred the suit in O.S.No.1261 of 79. The above said suit was filed by the defendant claiming that all the sharers in the suit property are entitled to obtain 1/5th share. The plaintiff has not purchased the 'A' and 'B' schedule properties from the lawful owners. Further, the plaintiff seems to have purchased the properties from his vendors even before the decree passed in O.S No.1261 of 79 declaring the shares of the respective owners. Further, the suit filed by Ponnusamy in O.S.No.22 of 96 was dismissed for default and further the suit laid by the plaintiff in O.S.No.23 of 96 in respect of the suit properties was also dismissed for default on 20.03.2000. Therefore, the plaintiff according to the defendant has laid the suit without any cause of action and hence the suit is liable to be dismissed.

5. In support of the plaintiff's case, PW1 and 2 were examined. Exs.A1 to A9 were marked. On the side of the defendant, DW1 and 2 were examined. Exs.B1 to B9 were marked. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff has preferred the first Appeal.

6.The first Appellate Court after a reappraisal of the evidence, partly allowed the Appeal and accordingly, declared the plaintiff's right in respect of the 'A' & 'B' schedule properties. However, dismissed his claim for recovery of possession of the 'B' schedule property. The defendant has challenged the judgment and decree of the first Appellate Court, in this Second Appeal.

7.The plaintiff claims title to the suit 'A' schedule property based upon the purchase from his vendors namely (i) Narayanasamy (ii) Durairaj, Sons of G.Ponnusamy Naidu, under the Sale Deed dated 26.09.2005 and the said Sale Deed has been marked as Ex.A1. According to the plaintiff, the suit 'B' schedule property forms part of suit 'A' schedule property purchased by him, under Ex.A1. Further, according to the plaintiff's case, the attempt of the defendant to purchase the suit 'A' schedule property failed. Aggrieved over the same, it is alleged that the defendant encroached into the suit 'B' schedule property without any authority and therefore according to the plaintiff he has been necessitated to file the suit as against the defendant for suitable reliefs.

8.Per contra, the defendant has questioned the ownership of the plaintiff in respect of the 'B' schedule property. According to the defendant, the plaintiff's vendors had no title or right over the 'A' schedule property and therefore, the plaintiff cannot derive any title under Ex.A1 in respect of the 'A' schedule property. Further, according to the defendant, on the basis of the decree obtained by one K.Munusamy, S/o.Kuppusamy in O.S.No.275 of 1965, the properties covered in S.Nos.646 & 649 were brought for sale in REA No.1100 of 69 in REP No.668 of 68 and K.Munusamy, S/o.Kuppusamy had purchased the properties covered in the above proceedings in the Court auction. Thereafter, challenging the same, it is the case of the defendant that he impleaded the other sharers in the properties concerned and preferred O.S.No.1261 of 79 and in that suit a preliminary decree was passed on 12.08.85 declaring that all the five sharers are each entitled to 1/5th share in the properties. Therefore, according to the defendant, the plaintiff having not purchased the suit property from the lawful owners and even prior to the declaration of the shares of the owners in O.S.No.1261 of 79 could not lay any claim over the suit property and therefore, according to the defendant the suit is liable to be dismissed.

9. It is not disputed that the suit 'B' schedule property forms part of the suit 'A' property. No doubt on a perusal of the plaint and also the evidence adduced by the plaintiff it could be seen that the plaintiff has not clearly explained as to how his vendors had derived title to the suit 'A' schedule property. On that footing, it appears that the trial Court has negated the plaintiff's claim.

10.However, the Appellate Court on a reappraisal of the evidence based upon the oral and documentary evidence adduced by the parties concerned particularly, the defendant's case, had traced the source of title of the plaintiff's vendors and accordingly held that the plaintiff had purchased the suit 'A' schedule property from the lawful owners and thus the plaintiff is entitled to seek and obtain the declaratory relief in respect of the suit property.

11.The defendant's case is that one K.Munusamy, S/o.Kuppusamy has obtained the decree in O.S.No.275 of 65 on the basis of the promissory note and in execution of the decree passed in the said suit, the properties were brought for sale in REA No.1100/69 in REP No.688 of 68 viz., the properties covered in S.Nos.646 & 649 were brought for sale and K.Munusamy, S/o.Kuppusamy had purchased the same in the court auction sale. Challenging the same and also for declaring the shares of the owners of the above said properties, the defendant, it appears, has filed a suit in O.S.No.1261 of 79. In the said suit a preliminary decree has been passed on 12.08.1985 and this could be seen from the copy of the judgment and decree marked as Exs.B5 & B4 respectively. The delivery receipt issued in respect of REA No.1100 of 69 in REP No.688 of 68 in O.S.No.275 of 65 has been marked as Ex.B3.

12.Therefore, from the above case of the defendant, it could be seen that the court in O.S.No.1261 of 79 had declared that the sharers in respect of the properties concerned are each entitled to obtain 1/5th share in the properties. The copy of the plaint in O.S.No.1261 of 79 has been marked as Ex.A6. From the above said document, it could be seen that the five sons namely Venkataraman, Chinnappaian, Kullan @ Munisamy, Mookkappan @ Govindasamy and Chendrayan are each entitled to get 1/5th share in the properties. The second son of Chinnappaian @ Govindan has been arrayed as second defendant in the said suit. The defendant is the first plaintiff and the first son Venkataraman has been arrayed as first defendant. His son Kuppusamy has been arrayed as second plaintiff. In as much as the Kullan @ Munisamy, Mookkappan @ Govindasamy and Chendrayan had already died, their wives namely Pachammal, Vellaiyammal and Govindammal had been arrayed as defendants 3 to 5 in the above said suit. Chinnaraj, who is the son of Kullan @ Munisamy had also been arrayed as the sixth defendant in the said suit. Therefore, the first Appellate Court on the basis of the defence taken by the defendant and the documents marked on the respective sides has found that in O.S.No.1261 of 79, in respect of the properties including the suit property, the owners were held to be entitled to 1/5th share each. Accordingly, the lower Appellate Court has found that Govindammal, W/o. Chendrayan would be entitled to get 1/5th share in the properties concerned.

13.Further, as per the case of the defendant from the copy of the sale deed dated 05.08.80 marked as Ex.B6, it is found that the plaintiff's vendors father Ponnusamy Naidu had purchased the specific extent in the suit Survey Number from Govindammal, W/o.Chendrayan and further from Ex.B7, a copy of the Sale Deed dated 16.02.83, the specific extent in the suit Survey Number were also purchased by the plaintiff, which Sale Deed had been executed by Valliyammal, W/o.Mookkappan @ Govindasamy and her daughter. Therefore, on the basis of the above said available evidence, the lower Appellate Court has

come to the conclusion that in as much as all the five brothers have equal share in the properties concerned including the suit property and the father of the plaintiff's vendors' namely Ponnusamy Naidu had purchased the share to which Govindammal, W/o.Chendrayan is entitled under Ex.B6 and the same had been sold to the plaintiff under Ex.A1 by Ponnusamy Naidu's sons found that the plaintiff had purchased the suit property only from the lawful owners.

14.With reference to the contention put forth by the defendant that the plaintiff having purchased the properties under Ex.A1 much prior to the declaration of the sharers entitlement in O.S.No.1261 of 79, the sale in favour of the plaintiff would not be valid, the above defence put forth by the defendant, as rightly held by the first Appellate Court cannot be sustained. It is not the case of the defendant that the plaintiff had purchased the properties under Ex.A1 more than the share to which Govindammal is entitled as one of the sharers. Under Ex.A1, the total extent purchased is only 25 cents and the lower Appellate Court has rightly found that out of the total extent of 1.63 cents in S.No.649/5, each sharer would be entitled to get 32.6 cents. Therefore, the lower Appellate Court has held that the plaintiff's vendors' father Ponnusamy Naidu having purchased the share of Govindammal under Ex.B6 and in as much as the plaintiff had purchased lesser extent from the sons of Ponnusamy under Ex.A1, has held that the plaintiff's purchase under Ex.A1 is valid in law. Further, as rightly found by the lower Appellate Court, even though the shares would not be entitled to definite share in the joint family properties, however they would be entitled to sell their share during the pendency of the suit, even prior to the declaration of their respective shares. In such view of the matter it could be seen that the plaintiff having purchased the suit 'A' schedule property under Ex.A1 from the real owners and therefore, the defence put forth by the defendant that the plaintiff's Sale Deed, Ex.A1 is invalid cannot be countenanced.

15.As rightly found by the lower Appellate Court in as much as the plaintiff has purchased the suit 'A' schedule property from the lawful owners, it could be seen that the defence put forth by the defendant that the plaintiff should have purchased the property through K.Munusamy, S/o.Kuppusamy, cannot hold any ground. It could be seen that pursuant to the preliminary decree passed in O.S.No.1261 of 79, as rightly found by the lower Appellate Court, the plaintiff has stepped into the shoes of his predecessor-in-interest Govindammal, the fifth defendant in O.S.No.1261 of 79 and accordingly, it could be seen his purchase under Ex.A1 is a valid one. Therefore as rightly found by the lower Appellate Court, the plaintiff has to work out his remedies for seeking possession of his share by taking necessary steps in the final decree proceedings as provided to him under law.

16.In conclusion, it could be seen that the lower Appellate Court was right in holding that the plaintiff is entitled to seek the relief of declaration in respect of the suit 'A' & 'B' schedule properties.

17. In the light of the above facts, no interference is warranted to the above findings of the lower Appellate Court. At the end, I found that no substantial question of law is involved in this Second Appeal. Accordingly, the Second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Judge,
Krishnagiri.

2.The District Munsif,
Krishnagiri.

+lcc to Mr.V.Nicholas, Advocate, S.R.No.64719

+lcc to Mr.S.Kanniah, Advocate, S.R.No.64417

S.A.No. 251 of 2011

SCD(CO)

CA(03/01/2017)

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