

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 29.11.2016****PRONOUNCED ON : 01.12.2016****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN**

S. A.No.310 of 2011
and
M.P.No.1 of 2011

1.Murugan
 2.Babu
 3.Malliga

...
 Vs.

Appellants

1.Sivasankar
 2.Karunanidhi

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 08.12.2010 passed in A.S.No.37 of 2010 on the file of the Principal Sub Court, Cuddalore confirming the judgment and decree dated 04.03.2010 passed in O.S.No.466 of 2008 before the Additional District Munsif Court, Cuddalore.

For Appellants : Ms. A.Nilaphar
 for Ms.R.Meenal

For Respondents : Mrs.G.Sumithra

JUDGMENT

The defendants 2 to 4 in this second appeal have challenged the judgment and decree dated 08.12.2010 passed in A.S.No.37 of 2010 on the file of the Principal Sub Court, Cuddalore, confirming the judgment and decree dated 04.03.2010 passed in O.S.No.466 of 2008 on the file of the Additional District Munsif Court, Cuddalore.

2. The suit has been initially laid by the plaintiffs for declaration and permanent injunction. Subsequently, on account of the trespass made into the suit property by the defendants, during the pendency of the suit, by way of amendment, the plaintiffs have also sought the relief of recovery of possession of the suit property from the defendants.

3. In short, the plaintiffs case is that the suit property originally belonged to Kathirvel Padayachi and Kathirvel padayachi and his wife mortgaged the suit property on 10.01.1969 to one Krishnaveni ammal and subsequently, sold the suit property in favour of the Krishnaveni ammal on 12.05.1969 and thereafter, Krishnaveni ammal conveyed the suit property in favour of the first plaintiff on 02.05.2002. Further, according to the plaintiffs, originally Kathirvel Padayachi had executed a settlement deed dated 20.10.1956 in favour of his wife

Sivabakkiya Ammal. However, the same was not given effect to and only the settlor had been in possession and enjoyment of the suit property. Further, according to the plaintiffs, by the release deed dated 09.02.1973, the legal heirs of Kathirvel Padayachi had released their right in respect of the suit property in favour of Krishnaveni ammal and thus, the plaintiffs claim title to the suit property.

4. The defendants have denied the title of the plaintiffs in respect of the suit property. According to the defendants in short, one Govindasamy was in possession and enjoyment of the suit property and he was highly indebted to the first defendant's mother-in-law and thereafter, the first defendant's mother-in-law was in possession and enjoyment of the suit property for several years and after her, her son Ramalingam was in possession and enjoyment and thereafter, the first defendant has been in possession and enjoyment and the first defendant had settled the property in favour of the 4th defendant, her daughter on 22.02.2002 and thus, it is stated that the defendants are in possession and enjoyment of the suit property.

5. The suit property is stated to be situated in Survey No.744/2 within specific boundaries. No doubt, in the documents of title relied

upon by the plaintiffs, the survey number as given in the plaint has not been mentioned, in particular in the mortgage deed dated 10.01.1969, EX.A1, the sale deed dated 12.05.1969, Ex.A2, the Settlement deed dated 20.10.1956, Ex.A4 and the release deed dated 09.02.1973, Ex.A5. The survey No.744/2 has not been mentioned. However, in the sale deed executed in favour of the first plaintiff by Krishnaveni ammal 02.05.2002 marked as Ex.A3, the correct survey number has been mentioned. Pointing to the above discrepancy, it is contended by the defendants that the title deeds relied upon by the plaintiffs do not indicate that the suit property had been dealt with and therefore, the plaintiff's predecessor in interest has no right or title over the suit property. However, the courts below have not accepted the above plea of the defendants. It could be seen that the courts below have analysed the description of the property given in the above mentioned documents particularly Exs.A1, 2, 4 and 5 and affirmed that on a careful analysis of the description of the property described therein, the boundary recitals are found to be the same in all the abovesaid documents and therefore, the courts below have found that though the survey number has been wrongly given, based upon the boundary recitals found in the above said documents, held that the identity of the property has been made out correctly and it has been found that only the suit property had been dealt with in the

above mentioned documents by the predecessor in interest of the plaintiffs. Further it has also been found that subsequently noting the mistake, the plaintiff's vendor Krishnaveni has given the correct survey number in Ex.A3 while conveying the property to the first plaintiff. Even thereto on a comparison of the boundary recitals with that of the boundary recitals found in Exs.A1,2, 4 and 5, the courts below have found that it is only the suit property which had been dealt with under the earlier documents and the same had been conveyed to the first plaintiff under Ex.A3.

6. No doubt, the suit property has been described as vacant site in the plaint. However, in the documents of title relied upon by the plaintiff, it has been described both as vacant site as well as containing site with superstructure. Be that as it may, on the basis of the boundary recitals, as rightly found by the courts below, there is no dispute as to the identity of the property involved in the above said documents of title. In the light of the above position, when the suit property had been rightly identified by the courts below based upon the boundary recitals and other attending circumstances, it could be seen that the decision relied upon by the defendants counsel reported in **1984 2 MLJ 306 (Dina Malar Publications, a Tamil daily, repto., by its partner, R.Krishnamoorthy V. The**

Tiruchirapalli Municipality, repled., by its Executive Authority, the Commr., and others) would not be applicable to the facts and circumstances of the present case. In this case, as far as the extent of the suit property within the stated boundaries, there is no dispute. Therefore, the above decision would not be helpful to hold that the earlier title deeds relied upon by the plaintiff do not point to the suit property.

7. It is further contended by the defendants' counsel that Kathirvel Padayachi having executed the settlement deed upon his wife under Ex.A4 giving her only life interest and the vested remainder to his male or female issues as the case may be, would thereafter have no saleable interest over the suit property and therefore, he could not have validly conveyed the suit property to Krishnaveni ammal under Ex.A2. However, the above plea cannot be accepted. It is the specific case of the plaintiffs that the above said settlement deed executed had not been acted upon and even thereafter, it is only Kathirvel padayachi, who had been in possession and enjoyment of the suit property. This could be seen from the recitals found in the mortgage deed executed by Kathivel Padayachi and his wife Sivapackiam ammal in favour of Krishnaveni ammal under Ex.A1. Therefore, it could be seen that as rightly found by the

courts below, the settlement deed Ex.A4 had not been acted upon and that Sivabakkia amml the wife of Kathirvel Padayachi had not accepted the settlement deed and took possession of the suit property and therefore, it could be seen that the plea of the defendants that Kathirvel Padayachi would not have any saleable interest over the suit property after Ex.A4 as such cannot be countenanced. Be that as it may, it is also found that in order to obviate legal problems according to the plaintiff, the legal heirs of Kathirvel padayachi had under Ex.A5 released their right over the suit proeprty in favour of Krishnaveni ammal, the plaintiffs' vendor. Therefore, it could be seen that in order to put at rest the legal issues that may ensue in future, the legal heirs of Kthirvel Padayachi had released their rights in favour of the Krishnaveni ammal. Such being the position, the defendants, who have no manner of right or title over the suit property cannot be allowed to contend that Kathirvel Padayachi after Ex.A5 would not have legal right over the suit property. As rightly argued by the plaintiff counsel, if at all any one, who would be entitled to question the sale/conveyance made in favour of Krishnaveni ammal or the plaintiffs, the same would be only the legal heirs of Kathirvel padayachi. They having not made any protest over the issue and particularly when they have admitted the release deed Ex.A5, it could be seen that the defendants for the sake

of contest had projected the defence that Kathivel Padayachi had no right over the suit property after the execution of Ex.A5. Further, as rightly found by the courts below, the legal heirs of Kathirvel Padayachi have also given reasons in Ex.A5 as to why they had come forward to execute the release deed in favour of Krishnaveni ammal and the same had found acceptance by the courts below and no exception could be taken to the same.

8. The defendants have not come out clearly as to how they claim title to the suit property. From the evidence adduced by the defendants, it could be seen that the defendants claim title to the suit property based on an oral sale and the oral sale projected by the defendants have been disbelieved by the Courts below. Further, when the oral sale has not been established, the case of the defendants that the first defendant had settled the suit property in favour of the 4th defendants as such cannot be accepted. The first defendant has not been shown to have legal competency to execute the settlement deed in respect of the suit property in favour of the 4th defendant. Therefore, it could be found that the courts below have rightly found that the defendants have miserably failed to establish their title or right over the suit property in any manner.

9. The defendants have also take a plea that it is only they, who are in possession and enjoyment of the suit property and not the plaintiffs even prior to the suit and therefore, the plaintiffs case should not be accepted. According to the defendants, it is argued that inasmuch the plaintiffs have never been in possession and enjoyment of the suit property, they have described the suit property as a vacant site and where as, there is a house structure on the suit property and therefore, the defendants having been found to be enjoying the same, the plaintiffs' case should fail. However, the above plea of the defendants did not find favour in the hands of the courts below. Even in the document relied upon by the defendants marked as Ex.B1, the suit property has been described only as the vacant site. It could be seen that after the institution of the suit, the defendants have encroached into suit property and put up the house superstructure thereon. This has been found by the courts below and therefore, it could be seen that the plaintiffs have been necessitated to amend the plaint and seek the relief of recovery of possession. No exception can be taken to the findings of the courts below that the defendants have trespassed into the suit property and not residing in the suit property for a long time as pleaded by them. The documents projected by the defendant have come into existence only after the execution of Ex.B1. When Ex.B1 itself is found to be an invalid

document it could be seen that the other documents pursuant to the same relied upon the defendants to show their possession of the suit property cannot be safely relied upon in any manner.

10. Lastly, the defendants counsel also placed reliance upon the decision reported in **1996 1 MLJ 118 (Kannu Reddiar V.T.Palanirajan and others)** for the proposition that the plaintiff can succeed or fail only on his own pleadings and evidence and not on the basis of any mistake committed by the defendants. As rightly put forth by the plaintiffs counsel, there is no quarrel over the above proposition of law.

11. In the light of the above discussions, it could be seen that the courts below have properly analysed the evidence adduced by the respective parties in the right perspective and following the correct principles of law pertaining to the same and the issues between parties, rightly held that the plaintiffs have established their title to the suit property and accordingly, further held that the plaintiff are entitled to recover possession of the suit property from the defendants. No exception can be taken to the same and they are confirmed.

At the end, no substantial question of law is found to be involved in this second appeal and accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.12.2016

Index : Yes/No
Internet: Yes/No
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To

1. The Principal Sub Court, Cuddalore.
2. The Additional District Munsif Court, Cuddalore.

T.RAVINDRAN,J.

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Pre-delivery order in
S. A.No.310 of 2011
and
M.P.No.1 of 2011

01.12.2016