

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.10.2016

PRONOUNCED ON : 21.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.66 of 2011

Kandayee

...

Appellant

Vs.

1. Gopal
2. A.Chinnasamy
3. Kalarani
4. Rukmanai
5. Chandra

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 09.02.2010 made in A.S.No.97 of 2009 on the file of the Learned II Additional Sub-ordinate Judge, Salem, reversing the Judgment and Decree dated 20.10.2008 made in O.S.No.1157 of 2008 on the file of the Principal District Munsif Court, Salem.

For Appellant : Mr.A.Ramalingam

For Respondents : Mr.V.R.Annagandhi

JUDGMENT

Challenge in this second appeal is made by the appellant /plaintiff against the judgement and decree dated 09.02.2010 made in A.S.No.97 of 2009 on the file of the Second Additional Subordinate Court, Salem, reversing the Judgement and decree dated 20.10.2008 made in O.S.No.1157 of 2008 on the file of the Principal District Munsif Court, Salem.

2. The suit is for declaration, possession and Permanent Injunction.

3. The averments contained in the plaint are briefly stated as follows:

The suit property, which is a vacant site, measuring about 201 sq.ft, along with some other property originally belonged to Sellakannu Pandaram and he sold the same to Lakshmiammal under a registered sale deed dated 22.04.1970. The plaintiff purchased 1770 sq.ft of land along with joint right in the manure pit from Lakshmiammal under a registered sale deed dated on 07.02.2002 and on 20.02.2006, the plaintiff purchased the suit property from Lakshmiammal under the registered sale deed. Thus, the plaintiff is

the absolute owner of the suit property. The defendants, who are strangers to the suit property, are claiming right over the same without any title or interest and forcibly encroached into the suit property on 21.09.2007, for which, a police complaint had been lodged. The defendants are liable to be evicted from the suit property and hence, the suit.

4. The averments, in the written statement filed by the first defendant and adopted by the other defendants, are briefly stated as follows:

The suit is not maintainable either in law or on facts. It is false to state that the plaintiff had purchased 1770 sq.ft from Lakhmiammal on 07.02.2002 and the plaintiff had purchased the suit property measuring 201 sq.ft from Lakshmiammal on 20.02.2006. The defendants never encroached upon the suit property as alleged in the plaint. The sale deeds were fraudulently created by the plaintiff and patta had been obtained. The plaintiff is not in possession of the suit property. There is no cause of action for the suit and hence, the suit is liable to be dismissed.

5. In support of the plaintiff's case, the plaintiff examined herself as PW1 and Exs.A1 to 3 were marked. On the side of the defendants, the first defendant had been examined as DW1 and Exs.B1 to 7 were marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for. Aggrieved over the Judgment and Decree of the trial Court, the defendants preferred the first appeal and the first appellate court, on a consideration of the evidence adduced in the matter, was pleased to allow the appeal and thereby set aside the Judgment and decree passed by the trial Court and consequently, the suit had come to be dismissed. Aggrieved over the Judgment and Decree of the first appellate Court, the plaintiff has preferred this second appeal.

7. For the sake of convenience, the parties are referred to, by their ranking in the trial Court.

8. The plaintiff claims title to the suit property measuring 201 sq.ft by virtue of the sale deed dated 20.02.2006. According to the plaintiff, she had purchased the suit property from Lakshmiammal.

Further, according to the case of the plaintiff, the suit property and other properties originally belonged to Sellakannu Pandaram and Sellakannu Pandaram had sold the same to Lakshmiammal under the registered sale deed dated 22.04.1970.

9. The defendants have vehemently denied the title of the plaintiff in respect of the suit property. According to the defendants, the plaintiff has created the sale deeds alleged in the plaint fraudulently and laying false claim over the suit property. It is stated further that the plaintiff was not in possession and enjoyment of the suit property at any point of time and without any cause of action, has laid the suit against the defendants. In the light of the defence put forth by the defendants, it can be seen that the onus is on the plaintiff to establish that she has valid title to the suit property. However, the plaintiff, for the reasons best known to her, has failed to establish that her vendor viz. Lakshmiammal had title to the suit property. Other than marking sale deed dated 20.02.2006, no other material has been put forth by the plaintiff to hold that Lakshmiammal had title to the suit property. It is the specific case of the plaintiff that Lakshmiammal had purchased the suit property under the registered sale deed dated 22.04.1970. However, the said sale deed has not seen the light of the day. No proof whatsoever has been placed by the

plaintiff to show that right from the year 1970, Lakshmiammal had been in possession and enjoyment of the suit property. The plaintiff claims to have purchased 1770 sq.ft from Lakshmiammal in the year 2002 and with reference to the same, she has deposed that Lakshmiammal was owning 13 cents by virtue of sale deed of the year 1970 and out of the same, the plaintiff has purchased 1770 sq.ft and the remaining extent has been purchased by Govindan and Sellakannu and after the purchase by the plaintiff, Govindan and Sellakannu from Lakshmiammal in the year 2002, Lakshmiammal was not owning any property. Therefore, as rightly found by the first appellate court, it is very clear that Lakshmiammal had no property to sell in the year 2006.

10. In such circumstances, the case of the plaintiff that Lakshmiammal had title to the suit property and that, she had conveyed the same to the plaintiff under Ex.A1 cannot be accepted in any manner. As found earlier, the plaintiff has not put forth any material to hold that at any point of time, Lakshmiammal had been in possession and enjoyment of the suit property as full owner thereof. Similarly, the plaintiff has also not placed any materials to hold, from the date of purchase, under Ex.A1, she has been in possession and enjoyment of the suit property.

11. The plaintiff's counsel contended that the plaintiff has been granted patta in respect of the suit property, pursuant to the purchased under Ex.A1. Impugning the same, it is argued by the defendants' counsel that patta has also been obtained fraudulently based on Ex.A1 and as rightly argued by the counsel for the defendants, patta cannot be equated to document of title and therefore, no credence could be given to patta, marked as Ex.A3, to hold that the plaintiff has valid title to the suit property.

12. It is argued by the plaintiff's counsel that inasmuch as the defendants have taken a plea that the plaintiff has fraudulently created the sale deed in respect of the suit property, the burden is upon the defendants to establish the fraudulent acts of the plaintiff. However, the above argument does not merit acceptance. The plaintiff having come forward with the specific case that she has purchased the suit property from the original owner and when the same has been stoutly denied by the defendants, as rightly argued by the defendants' counsel, the burden squarely lies upon the plaintiff to establish by producing acceptable and reliable materials that her vendor viz., Lakshmiammal had title to the suit property and that, she

was competent to alienate the same under Ex.A1 Sans proof with reference to the same, as rightly found by the first appellate Court, the plaintiff cannot be granted any relief as prayed for in the plaint.

13. No doubt, the defendants have not pleaded in the written statement that they have valid title to the suit property. However, it is the specific case of the defendants that they are in possession and enjoyment of the suit property. The plaintiff has also admitted the possession and enjoyment of the suit property by the defendants and accordingly, the plaintiff has prayed for the relief of recovery of possession for the suit property from the defendants.

14. Be that as it may, the plaintiff has come forward with the claim of specific reliefs, her case should stand or fall on the merits of her own case. In my considered opinion, the plaintiff has failed to establish her title to the suit property by producing acceptable and reliable material. As rightly found by the first appellate Court, the plaintiff has instituted the suit without any cause of action and therefore, the plaintiff's case has to fail.

In conclusion, I hold that no substantial question of law is involved in this second appeal and no interference is called for with

reference to the findings of the first appellate court. Accordingly, the second appeal is dismissed. No costs.

21.10.2016

Index : Yes/No
Internet: Yes/No
sms

To

1. II Additional Sub-ordinate Judge,
Salem.
2. The Principal District Munsif Court,
Salem.

T.RAVINDRAN,J.

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Pre-delivery order in
S. A.No.66 of 2011

21.10.2016