

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

S.A.No.199 of 2017

Ramesh

... Appellant/Defendant

Versus

Gopalakrishnan

... Respondent/Plaintiff

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 13.07.2016 passed in AS.No.17/2014 on the file of the learned Principal Subordinate Judge, Tindivanam, confirming the judgment and decree dated 30.10.2013 passed in OS.No.78/2005 on the file of the learned District Munsif cum Judicial Magistrate, Vanur.

For Appellant : Mr.Om.Sairam

For Respondent : Mr.C.Prabakaran

JUDGMENT

The defendant in OS.No.78/2005 on the file of the Court of District Munsif-cum-Judicial Magistrate, Vanur, lost before the Trial Court and on appeal in AS.No.17/2014 on the file of the Court of Principal Subordinate Judge, at Tindivanam, also, he lost it and hence, filed the present Second Appeal.

2. The facts leading to the filing of this Second Appeal, briefly narrated, are as follows:-

[a] The suit property admeasuring to an extent of 0.06 $\frac{3}{4}$ cents with a thatched shed in Survey No.10/7 in Re-Survey No.138/10, Pallar Street, Kottakuppam Village, Vanur Taluk. It is the case of the respondent / plaintiff that the suit property was enjoyed by one Kanagasabai, father of Murugan for very many years and after him, Murugan was in possession and enjoyment of the suit property and on 07.02.2001 [under Ex.A1], he sold the said property in favour of the plaintiff for a valid consideration and to the East of the suit property, his ancestral property is also located. The respondent / plaintiff

would further aver that the suit property actually measures 0.06 $\frac{3}{4}$ cents, but by mistake, it has been mentioned as 0.05 $\frac{1}{2}$ cents since the boundary prevailing over the extent, it should be construed as 0.06 $\frac{3}{4}$ cents.

[b] It is the specific case of the plaintiff that on 08.03.2005, Anbarasan, Ravikumar, Lakshminarayanan had created a Sale Deed in favour of watchman Ramesh-the appellant herein and except the predecessors in title, namely, Kanagasabai and Murugan, no one is having right and title in respect of the said property and the plaintiff had also made attempts to change patta in his name and therefore, led to the institution of the suit and he has also sent a legal notice under Ex.A32 dated 19.04.2005 and in spite of receipt and acknowledgment, the appellant/defendant did not chose to respond to the same and therefore, came forward to file the suit for declaration and for permanent injunction.

[c] The appellant/defendant filed a written statement denying the averments made in the plaint and would contend that the extent of the property is 8 cents and on 10.07.1939 [Ex.B1], Govindasamy has sold the property in favour of Kanni Gounder and possession was also handed over to him and it remained as a vacant land and Kanni Gounder has constructed a house and made his sister Chinnakuzhandhai to reside in the suit property and after her demise, her daughter Kuppayee, was in possession and enjoyment of the suit property. The appellant / defendant would further aver that Kanni Gounder's legal heirs, viz., Ramanujam, Duraisamy, Ramadoss, Perumal and Thulasi, had appointed Natarajan as the Power of Attorney and he was looking after the same and the said Power of Attorney was revoked on 08.03.2005 and on the very same day, it was sold in favour of the plaintiff [under Ex.B2] and since then, the defendant is holding the title and the claim made by the plaintiff as to the right, title and possession in respect of the property is wholly unsustainable and prays for dismissal of the suit.

[d] The Trial Court, on a consideration of the pleadings, had framed the following issues:-

[a] Whether the plaintiff has valid title to the suit property and is entitled to declaration of title to the suit property as sought for? ;

[b] Whether the plaintiff is in lawful possession and enjoyment of the suit property and is entitled to permanent injunction as prayed for? ; and

[d] To what other reliefs the plaintiff is entitled to?

[e] During the course of trial, on behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A1 to A32 were marked. On the side of the defendant, D.Ws.1 to 4 were examined and Exs.B1 to B9 were marked.

[f] The Trial Court, on a consideration of pleadings and on appreciation of oral and documentary evidences, has decreed the suit as prayed for vide judgment and decree dated 30.10.2013 and aggrieved by the same, the defendant filed an Appeal in AS.No.17/2014 on the file of the Court of Subordinate Judge, Tindivanam.

[g] The Lower Appellate Court, on a consideration of materials placed before it, had formulated the following points for consideration:-

[i] Whether the Lower Court is correct in decreeing OS.No.78/2005? ; and

[ii] Whether the judgment and decree of the Lower Court is liable to be dismissed [reversed]?

[h] The Lower Appellate Court on appreciation of the oral and documentary evidences and on going through the materials, found that as per Ex.A1, the respondent / plaintiff had purchased the said property admeasuring to an extent of 5 ½ cents only and in respect of the Northern boundary shown as land in Pallar Street and the Eastern boundary shown as lands belonging to Govindasamy and the Southern boundary shown as lands belonging to Kuppusamy and the Western boundary shown as lands belonging to Palani. The Lower Appellate Court has also taken into consideration, the Sale Deed in favour of the appellant/defendant under Ex.B1 and found that the plaintiff had purchased the property in S.No.128/10 and it is bounded on North, by the land belonging to Sabapathy and East, by the land belonging to Govindasamy and South, by land belonging to Kuppusamy and West by Palani Gounder and though Ex.B2 pertains to Door No.9, House Tax Receipt have not been produced and under Exs.B3 and B4, northern boundary shown as Pallar Street, but not as Deivanayagam's land.

[i] The Lower Appellate Court further found on perusal of Ex.B2 and the boundaries mentioned in Ex.B1, had reached the conclusion that the suit property and the property purchased by the defendant under Ex.B2 are different one and taking into consideration of the fact that under Ex.A15, the extent of the land purchased by the respondent / plaintiff measures only 5 ½ cents in S.No.128/10. The Lower Appellate Court has also found that the plaintiff, through Ex.A15-Sale Deed, coupled with the other exhibits, proved his title and possession. Therefore, upheld the judgment and decree passed by the Lower Court and dismissed the Appeal vide impugned Judgment and decree dated 13.07.2016. Aggrieved by the same, the defendant has filed the Second Appeal.

3. In the Memorandum Grounds of Second Appeal, the following Substantial Questions of law are raised:-

[a] Whether the Courts below is correct in not applying the raiton laid down in the judgments reported in 2013[2] CTC 347 and 1999 [3] CTC 650? ;

[b] Whether the Courts below are correct in granting declaration of title to respondent / plaintiff based on the revenue record?

[c] Whether the Lower Appellate Court is correct in confirming the decree of Trial Court without giving independent reasons while confirming the trial court Judgment and decree as per the provision of Civil Procedure Code?

[d] Whether the Courts below are correct in ignoring the Exhibit B1 and B2, ie., patta and A Register marked through P.W.1 wherein names of respondent or his vendor name does not reflect?

4. Mr.Om Sairam, learned counsel for the appellant/defendant has drawn the attention of this Court to the judgments and decrees passed by the Trial Court as well as the testimony of P.W.1 and would submit that the respondent / plaintiff had purchased only possessory right said to have been enjoyed by Kanagasabhai and Murugan and in Ex.A15-Sale Deed, in and by which, the plaintiff said to have been purchased the said property, prior title has not been traced and whereas, as per the Sale Deed under Ex.B2 dated 08.03.2005, the said property was purchased by the appellant / defendant from Ramanujam, Duraisamy, Ramadoss, Perumal and Thulasi, wherein, the earlier title has been proved and also drawn the attention of this Court to the evidence of P.W.1 and would submit that it is the own admission of P.W.1-respondent / plaintiff that he had purchased only possessory rights and since he has failed to establish his title to the said property through a tenable evidence, the judgments rendered by the Trial Court as affirmed by the Lower Appellate Court warrants interference and prays for setting aside the impugned judgment and decree passed by the Courts below and as a consequence, prays for allowing of the appeal.

5. The Court heard the submissions of MR.C.Prabakaran, learned counsel appearing for the respondent / plaintiff and also perused the materials placed before it.

6. The Trial Court, on a consideration of pleadings and on appreciation of oral and documentary evidences, found that the Sale Deed under Ex.B2, in and by which, the appellant/defendant claims to have purchased the property, there has been an interleniation and the Northern boundary has been mentioned as Pallar Street and there is no endorsement as to the interleniation made in the said document and it has also been

endorsed by the Sub Registrar who has registered the document. The Trial Court has also found that Ex.B2 pertains to Door No.9 and whereas, the predecessor in title or the respondent / plaintiff has paid the House tax for Door No.9A and thereafter, it was conveyed in favour of the respondent / plaintiff and pertains to Door No.21/9/A.

7. The Trial Court also found that the defendant / appellant has not chosen to produce the House Tax Receipt pertaining to Door No.9 and the General Power of Attorney executed on 28.05.2001 in the name of persons who had conveyed the property in favour of the appellant / defendant under Ex.B2 and the said Power of Attorney has also been subsequently cancelled under Ex.B4.

8. Ex.B4-cancellation of the Power of Attorney Deed would also disclose that northern boundary shown as lands belonging to Deivanayagam and not Pallar Street and therefore, the Trial Court has reached the conclusion that the said property is completely different from the property which has been purchased by the appellant/defendant under Ex.B2.

9. The Trial Court has also, after going through exhibits numbering 35 marked on behalf of the respondent / plaintiff, found that the patta has been issued in respect of 220 sq.m., which is 5.43 cents and the notice under Ex.A2 pertains to an extent of 5 ½ cents which is 2395 sq.ft and though the plaintiff has claimed larger extent of 6 ½ cents of land, he is entitled to only 5 ½ cents and consequently, granted declaration.

10. The Lower Appellate Court has also independently applied its mind to the materials and reached the conclusion that the case projected by the appellant/defendant has no merits and has confirmed the findings rendered by the Trial Court by dismissing the appeal suit.

11. It is the primordial submission of the learned counsel for the appellant / defendant, that in the light of the admission made by P.W.1 in his evidence, as the plaintiff has purchased only the possessory rights, he is not entitled to any such relief. Admittedly, in the typed set of documents, the appellant/defendant has filed only the testimony fo P.W.1 and not his evidence.

12. The factual aspects as well as the question of law, had been considered by the Lower Appellate Court and this Court has to entertain the Second Appeal only on substantial questions of law in exercise of its jurisdiction under section 100 of CPC, 1908. In the considered opinion of the Court, the Courts below, on proper appreciation of evidence and on correct application of

law, had reached the conclusion to grant decree in favour of the plaintiff and the said findings are also concurrent in nature.

13. There are no substantial questions of law arising for consideration, leave alone the substantial questions of law and the Lower Appellate Court, which is the final Court on facts as well as question of law, had reached the conclusion to accept the findings rendered by the Trial Court and dismissed the Appeal Suit.

14. The Second Appeal lacks merit and deserves dismissal and accordingly, dismissed at the admission stage itself, confirming the judgment and decree passed by the learned Principal Subordinate Judge, Tindivanam, in AS.No.17/2014 dated 13.07.2016. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Principal Subordinate Judge,
Tindivanam.
2. The District Munsif cum Judicial Magistrate
Vanur.

Copy to:

The Section Officer
VR Section, High Court,
Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.17317
+1cc to Mr.S.T.Raja, Advocate, S.R.No.16965

S.A.No.199 of 2017

RJ(CO)
CA(07/04/2017)