

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.312/2017 & CMP.No.7462/2017

1.Smt.R.Saraswathi

2.Mr.Rajasekaran

.. Appellants /
Defendants 1 & 2

Versus

1.Mr.T.S.Ranganathan

... Plaintiff /1st Respondent
1st Respondent

2.Mrs.A.Bhavani

3.Miss.A.Liya

4.Miss.A.Nancy

5.Miss.A.Santhiya

..Defendants 3 to 6/Respondents 2 to 5
/ Respondents 2 to 5

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to allow the appeal and set-aside the Judgement and Decree passed in AS.No.13/2015 dated 17.10.2016 on the file of the Learned Principal District Judge of Kancheepuram District at Chengalpattu confirming the Judgement and Decree passed in O.S.No.29/2010 (CPT SC O.S.No.168/2003) dated 30.04.2015 by the Learned Subordinate Judge, Tambaram.

For Appellants : Mr.V.Manohar

For Respondents : Mr.C.V.Subramaniam

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JUDGMENT

The defendants who had lost before the Courts below, are the appellants herein.

2. The first respondent / plaintiff had instituted the suit in O.S.No.29/2010 on the file of the Sub Judge at Tambaram praying for the relief of declaration that he is the sole and absolute owner of the suit property bearing No.287, Palkalai Nagar, comprised in Survey No.1(Part) and 80 (part) Patta No.911, as per Patta Sub division No.1/296, Palavakkam Village, measuring an extent of 1800 Sq.ft. in approved lay out

No.MMDS/PPS/LO/15 and also for reconvey of possession and also for mandatory injunction directing the defendants to remove the illegal construction put up by them in the suit property and handover the vacant possession of the suit land to the plaintiff.

3. It is the case of the 1st Respondent/ Plaintiff that he has purchased the above suit property under a registered Sale Deed dated 28.02.1998 (Ex.A1) from the lawful owner and during the year 2003, he visited the suit property and came to know about the construction activities made by the 1st and 2nd defendants and immediately, he lodged a complaint with regard to the said illegal acts.

4. The Plaintiff would further aver that on enquiry he came to know that the 1st defendant had purchased the suit property from the plaintiff's father and one Ms.Sandhiya, under a registered Sale Deed dated 14.02.2001 (Ex.A5), which was admittedly after the purchase made by the Plaintiff under Ex.A1 dated 28.02.1998. It is also a stand of the 1st respondent / plaintiff, in the light of the Ex.A1 which came in to being earlier to that of Ex.A5, the vendors and the 1st defendant had no title to pass and as such, the 1st defendant did not derive any right, title or possession in respect of the suit property. Therefore, despite the attempts and request made, the 1st and 2nd defendants did not come forward to handover the possession of the same. Therefore, he has filed the above said suit.

5. The 1st and 2nd defendants filed their written statement refuting the allegations made in the plaint and took a stand that the 1st defendant who is the absolute and sole owner of the property by virtue of their purchase through valid Sale Deed dated 14.02.2001 from the legal representatives of late Mr.D.Arokiadoss, the original allottee of the said plot by the University of Madras.

6. The defendants would further contend that pursuant to the said purchase, the 1st defendant has been put in possession of the suit property and also started putting up construction lawfully and all revenue records stood mutated in their names. The 1st defendant also took a stand that admittedly one of the vendors was a minor at the relevant point of time and admittedly, permission of this Court has not been obtained before effecting the said purchase. The 1st defendant had purchased the property after one of the daughters of [late] Arokiyadoss who was minor at the time of execution of Ex.A1, became major and as such, the purchase made by her under Ex.A5, Sale deed is a valid one and also took an alternate plea that the 1st defendant is the bona fide purchaser without encumbrance certificate and on the ground also the plaintiff is not entitled to have any claim in respect of the suit property.

7. The 1st defendant also took a stand that the recitals mentioned in Ex.A1 are different from the Sale Deed executed in her favour. There is no localization of the property on the part of the plaintiff and in the light of the fact that construction put up by them, has been completed on the suit property, she prays for dismissal of the suit with cost.

8. The Trial Court on consideration of pleadings had formulated the following issues :

- Whether the plaintiff is absolutely entitled to the suit property?
- Whether the Plaintiff is entitled to recovery of possession of the suit property after removal or superstructure by issue or mandatory injunction as prayed for?
- To what reliefs the plaintiff entitled?

9. During the course of trial, the plaintiff examined himself as PW.1 and marked Ex.A1 to Ex.A10, the 2nd defendant examined himself as DW1 and the 4th defendant examined himself as DW2 and Exs.B1 to B11 were marked.

10. The Trial Court on consideration of pleadings and appreciation of oral and documentary evidence, has decreed the suit as prayed for, vide Judgement and decree dated 30.04.2015.

11. The suit was filed originally on the file of Sub-Court, Chennai in O.S.No. 168 of 2003 and on account of amendments made to the Civil Courts Act, it was transferred to the Principal District Court, Chennai and renumbered as O.S.No.29 of 2010. The Lower Appellate Court on taking note of the grounds of Appeal had formulated the following points for determination :

- Whether the plaintiff in the suit is not entitled for the relief of declaration and possession?
- Whether the plaintiff is not entitled to the relief of mandatory injunction?
- Whether the appeal deserves to be allowed?

12. The Lower Appellate Court, considering the rival submission and on perusal of records had found that it is an admitted case of the parties the suit properties originally belong to Arokiyadass who had purchased the same under the registered Sale deed dated 28.02.1998 and he died intestate leaving behind his legal heirs namely A. Bhavani, his wife (DW.4) and his daughters as DW5 to DW7 and the plaintiff had purchased the property from the defendants 3 to 6 and also from one Durairaj who is the father of Arokiyadoss, under Ex.A1 registered Sale Deed dated 28.02.1998.

13. The Lower Appellate Court further found that after execution of Ex.A1 the vendors of the first defendant namely DW3 to DW7 cannot have any right for the reason that they have no title to the property. The Lower Appellate Court had also dealt with one of the grounds urged by the learned counsel appearing for appellants / defendants as to the sale effected by one of the legal heirs of Mr.Arokiyadass, viz., Ms.A.Sandhiya was aged about 15 and she was minor at the relevant point of time and after attaining majority she did not choose to make a challenge within a period of limitation as to the execution of Sale Deed in favour of the plaintiff.

14. The Lower Appellate Court has also take a note of testimonies of DW1 , the 2nd defendant/the husband of the 1st defendant who is an Advocate by profession and found that DW2, being an advocate, did not verify the original encumbrance certificate for continuous period of 12 years and further found that encumbrance certificate have been marked as Ex.B4 and B5 in respect of the properties herein and Ex.A1 came in to being and no encumbrance certificate has been obtained and further upheld that despite the mutation of records after Ex.A5 in favour of the 1st defendant, the same would not create any right in favour of her for the reason that the patta is not a document of title.

15. The Lower Appellate Court also taken note of the fact the sale consideration paid under Ex.A1 was Rs.4,75,000/- and whereas the very same property which is the subject matter of sale in favour of the 1st defendant under Ex.A5/B2 was for a sum of Rs.1,51,200/- only and it is highly improbable that a property worth about 4,75,000/- at the time of execution of A1, was bona fidely sold for very less sum in the year 2001 and therefore, recorded the findings that a fraudulent transfer has been made in favour of the 1st defendant and upheld that the plaintiff is the absolute owner of the property.

16. The appellants / defendants 1 & 2 also took a stand that admittedly the original of Ex.A1 has not been marked and therefor,e the Trial Court had committed a grave error in admitting the xerox copies of Ex.A1 and found that the original document was filed and subsequently it was misplaced and therefore, the xerox copy was marked and encumbrance certificate would also establish about the existence of Ex.A1. Hence, the procedure adopted by the Trial Court cannot be faulted with.

17. Learned counsel appearing for the appellants / defendants 1 and 2 has also put forward the submission that though it is the claim of the 1st respondent / plaintiff that he has purchased the property under Ex.A.1 as early as on 28.02.1998, he did not visit the property and his claim is that when he visited the property at a later point of time, he found

that construction activities are going on and therefore, filed the suit, cannot be believed for the reason that a person who is really the owner of the property, would not have kept quite without visiting the said property and the said act of the 1st respondent / plaintiff implies that he is not the owner of the property. The Lower Appellate Court has also dealt with that point and given out reasons that it is for the purchaser who is the owner of the property to make a visit to the property or not and he can keep his property according to his preference and ultimately, the Lower Appellate Court concluded that the first defendant before purchasing the property did not make proper verification and DW1 in the course of testimony, would admit that he did not receive the original documents of title from the vendors and insofar as the stand of the appellants that one of the vendors was a minor and therefore, Court permission was not required, has given out a reason that after becoming major, she did not chose to make a challenge to the alienation and ultimately, found that the points urged on behalf of the appellants lack merit and accordingly, dismissed the appeal suit vide impugned judgment and decree dated 17.10.2016 and aggrieved by the same, the appellants are before this Court by filing the present second appeal.

18. Per contra, Mr.C.V.Subramanian, learned counsel appearing for the 1st respondent / plaintiff / Caveator would submit that the Courts below had recorded concurrent findings based upon correct and proper appreciation of oral and documentary evidences and also castigated the appellants as to the non-making of proper and relevant enquiry before purchasing the property and in the light of the same, this Court may not interfere with the impugned judgments in exercise of its jurisdiction under section 100 CPC.

19. This Court has carefully considered the rival submissions and also perused the materials placed before it including the impugned judgments.

20. In the considered opinion of the Court, the concurrent findings recorded by the Courts below warrant no interference for the following reasons. The 1st respondent / plaintiff had purchased the suit property under Ex.A1. Dated 28.02.1998. The 1st defendant, whose husband is the 2nd defendant - an Advocate, did not make proper verification by verifying the Encumbrance as well as making local enquiry as to the subsistence of the prior encumbrance and as such, the first appellant cannot claim as bona fide purchaser, without prior notice of encumbrance. One of the vendors who executed Ex.A.1, viz., the 6th defendant, was a minor and though it is the stand of the appellant that no Court permission has been obtained to convey minor's property, the 6th defendant became major at a later point of time, did not

challenge the alienation made under Ex.A.1 and she was not even examined as a witness on behalf of the appellants / defendants 1 and 2. One of the vendors, viz., 3rd defendant - wife of the deceased Arokiadass, examined herself as DW2, supported the case of the 1st respondent / plaintiff and on that ground also, the case projected by the appellants / defendants 1 and 2 lacks merit.

21. DW1 / 2nd defendant who is also an Advocate in the course of his testimony, would admit that at the time of registering Ex.A.5, the original documents have not been handed over by the vendors and it would also imply that no proper verification and local enquiry has been made before purchasing the suit property.

22. The appellants who are the subsequent purchasers, cannot be claim title at all for the reason that the tile to the suit property has already been conveyed in favour of the 1st respondent / plaintiff under Ex.A.1 dated 28.02.1998 and the remedy open to the appellants / defendants 1 and 2, if any, is to proceed against their vendors, viz., Defendants 3 to 6 in accordance with law.

23. The Courts below on a thorough consideration of the oral and documentary evidences, have rightly reached the conclusion that the 1st respondent / plaintiff is entitled to the reliefs as prayed for and this Court, on an independent application of mind to the materials, is of the view that there is no error or perversity attached to the said findings and finds no merit in the Second Appeal.

24. In the result, the Second Appeal is dismissed, confirming the judgment and decree passed by the Courts below. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

RKA

To

1. The Principal District Judge,
Kancheepuram at Chengalpattu.

2. The Sub Judge
Tambaram.

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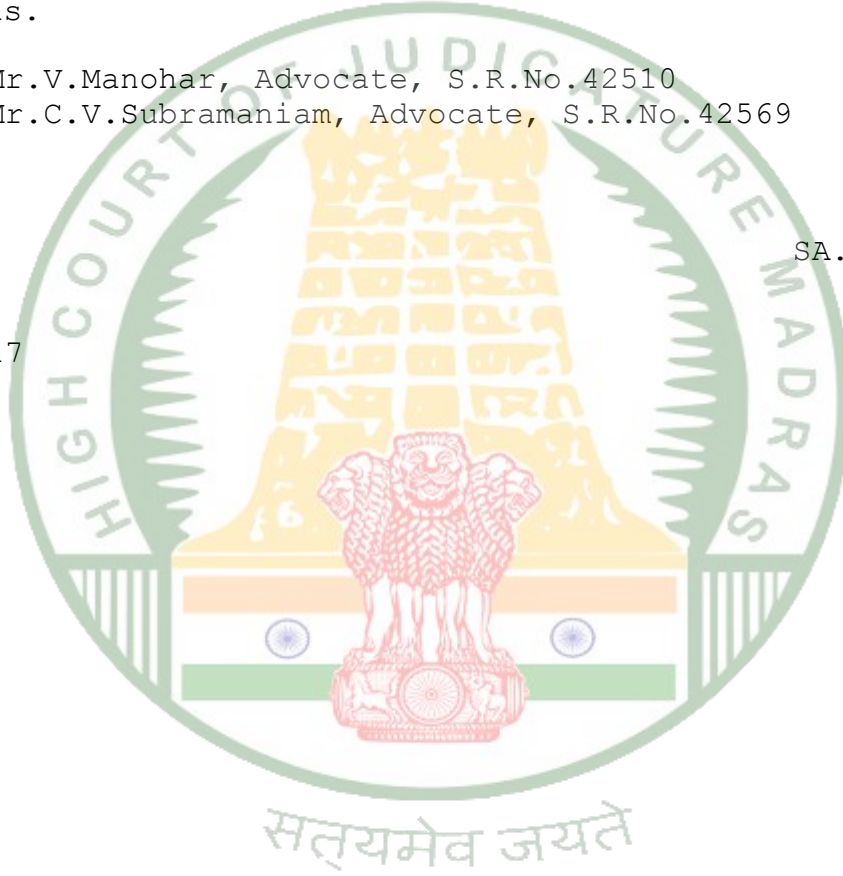
The Section Officer
VR Section, High Court,
Madras.

+2ccs to Mr.V.Manohar, Advocate, S.R.No.42510

+2ccs to Mr.C.V.Subramaniam, Advocate, S.R.No.42569

SA.No.312/2017

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