

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.389/2017 & CMP.No.9015/2017

Rajasekaran

..Appellant/Appellant / Plaintiff

Versus

1. Kamatchi Ammal
2. Jagadesan
3. Saroja Ammal
4. Tahsildar  
Taluk Office,  
Cuddalore
5. The Sub Registrar,  
Sub Registrar Office,  
Thiruvandhipuram Road,  
Thirupapuliyur,  
Cuddalore

... Respondents/Respondents / Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 07.02.2017 made in A.S.No.67/2016 on the file of Principal Sub Court, Cuddalore as confirmed by the Judgment and Decree dated 29.04.2016 made in O.S.No.223/2010 on the file of the Principal District Munsif Court, Cuddalore.

For Appellant : Mr.M.V.Venkataseshan

JUDGMENT

The plaintiff who lost before the Courts below, is the appellant herein.

2 The plaintiff filed a suit in O.S.No.107 of 2010 on the file of the Vacation Civil Judge, Cuddalore, against the respondents 1 to 3 for the relief of praying for judgment and decree to declare his title to the suit property and also for permanent injunction restraining the defendants their men or agents or any person claiming under them from interfering with the peaceful possession and enjoyment of the suit property and also for delivery of vacant possession of the suit property

within the time stipulated by the Court. Subsequently, the defendants 4 and 5 were arrayed as parties and as per the amended plaint, it is a case of the appellant / plaintiff that the landed property in New Survey No.53/1, Cuddalore O.T. (non-municipal), admeasuring to an total extent of 2.15.0 Hectares, was assigned in his favour as well as in favour of his mother viz., Saroja Ammal-3<sup>rd</sup> defendant herein, by a separate Deed of Assignment dated 26.10.1995, subject to certain conditions and in one of the conditions, the assignee should do agricultural activities within three years from the date of Assignment and should not alienate the land within 10 years of assignment and even if it is alienated / sold, it could be done only with the prior permission of the Government. The Plaintiff would state that the property is located in a hillock and there is no irrigation facility for which the plaintiff spent huge amount to reclaim the land and develop it and also raised cashew trees in the property and he has also appointed the Watchman to take care of the property and he did not sell the property to any one including the defendants.

3 It is also stated by the plaintiff that his mother - 3<sup>rd</sup> defendant seems to have entered into some kind of arrangement regarding the property, such transaction is null and void, in the light of the conditions stipulated in the assignment and since the defendants started making claim in respect of the said property, the plaintiff came forward to file the said suit.

4 The defendants 1 and 2 had filed the written statement refuting the allegations and they took a stand that the plaintiff and his mother and father came down to Sub Register Office at Thiruppapuliur and he and his mother/3<sup>rd</sup> defendant had executed the Sale Deed dated 14.02.1996 in favour of the 1<sup>st</sup> defendant and also handed over the original Deeds of Assignment and ever since the date of sale, they continue to remain in possession and enjoyment of the property and as such, the claim made by the plaintiff lacks bona fide and devoid on merits and prays for dismissal of the suit with cost.

5 The Trial Court on consideration of pleadings had formulated the following points for determination :-

- Whether the Sale deed dated 14.02.1996 alleged to have been executed by the plaintiff and his mother in favour of the 2<sup>nd</sup> defendant is true and valid?
- Whether the 2<sup>nd</sup> defendant has prescribed title through adverse possession contended by him?
- Whether the plaintiff is entitled to the relief of declaration, permanent injunction or delivery of vacant possession as prayed for?
- To what other relief?

6 During the course of trial, the plaintiff examined himself as P.W.1 and marked Exs. A1 to A7 and the 2<sup>nd</sup> defendant examined himself as D.W.1 and one Mr.Thangarathinam examined himself as D.W.2 and marked Exs. B1 to B5.

7 The Trial Court on a consideration and appreciation of oral and documentary evidence, has dismissed the suit vide Judgment and decree dated 29.04.2016 and aggrieved by the same, the plaintiff preferred an appeal in A.S.No.67 of 2016 on the file of the Principal Sub Judge, Cuddalore and later on, it was transferred to the Principal District Munsif, Cuddalore and renumbered as O.S.No.107 of 2010.

8 The Lower Appellate Court upon perusal of the pleadings had formulated the following points for determination :-

- Whether the Judgment and decree dated 29.04.2016 passed in O.S.No.223 of 2010 on the file of the Principal District Munsif, Cuddalore are liable to be set aside or not?
- Whether the appeal is to be allowed or not?

9 The Lower Appellate Court, on appreciation of oral and documentary evidences, has found that the Sale Deed under Ex.B3 was executed by the plaintiff and his mother and however, the plaintiff has totally suppressed the said fact and hence, failed to approach the Court with clean hands.

10 The Lower Appellate Court has also recorded the findings that in pursuant to the Sale Deed, Ex.B1 and Ex.B2-Assignment Order also handed over to the defendants 1 and 2 and the plaintiff has failed to explain as to how the original Deeds of Assignment has reached the hands of defendants 1 and 2.

11 The Lower Appellate Court recorded the findings that in terms of the conditions of Deed of Assignment, the property cannot be sold and that the plaintiff and 3<sup>rd</sup> defendant at the time of Ex.B3-Sale Deed and as such, the defendant 1 and 2 cannot be derived title under the Ex.B3-Sale Deed.

12 The Lower Appellate Court further recorded that Ex.B3 is defective in nature and the plaintiff is the person who committed mischief in disposing of the suit property to defendants 1 and 2 and therefore, he cannot be permitted to take advantage of money of the defendants 1 and 2. Citing the said reasons, the Lower Appellate Court has dismissed the suit vide impugned judgment dated 07.02.2017 and challenging the legality of the same, the plaintiff has filed this Second Appeal.

13 In the Memorandum of Grounds of Second Appeal, the following substantial questions of law are raised by the appellants:-

- Whether the Courts below are right in



dismissing the suit of the plaintiff when admittedly Ex.B3 Sale Deed in favour of the 1<sup>st</sup> defendant is void as it is only the tenure of Ex.A1 assignment order?

- Whether the Courts below have not committed serious error of law in properly molding the relief so as to give quietus to the litigation between the parties, especially when the 4<sup>th</sup> defendant Tahsildar reminded exparte?

14 Mr.M.V.Venkataseshan, learned counsel appearing for the appellant / plaintiff held that it is an admitted case of the defendants 1 and 2 that under Ex.B1 and B2-Deeds of Assignment, the plaintiff and his mother-3<sup>rd</sup> defendant were assigned with some lands and certain conditions have also been stipulated and one of the conditions is that the property cannot be alienated within 10 years from the date of assignment. In spite of the said fact, alienation has been done in the form of Ex.B3 - Sale Deed and as such, the defendants 1 and 2 did not derive any title and the said material fact has not been properly appreciated by the Courts below. It is a further submission of the learned counsel for the appellant / plaintiff, though the Courts below had recorded the findings that defendants 1 and 2 cannot derive any better title under Ex.B3-Sale Deed, the plaintiff ought to have granted recovery of possession since they failed to do so and prays for interference.

15 This Court has considered the submissions made by the learned counsel appearing for the appellant / plaintiff and also perused the impugned judgments passed by the Courts below.

16 The conditions stipulated in Exs.B1 and B2 make it clear that agricultural activities have to be done by the assignees within three years of assignment and the another condition is that he should not alienate the suit property within ten years from the date of Deed of Assignment and even if it alienated, it could be done with the prior permission of the Government. Admittedly, no prior permission has been obtained by the plaintiff as well as his mother -3<sup>rd</sup> defendant before alienating the property under Ex.B3-Sale Deed in favour of defendants 1 and 2.

17 The Courts below had rightly observed that the plaintiff has failed to approach the Court with clean hands for the reason that he along with his mother had executed Ex.B3 - Sale Deed and however, he was aware that his mother-3<sup>rd</sup> defendant had entered into some kind of agreement with defendants 1 and 2 in respect of the suit property.

18 In the considered opinion of the Court, the plaintiff was very well aware of the alienation under Ex.B3 in favour of defendants 1 and 2 along with this mother; but however, deliberately suppressed the said fact and also acted detrimental to the interest of Defendants 1 and 2. No doubt, the Courts below had also recorded the finding that the title passed on in favour of defendants 1 and 2 under Ex.B3 is a defective one and however, the defendants 1 and 2 did not make any challenge to the said findings recorded by the Courts below.

19 The appellant / plaintiff having become aware of Sale Deed under Ex.B3 executed in favour of defendants 1 and 2, who had filed their written statement, did not chose to make a challenge to the said sale transaction.

20 Since the plaintiff has failed to approach the Court with clean hands and deliberately suppressed the execution of B3 - Sale Deed by him as well as by his mother -3<sup>rd</sup> defendant coupled with other facts and circumstances, this Court is of the considered view that the Courts below had rightly reached the conclusion to reject the claim of the plaintiff and the said findings are also concurrent in nature.

21 There is no perversity or infirmity in the findings recorded by the Courts below and there are no Questions of Law, leave alone the Substantial questions of law, arises for consideration in this Second appeal.

22 In the result, the second appeal is dismissed at the admission stage confirming the judgments and decrees passed by the Courts below. No costs. The connected Miscellaneous Petition is closed.

s/d-  
Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

rka/sk

To

1. The Principal Sub Court,  
Cuddalore.

2. The Principal District Munsif Court,  
Cuddalore.

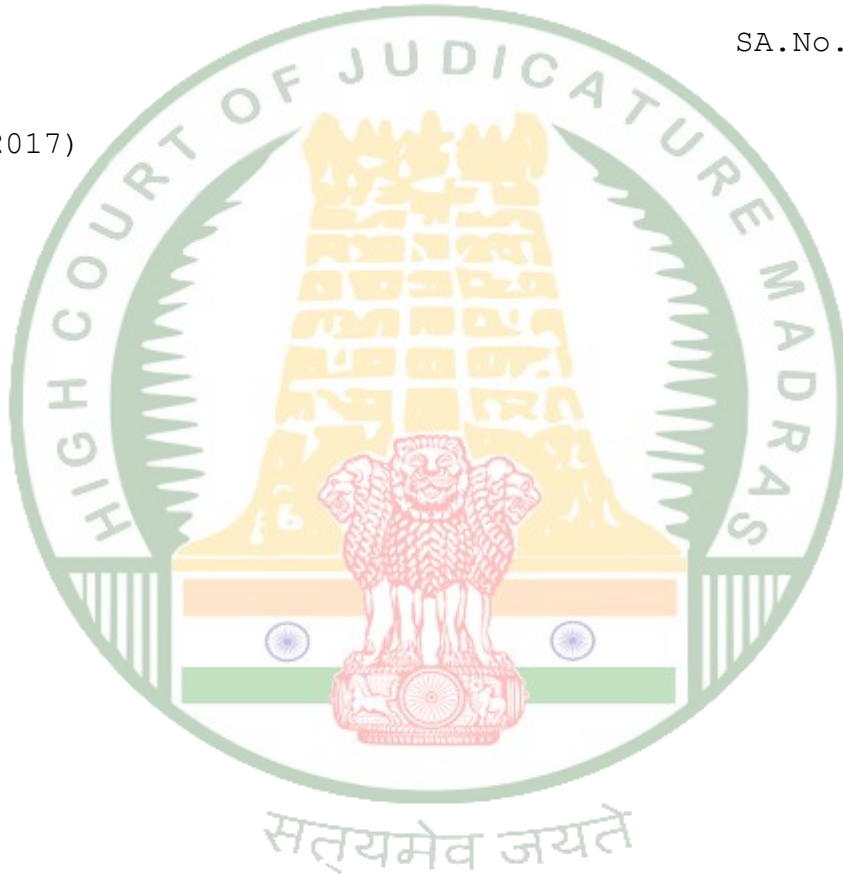
Copy to:

1. The Section Officer  
VR Section, High Court,  
Madras.

+1 CC to Mr.M.V.Venkataseshan, Advocate sr 43962

SA.No.389 of 2017

RSK(CO)  
sp(17/07/2017)



WEB COPY