

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.407 of 2017
CMP.No.10061 of 2017

R.Natarajan

...Appellant/Appellant/Plaintiff

Vs.

1.R.Sundaram

2.Mrs. Savithiri Sundaram

3.Mrs.Shalini W/O Ramamoorthy Narayanan
(Rep by Power of Attorney R.Sundaram)

4.K.Padmagreeswaran ...Respondents/Respondents/
Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Judgment and Decree dated 24.01.2017 made in A.S.No.52 of 2014, passed by the learned Subordinate Judge, Tambaram, confirming the Judgment and Decree dated 17.04.2014 made in O.S.No.915 of 2008, passed by the learned Principal District Munsif, Alandur.

For Appellant : Mr.N.Vanaraj
For Respondents : Mr.P.Mathivanan

J U D G M E N T

The plaintiff, who lost before the Courts below, is the appellant in this Second Appeal.

2. The appellant/plaintiff filed the Suit in O.S.No.915 of 2008 on the file of the Court of Principal District Munsif at Alandur against the respondents/defendants praying for the relief of Permanent Injunction restraining the defendants jointly and severally, their men, agents and servants or any other person or persons claiming under or through the defendants in any manner either jointly or severally from disturbing the plaintiff's possession and enjoyment of the Suit schedule mentioned property ad-measuring to an extent of 2400 sq.ft. situated at No.154, Madipakkam Village, formerly Saidapet Taluk, Chengalpattu District, now Tambaram Taluk, Kancheepuram District, Paimash No.10, S.No.101, Plot No.267/B and also for

Mandatory Injunction directing the defendants jointly and severally to remove the illegal structures put up in the schedule property or alternatively directing the plaintiff to remove the illegal structures being put up by the defendants and restore the schedule property to its original condition at the cost of the defendants jointly and severally and also for costs of the Suit.

3. The appellant/plaintiff would aver among other things that Suit property was purchased by the plaintiff from one Gunabushanammal and Sarangapani under registered Sale Deed dated 13.06.1985/ Ex.A1 for a valuable consideration and he has also traced the title stating that one Dakshinamurthy had purchased the schedule property in the year 1965 from one Subramania Iyer, under registered Sale Deed dated 30.03.1965/ Ex.A4 and his vendors are wife and son of late Dakshinamurthy. The plaintiff, after purchase, is in possession and enjoyment of the schedule mentioned property and frequently visited the schedule property and when he visited the suit property on November 2008, he found that there was some construction work going on and when it was questioned by the plaintiff, two persons claiming ownership, threatened the petitioner with dire consequences and therefore, he came forward to file said Suit.

4. The first defendant had filed the written statement, which was adopted by the third defendant and he would aver that the schedule property was purchased by him from one Radhakrishnan on 27.01.2000, under registered Sale Deed /Ex.B3 and his vendor was the absolute owner of the property comprised in S.No.101/220B approved Layout No.330/73 in Sadasivam Nagar, admeasuring 2400 Sq.ft and earlier, Radhakrishnan had purchased the property from the legal heirs of one Ramasamy, namely Rukmani, Raghunathan, Minor Rajesh, Minor R.Deepak, represented by their father Raghunathan and Usha Lakshmanan under registered Sale Deed dated 04.11.1992/Ex.B2. Ramasamy in-turn purchased the property from K.P.Gopinathan under registered Sale Deed dated 14.10.1961/Ex.B1. It is the stand of the first defendant as well as the third defendant that Subramani Iyer had fraudulently executed a Power of Attorney in favour of I.A.Dasson on 14.05.1965 before the Sub-Registrar, Cuddalore to sell the vacant time. The first defendant would further claim that he is in possession and enjoyment of the Suit property as a rightful owner from the year 2000 and even prior to the purchase, the property was subdivided into two plots viz., Plot No.267A and 267B and layout was also approved by the Local Body, namely St.Thomas Panchayat Union on 07.10.1992 and on 20.10.2007, the plan approval for construction of a residential building in Plot No.267B was granted in favour of the defendant and after purchase, mutated the revenue records and planning permission was given by St.Thomas Panchayat Union and

subsequently, as per plan approval, superstructure was put up and the construction was completed and the first defendant had conducted house warming ceremony on 30.11.2008. It is also stated by the first defendant in the written statement that he executed a sale deed in favour of the fourth defendant on 18.02.2008 in respect of Plot No.267B and also executed two settlement deeds dated 18.02.2008, marked as Exs.B4 and B5 in favour of his wife and daughter respectively and therefore, prayed for dismissal of the Suit.

5. The second defendant had file a written statement stating that the first defendant is the absolute owner of the Suit property admeasuring to an extent of 2400 sq.ft. and he has purchased the same from A.Radhakrishnan under registered Sale Deed dated 27.01.2000 and the first defendant has also executed a settlement deed in favour of the second defendant on 18.02.2008 and thereby settled 1/4th (600 Sq.Ft.) share of vacant land and he has put up superstructure and occupied the property on 30.11.2008 after conducting house warming ceremony and the second defendant also raised loan of Rs.8,00,000/- for putting up superstructure and prayed for dismissal of the Suit.

6. The fourth defendant had filed the written statement stating that the first defendant is the absolute owner of the Suit property admeasuring to an extent of 2400 sq.ft. and he purchased the same from A.Radhakrishnan under registered Sale Deed dated 27.01.2000 and the first defendant also executed a Settlement Deed in favour of the second defendant on 18.02.2008 and he has also put up superstructure and occupied the property on 30.11.2008 after conducting house warming ceremony and he has raised Rs.10 lakhs loan from the bank for putting up the superstructure and prayed for dismissal of the Suit.

7. The Trial Court, on consideration of the pleadings, framed the following issues:

1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for ?
2. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for?
3. To what relief?

During the course of trial, the appellant/plaintiff examined himself as P.W.1 and marked Exs.A1-A9. On the side of the defendants, first defendant was examined as D.W.1 and the fourth defendant was examined as D.W.2 and Exs.B1 to B33 were marked.

8. The Trial Court, on consideration of oral and documentary evidence, had dismissed the Suit, vide judgment and decree dated 17.04.2014. The plaintiff, aggrieved by the dismissal of the

Suit, filed an Appeal Suit in A.S.No.52 of 2014 on the file of the Court of Subordinate Judge, Tambaram.

9 The Lower Appellate Court, on perusal of the grounds, had formulated the following point for determination:-

- Whether the appeal has to be allowed as prayed by the appellant?

10. The Lower Appellate Court observed that since the parties are claiming their possession on the basis of title documents, it has to necessarily go into the title of the properties over the suit property to find out the prima facie case and also specifically indicated that it is not going to decide the title of the properties and also relied upon the decision of the Hon'ble Supreme Court of India in AnathulaSudhakar v. P.Buchi Reddy (Dead) by LRs and Others [2008 (6) CTC 237]. The Lower Appellate Court to find out a prima facie case observed that Ex.A9 is dated 17.05.1961 and whereas K.B.Gopinathan acquired the right of ownership only on 17.08.1961 under Doc.No.3863 dated 14.08.1961 under Doc.No.3810 and therefore, he could not have become the owner of the property on the date of Doc.No.1308 dated 17.05.1961 and therefore, the sale deed executed in favour of Ramani Iyer under Ex.A4 is doubtful and there is a cloud upon the title of the vendor of SubramaniIyer @ RamaniIyer. The Lower Appellate Court further held that Ex.A9 was marked without objection and having found to be illegible, no steps have been taken by the plaintiff to produce the original. The Lower Appellate Court has also considered the oral and documentary evidences and found that the defendants had proved their title through Exs.B1 to B3 and the revenue documents have also been marked as Exs.B9 to B11 and the defendants had also produced documents under Exs.B24, B25, B32, B26 to B28 to evidence the payment of statutory levies and to probablise the claim of the defendants that they are the owners. The Lower Appellate Court also taken note of the admission made by P.W.1 that since superstructure has been put up, he is not residing in the suit property and he was not aware that Ramani Iyer executed sale deed in favour of Radhakrishnan in the year 1965 and after purchasing the suit property, he used to visit every year and when he lastly visited on November 2008, he found that superstructure has been put up and he did not lodge any complaint. The Lower Appellate Court, citing the said reasons, had dismissed the Appeal Suit and thereby confirmed the judgment and decree passed by the Trial Court, vide impugned judgment and decree dated 24.01.2017.

11. The plaintiff, aggrieved by the dismissal of the Appeal Suit, had filed this Second Appeal and in the Memorandum of the Grounds of Appeal, the following Substantial Questions of law are raised:

(a) Whether the Courts below while embarking upon to decide the title to the suit property in the Suit, has come to a perverse finding holding that the original owner KB Gopinathan who has purchased the property benami in the name of one S.Venkata Achari had no title to the suit property on 17.5.1961 when he executed as sale deed in favour of Subramaniya Iyer @ Ramani Iyer in Ex.A-9 and dismissing the Suit without considering the position of law that Benami transaction does not vest any title in the Benamidar but vests it in the real owner and the real owner has got the legal title though the property and can deal with the property without reference to the Benamidar as held by the Hon'ble Supreme Court in "Controller of Estate Duty, Lucknow v. Aloke Mitra reported in 1981 (2) SCC 121.

(b) When it is not dispute that the property was purchased by the said KB Gopinathan in the name of the Benamidar S. Venkata Achari, if at all any objection can be raised, it is only for the said benamidar S.Venkata Achari to raise any dispute or objection and also set aside the sale in respect of the sale executed by the KB Gopinathan in favour of V Ramani Iyer @ Subramania Iyer in Ex.A9 whether the Courts below have erroneously considered the objection raised by the Defendants who are third parties to the transaction between the said KB Gopinathan and benamidar S.Venkata Achari?

(C) When a specific plea is made by the Appellant that while the original owner KB Gopinathan who has sold the suit property to Subramaniya Iyer @ Ramani Iyer on 17.5.1961 in Ex.A9 has perfected his title during 17.8.1961 and 14.8.1961 as transferor (KB Gopinathan) subsequently acquires the property, the transferee (V.Subramaniya Iyer @ Ramani Iyer) becomes entitled to it and hence the sale of suit property under Ex.A9 does not suffer any defect and it makes no difference whether the defect of title in the transferor arises by reason of his having no interest whatsoever in the property at the time of transfer as held by the Hon'ble Supreme Court in Jumma Masjid Mercara v. Kodimaniandra Deviah reported in AIR 1982 SC 847, was it lawful on the part of the Appellate Court to consider the same and give reasons for negating the plea of the Appellant.

(D) Was it lawful on the part of the Courts below to come to an erroneous conclusion that Ex.A9 is not a genuine and valid document Ex.A9 which is a certified copy of the original held by the public authority when the same is executed in the manner prescribed under the Registration Act and the same is admissible in evidence under Sections 4, 74, 77 & 79 of the Evidence Act and also under Sections 57(5) of the Registration Act.

12. Mr.N.Vanaraj, learned counsel appearing for the appellant/plaintiff would contend that though the Suit is filed for permanent injunction, the Courts below had virtually decided the title in favour of the defendants and had gone into the title incidentally and had given a positive finding and in utter violation of the settled legal position, the Courts below had decided the title in favour of the defendants. It is the further submission of the learned counsel appearing for the appellant/plaintiff that the Courts below had failed to appreciate the oral and documentary evidence in proper perspective and rendered an erroneous concurrent findings and therefore, prays for interference.

13. Per contra, Mr.P.Mathivanan, learned counsel appearing for the caveators/respondents 1 to 4/defendants would submit that though the title of the appellant/plaintiff had been denied by the defendants, he did not take any step to amend the plaint and during the course of trial, not even examined his previous vendors and whereas the respondents/defendants marked parent title deeds to show that they are in possession and enjoyment of the suit property. It is the further submission of the learned counsel appearing for the respondents/defendants that admittedly even as per the own admission of the appellant/plaintiff, when he lastly visited the property during November 2008, he found that superstructure has been put up and the defendants had completed the superstructure by availing bank loans and also conducted house warming function and also mutated the relevant revenue records and started paying statutory levies and in the light of the admission made by P.W.1, the Courts below had rightly reached the conclusion to dismiss the Suit and further urge that no substantial question of law arises for consideration and prays for dismissal of the Suit.

14. This Court paid its best attention to the rival submissions and also perused the entire materials placed before it.

15. A perusal and appreciation of the pleadings would disclose that the defendants, in their written statements, had denied the title of the plaintiff and the best course open to the plaintiff was to go for amendment of the plaint, but

unfortunately, he has failed to do so. It is the categorical admission of the plaintiff that the suit property was purchased as vacant site and he periodically visited the same and when he lastly visited during November 2008, he found superstructures being built up and when it was questioned, he was threatened with dire consequences and therefore, he filed the Suit for permanent injunction. Admittedly, pendency of the Suit, the appellant/plaintiff failed to get any interim orders and the defendants, after obtaining approval from local body, completed superstructure and conducted house warming function and also paying statutory levies. It is the primordial submission of the learned counsel appearing for the appellant/plaintiff that since the suit property has been purchased as vacant site under valid title deeds and in the light of the settled legal position that possession prevails over title and he has deemed to be in possession, the Courts below ought to have granted the said relief.

16. It is pertinent to point out at this juncture that the defendants also based their claim on the basis of title deeds and the revenue records and the Lower Appellate Court, in para 13 of the impugned judgment, observed that since the Suit is for permanent injunction and the parties are basing their claim on the basis of title documents, it has to necessarily go into the title of the properties over the suit property to find out the prima facie case and also relied upon the decision of the Hon'ble Supreme Court of India in AnathulaSudhakar v. P.Buchi Reddy (Dead) by LRs and Others [2008 (6) CTC 237] and also specifically indicated that it is not going to decide the title of the properties but incidentally gone into issue to find out who is in possession of the suit property.

17. The admission of P.W.1/plaintiff would also reveal that he is not in possession of the Suit property and when he visited the suit property during November 2008, he found that someone developing superstructures and he failed to get any interim orders and the defendants took risk to complete the superstructures and started paying statutory levies.

18. This Court, on an independent application of mind to the impugned judgment passed by the Courts below, is of the considered view that there is no error apparent, infirmity or perversity attached to the findings rendered by the Courts below in negating the prayer sought for by the appellant / plaintiff and finds no merit in the Second Appeal.

19. In the result, the Second Appeal is dismissed confirming the Judgment and Decree dated 24.01.2017 made in A.S.No.52 of 2014, passed by the learned Subordinate Judge, Tambaram, confirming the Judgment and Decree dated 17.04.2014 made in

O.S.No.915 of 2008, passed by the learned Principal District Munsif, Alandur. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

jvm

To

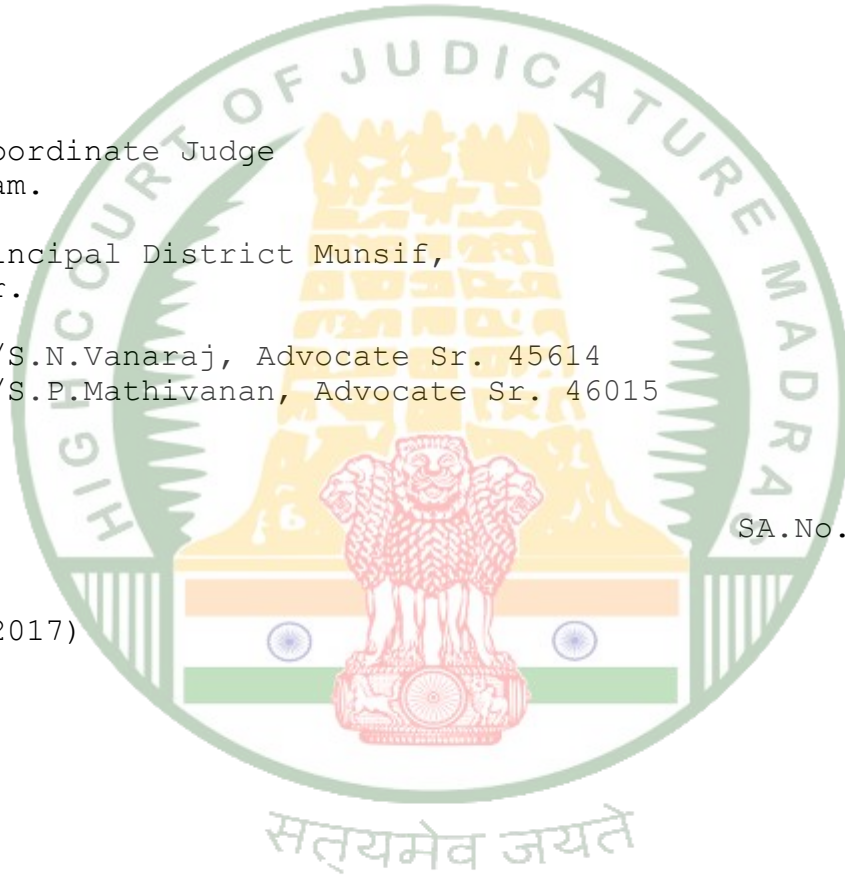
1. The Subordinate Judge
Tambaram.
2. The Principal District Munsif,
Alandur.

+1cc to M/S.N.Vanaraj, Advocate Sr. 45614

+1cc to M/S.P.Mathivanan, Advocate Sr. 46015

SA.No.407 of 2017

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