

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.02.2017

Date of Verdict : 07.02.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No.1703 of 1997  
and C.M.P.No.16815 of 1997

1. Thimmakka  
2. Munusamy Reddy  
3. Chandra Reddy  
4. Yerra Reddy  
5. Sanje Reddy .....Appellants 1 to 5/  
Defendants 2 to 6

Vs.

1. Subhan Sahib (Deceased) ...1st Respondent/Plaintiff  
2. Gafoor Pasha  
3. Riaz  
4. Akbar Basha  
5. Fayaz  
6. Azeema (Deceased)  
7. Zameer Ahmed  
8. Ameer Ahamed  
9. Sameer Ahmed ...Respondents 2 to 9

(RR 2 to 6 brought on record as  
LRs of the deceased R1 vide  
order of Court dated 18.11.16  
made in C.M.P.Nos.1295 &  
1296 of 2007 in S.A.No.1703 of 97)

(RR7 to 9 brought on record as  
LRs of the deceased R6 vide order  
dated 18.11.16 made in C.M.P.  
Nos. 1056 to 1058 of 2011 in  
S.A.No.1703 of 1997)

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgement and decree dated 27.06.1996 made in A.S.No.26 of 1996 on the file of the Sub Court, Hosur, reversing the judgment and decree dated 01.09.1994 made in O.S.No.18 of 1981 on the file of the District Munsif Court, Hosur.

For Appellant : Mr.A.Jenasenan

For Respondent : Not ready in notice.

#### JUDGMENT

The appeal arise from the suit for declaration of title and permanent injunction against the defendants. Having suffered a reversal decree, the defendants are before this Court as appellant. The first plaintiff Suban Sahib, the decree holder died pending appeal. Hence his legal representatives are brought on record.

2. Before the trial Court the first plaintiff failed to impress the Court on his contention that he purchased the suit property at Hosur on 14.12.1960 and lived in the suit house for 7 to 8 years, till he shifted his family to Bangalore. He came back to Hosur to establish business for his son in Hosur at the suit premises. When he attempted to clean the suit premises for construction, his attempt was resisted by the defendants claiming title over the property.

3. The trial Court dis-believed the above contention of the plaintiff on the ground that, in the plaint the plaintiff has mentioned one Junjappa as his vendor where as in Ex.A.2, the title deed relied by the plaintiff, the vendor name is shown as Moideen Sahib. Comparing Ex.A.1 and Ex.A.2 which are sale deeds of the suit property executed in the year 1952 by Junjappa to Moideen Shahib and of the year 1960 by Moideen Shahib to Suban Sahib (the plaintiff) the trial Court pointed out that the sale consideration in both the deeds is Rs.100/- though there was gap of eight years between these two sale deeds. Therefore held that the case of the plaintiff is not believable. Further while appreciating the original title deed Ex.A.2, which is in Telugu, the trial Court pointed out that, the person who translated Ex.A.2 from Telugu to Tamil not been examined to prove its authenticity of the Tamil version, therefore it cannot be taken into evidence. Regarding possession, taken the admission of the plaintiff during his earlier deposition which was later retracted while examined subsequently that he has not seen the suit property for 25 years after leaving the suit village for Bangalore. The trial Court, rejected the relief of injunction.

4. The aggrieved plaintiff filed first appeal before the Sub Court, Hosur, wherein the lower appellate Court after re-appreciating the facts afresh held that the defendants have failed to prove that the suit property and the property purchased by the plaintiff under Ex.A.2 are not one and the

same. The burden to prove the property is dispute and the property purchased by the plaintiff under Ex.A.2 are different. So reversed the trial Court judgement and declared the title in favour of the plaintiff. Regarding possession, also the lower appellate Court differed from the trial Court view and held that the defendants are ranked trespassers into the suit property. Their plea of adverse possession is not acceptable. Thus the lower appellate Court also rejected the patta issued in favour of the defendants, observing that the suit property is Grama Natham occupied by the defendants hence patta has been granted to them in the year 1988. The grant of patta will not supercede Exs.A1 and A2. The aggrieved defendant has preferred the second appeal rising the several questions of law.

5. On considering the pleading, evidence and in the light of the reversal judgment, this Court takes the following two questions of law as substantial :-

1. Whether the finding of the Court below that the respondent has got title tot he suit property based on a Telugu document read with an alleged translated copy which has not been approved in a manner known to law is sustainable in law?
2. In the light of the admission of the respondent/plaintiff as contained in the evidence given by him in 1987 and the averments in the plaint and the statement given in the oral evidence to the fact that the respondent/plaintiff has been away for about 25 years. Whether the finding of the appellate Court that the respondent is deemed to be in possession is sustainable in law?

6. The plea of the plaintiff is that he purchased the property from one Junjappa but the fact turn to be, he purchased it from Moiden Sahib. Junjappa was his vendor's vendor. The trial Court has pointed out that the Ex.A.2 title deed in Telugu not been proved by letting evidence of the translator who translated the document from Telugu into Tamil. The lower appellate Court referring the unmarked Tamil version of the document has gone to the extend of saying that in that unmarked document, the translator has stated that he knows Telugu and Tamil, therefore, Ex.A.2 is to be accepted as proved and it confers title to the plaintiff. Relying upon the content of an unmarked document, without examining the author of the said unmarked document is unknown to law. No provision under Indian Evidence Act permits the Court to do so. For this sole reason of perversity this appeal is liable to be allowed.

7. In addition, regarding the relief of injunction, when there is doubt over the title and admittedly the plaintiff is not in possession of the property, the lower appellate Court has rejected the evidence of D.W.3 an independent witness deposed in support of the defendants regarding their continuous possession enjoyment of the suit property for more than 15 years. The reason attributed by the lower appellate Court from the rejection is that, in 1994 the age of D.W.3 when he deposed was 35 years. The suit was filed in the year 1981. So at the time of filing the suit, the age of D.W.3 could be only 22 years. Therefore he cannot be a competent person to say that the defendants have perfected title by adverse possession. This court fails to see any logic in the above finding. D.W.3 has only deposed about his knowledge of defendants possession for the past fifteen years. The inferential fact from this evidence is not whether the defendant has perfected the title by adverse possession. It is whether the plaintiff is entitled for injunction against the defendants when the evidence clearly show that defendants are already in possession of the suit property on the date of filing the suit and whether without a plea for recovery of possession relief of injunction can be granted. More so when the defendants have been granted patta for the land. When the plaintiff has failed to prove his title in the manner known to law, when the land admitted by a Grama Natham and patta issued in favour of the defendants and when the defendants have proved to be in possession of the property, the findings of the lower appellate Court over looking all the admissible evidence but relying upon the facts not proved in accordance to the law of evidence bristles with illegality hence liable to be set aside, accordingly second appeal is allowed.

8. In the result, the second appeal is allowed. First appellate Court judgement and decree set aside. Trial Court judgment and decree restored. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rts



To

1. The Subordinate Judge, Hosur

2. The District Munsif Hosur.

+1 cc to Mr.A.Jenaseenan Advocate sr 7510

S.A.No.1703 of 1997  
and C.M.P.No.16815 of 1997

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