

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 07.03.2017

PRONOUNCED ON : 31.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.526 of 1999
and
C.M.P.No.580 of 2012

1.Jayaraman
2.Tmt.Sarada Ammal (deceased)
3.Santhanam

4.J.Hamsanandham
5.J.Thilagar
6.J.Ravichandran
7.J.Gunasekaran
8.M.Vijayalakshmi
9.M.Dhakshayani
(Appellants 4 to 9 brought on
record as LRs of the deceased
2nd appellant vide order of Court
dated 7.2.12 made in C.M.P.Nos.
59 to 61/12 in S.A.526 of 1999)

...Appellants/Defendants 1 to 3
...Vs...

Sambanda Murthy

...Respondent/Plaintiff

PRAYER: Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and decree dated 10.02.99 made in A.S.No.85 of 1997 on the file of the Sub-Court, Thiruvallore confirming the judgment and decree of the District Munsif Court, Thiruvallore dated 22.09.97 made in O.S.No.655 of 1989.

For Appellants : Mr.C.Ramesh

For Respondent : Mr.G.Karthikeyan

J U D G M E N T

The defeated defendants are the appellants herein.

2. The respondent/plaintiff filed a suit in O.S.No.655 of 1989, District Munsif Court, Tiruvallur for a declaration of his title over the suit property and for consequential relief of permanent injunction restraining the defendant/appellant from interfering with peaceful possession and enjoyment of the suit property.

3.The plaintiff proceeds on the basis that the suit property is a Gramanatham measuring 1153 extent and by virtue of power of attorney executed by the Amirthammal, Nagappan, Panchatcharam and others in favour of one Umapathy on 28.07.1989 and thereafter, the plaintiff has purchased from the said Power of Attorney by a sale deed dated 5.8.1989. Thereafter, he has put up a small hut and residing therein and the defendant who is a neighbour has based upon a vague sale deed trying to interfere with the peaceful possession and hence, suit for declaration and for permanent injunction.

4.The appellant/defendant filed a written statement denying the various allegations inter-alia contended that the alleged sale deed dated 5.8.1989 in favour of the plaintiff is specifically denied and further stated that as early as on 21.11.1983, the second defendant has obtained a sale deed in his favour, initially the property was enjoyed by the D1 as ancestral property and thereafter, by virtue of sale deed, he was in possession. Besides, he also raised the plea of adverse possession and on 15.5.1989, he has mortgaged the property and raised a loan from Sriperumbudur Co-operative Housing Society and hence, prayed for dismissal of the suit.

5.Before the trial Court, plaintiff examined himself as P.W.1 and further examined P.W.2 to P.W.5 and marked as Exhibits A1 to A5. While, on behalf of the defendant, he examined D.W.1 to D.W.3 and marked as Ex.B1.

6. Before the trial Court, to identify the physical feature of the suit property, an Advocate Commissioner was appointed at the instance of the defendant and Advocate Commissioner after physical inspection of the suit property filed Exhibits.C1 and C2 viz., Report and Sketch.

7. Based upon the answer elicited in the cross-examination of D.W.1 coupled with the documentary evidence, the trial Court decreed the suit.

8.The defeated defendants have preferred A.S.No.85 of 1997 before the Sub-Court, Tiruvallur and after framing necessary points for determination of the appeal and on re-appreciation of the evidence, the lower Appellate Court has come to the conclusion that the suit plaintiff property as projected by the defendant and the measurement spoken to by the D.W.1 does not relate to the suit property and the defendant has not proved by legally acceptable evidence to show that the schedule in the Ex.D1 is that of the suit property and further, held that the plaintiff has proved his case by letting in oral and documentary evidence and accordingly, confirmed the judgment and decree of the trial Court and hence, Second Appeal .

9. At the time of admission, the following substantial questions of law were framed for consideration:

- (i) Whether the Courts are right in granting the relief of declaration of title to the property in favour of the plaintiff inspite of holding that the plaintiff has failed to prove his case?

10. The learned counsel for the appellant and learned counsel for the respondent were heard on the substantial question of law.

11. The respondent/plaintiff has specifically projected that Ex.A1, sale deed dated 5.8.1989 was executed by one Umapathy in favour of the plaintiff and its parent document, Ex.A2 are true and genuine, tally with the suit schedule property and P.W.2 vendor of the Ex.A1 has deposed in support of his case. Further, P.W.3 and P.W.4 are the attessor of the document. One of the executor of the Ex.A2 document has been examined as P.W.2, who has spoken about the title of the predecessor-in-title of the plaintiff and further, P.W.3 Arumugam, one of the attessor of the sale deed. Ex.A1 in favour of the plaintiff, deposed regarding execution and registration in favour of the sale deed. P.W.4 Gunasekaran, one of the neighbour who deposed that the plaintiff is in possession and enjoyment of the suit property since 1989 so also P.W.5 and thus, it could be seen that the plaintiff in order to substantiate his prayer for declaration of title have marked Ex.A2 and Ex.A1 title deeds relating to the suit property and person in connection with the Ex.A1 and Ex.A2, sale deed and Power of Attorney deed were also examined as P.W.2 and P.W.3 and there is nothing in the cross examination to discredit their evidence and with regard to possession, he has examined P.W.4 and P.W.5 and therefore, the trial Court has come to the conclusion that the plaintiff has proved his pleadings by legally acceptable evidence.

12. On behalf of the appellant/defendant, with regard to the rival claim over the suit property, the defendant examined himself as D.W.1, when he was confronted with the measurement of the suit property, he has given a different measurement and also different description and could clearly admitted in the cross-examination that the suit property is fenced by him and it has been used for dumping the waste materials and waste vegetables over the said version of the D.W.1 is found to be in total contradiction to the Advocate Commissioner's Report Exhibits.C1 and C2 and based upon the same, the Courts below have properly appraised of the fact that Advocate Commissioner's Report Exhibits.C1 and C2 duly substantiated the stand of the plaintiff and not that of the defendant. Furthermore, from the answer elicited in the cross-examination of D.W.1, both the Courts below have concurrently come to the conclusion that the evidence of D.W.1 does not relate to Survey No.835 /1B/1B1 and does not relate to property as projected by the defendant in his document Ex.B1. Further, the

lower Appellate Court has given a specific finding that under Ex.B1, it appears that the first defendant-husband has executed a sale deed in favour of the second defendant-wife alleged that he is in continuous possession of the suit property is found to be sham and nominal, has rightly held in the absence of the any title to the suit property being demonstrated by the defendants.

13. The main contention of the learned counsel for the appellant is that based upon the Ex.B1 sale deed, the defendant have raised housing loan from the Sriperumbudhur Co-operative Housing Society which is a Act of ownership and hence, sought to set aside the judgment and decree of the Courts below , this Court has given its anxious consideration for the said contention of the appellant counsel and the same does not holds water for more than one reason. When the same fact has been confronted with the first plaintiff as P.W.1 in witness box, he has categorically stated that the defendant had tried to avail the loan by executing a mortgage deed based upon this created sale deed, Ex.B1 and he filed objection before the Sriperumbudhur Co-operative Housing Society and stalled the disbursement of the loan for the said evidence. In this regard, there was no contra evidence let in by the defendant assumes significance.

14. Furthermore, both the Courts below have concurrently held that under the guise of Ex.B1, sale deed, the husband-first defendant appears to have executed sale deed in favour of his wife-the second defendant herein and hence it is only a sham and nominal document without any trace of title in their favour appears to be correct and there is no other revenue document to substantiate their plea and accordingly, both the Courts below have concurrently held that in view of the oral evidence of the P.W.1 coupled with Ex.A1 and A2 document of title which is stand duly corroborated by the oral evidence of the parties to the said document who are examined as P.W.2 to P.W.4 and P.W.5 who had deposed regarding the possession of the plaintiff in the suit property which further stands corroborated by the Exhibits.C1 and C2 Advocate Commissioner's Report, both the Courts below have come to the concurrent conclusion that the plaintiff is entitled for the relief of declaration of title and for injunction and the claim raised by the defendant. Based upon Ex.B1 which is not legally acceptable for the reasons stated supra and coupled with the admission made by the P.W.1 in the witness box, the suit property lies away from the property mentioned in his Ex.B1 document. Both the Courts below have concurrently held that the respondent/plaintiff is entitled for the relief as prayed for. Accordingly, the said finding of the Courts below is well merited and well considered does not warrant any interference by this Court, in the absence of any irregularity or illegality as discussed supra.

15. In this view of the matter, the substantial question of law stands negatived against the appellant and this appeal is devoid of merits in this case.

16. In the result,

i) this second Appeal is dismissed without costs.

ii) Judgment and decree in A.S.No.85 of 1997, dated 10.02.1999, on the file of the Sub-Court, Thiruvallore in confirming the judgment and decree in O.S.No.655 of 1989, dated 22.9.97, on the file of the District Munsiff, Tiruvallur is hereby confirmed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To:

- 1.The Fast Track Court No.I, Thanjavur
- 2.The District Munsif Court, Thiruvallore
- 3.The Section Officer,
VR Section, High court, Madras (2copies)

+1cc to Mr.G.Karthikeyan, Advocate SR.No.76915

+1cc to Mr.C.Ramesh, Advocate SR.no.77245

S.A.No.526 of 1999

CNR(CO)

sm:25.1.2018

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