

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 01.02.2017
Pronounced on : 16.02.2017
CORAM
THE HON'BLE DR. JUSTICE G.JAYACHANDRAN
S.A.No.315 of 2009
M.P.Nos.1 of 2009, 1 of 2015 & 19805 of 2016
and
Cross Obj. SR. No.53 of 2016

M.Ranganathan ... Appellant/1st defendant
1st respondent in cross objection

versus
1. V.Ramasamy 1st respondent/2nd Plaintiff
cross objection in cross obj 53/2016
2. Natarajan Respondents 2 & 3 / Plaintiffs 3 & 4
3. Kumar Respondents 2&3 in cross objection
4. N.Sivakumar Respondents 4 to 6/Defendants 5 to 7
5. Saraswathi Ammal Respondents 4 to 6 in cross objection
6. Premavathi

Prayer :- Second Appeal filed under Section 100 of Civil Procedure Code against the judgement and decree in A.S.No.212 of 2003, on the file of 1st Additional Sub Court, Villupuram, dated 28.01.2009, in reversing the judgment and decree in O.S.No.767 of 1989, on the file of Principal District Munsif Court, Tirukoilur, dated 27.03.2002

For appellant : Mr.V.Raghavachari
for appellant in SA for
1st respondent in Cross objection

For Respondents: Mr. N. Suresh for R1 to 3 (in SA)
and Cross objection (in cross objection)
for R2 & 3 (in cross objection)
R4 to 6 - given upon vide order dt.1.7.2015.

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J U D G E M E N T

This appeal is preferred by the first defendant against the judgment and decree of the first Appellate Court declaring the title of the suit property in favour of the plaintiffs.

Pleadings of the parties in the suit

2. The plaint averment is that the A and B schedule properties are mostly the ancestral properties. The title is perfected by prescription and adverse possession to the first plaintiff by name Venkatraman @ K.V.Raman. The said K.V.Raman had three sons and his elder son Narayanasamy pre-deceased him during his lifetime. Narayanasamy has released his rights in favour of the first plaintiff and the second plaintiff Ramasamy vide release deed dated 06.03.1968 and the first defendant is one of the witness to the said document. When the "B" schedule property and other properties came for auction, the first plaintiff purchased them in the name of the first defendant and the first defendant, acknowledging the same, has also executed a document dated 11.05.1969. While so, the first defendant without any right or title over the suit property, encroached upon the land and hence a separate suit had already been filed for declaration and possession. Since the first defendant has taken over the possession unlawfully, the present suit for declaration, possession and consequence relief for permanent injunction has been filed.

3. While filing suit, the first plaintiff had arrayed his three sons as defendants 2 to 4, but on the death of the plaintiff, the defendants were transposed as plaintiffs 2 to 4. The claim of the plaintiffs regarding possession and title was denied by the defendant. According to the first defendant, the "B" schedule properties originally owned by the father of the plaintiff, since he had revenue dues to the State, "B" schedule property and items 6 to 12 of "A" schedule property were brought on auction and same was purchased by the first defendant on 27.10.1963, and the sale was also confirmed. Since then the first defendant is in enjoyment of the "B" schedule property and other properties, which was purchased by him in the revenue sale. For the past 25 years, the first defendant is in enjoyment of the "B" schedule property and thereby he has also perfected the title. He has not executed a deed dated 11.05.1969 as alleged by the plaintiffs and already a suit for injunction filed by the defendant in O.S.No.919/97 has been allowed and injunction in respect of "B" schedule property has been made absolute in the interim application as early as 02.04.1988 in which, the plaintiff is one of the respondents and therefore, the present suit is not maintainable.

4. In respect of "A" schedule property Items 6 to 16, it was brought on revenue auction on 27.10.1963 and purchased by Narayanasamy, who is none other than the son of the plaintiff. The property purchased by Narayanasamy was in possession and enjoyment of Narayanasamy till his death and after his death, it has been inherited by his three children. In so far item 17 in

the "A" schedule, it is the property of one Chellammal, who is the mother of the plaintiff. She sold the property to the first defendant on 11.12.1959 for value, since then the first defendant is in possession and enjoyment of the "A" schedule property. Therefore, the contention of the first defendant was that, as a purchaser for value the item 17 and "B" schedule properties are his absolute properties and therefore, the plaintiff cannot claim right over the property.

5. In so far, items 6 to 16 properties mentioned in "A" schedule, it was purchased by Narayanasamy and they are under lease with one Subbarayan and in respect of the item 1 of the "A" schedule property, the first plaintiff entered into an agreement with the first defendant for consideration of Rs.1,000/-, but the sale deed could not be executed and therefore the first plaintiff and the third defendant together filed a suit O.S.24/1988 in respect of items 2, 3, 5, 6 to 17 of "A" schedule property. These properties are the properties of the third defendant, which he got through a will and therefore, the suit is liable to be dismissed.

6. In the written statement of the 2nd defendant adopted by the third and fourth defendants it was contended that the suit filed by the first defendant in respect of "B" schedule property is the subject matter pending before this Court in Second Appeal preferred by one Elumalai and Subbarayan, son of Thoppula Gounder. Therefore, the first defendant, who is witness to the said sale deed in respect of "B" schedule property sold to Elumalai and Subbarayan is estopped from making any claim in respect of the "B" schedule property. In respect of the remaining "B" schedule property neither the plaintiff nor the first defendant had right over the property.

7. Based on the pleadings, the trial Court framed the following issues:-

1. Whether "A" and "B" schedule properties belongs to the plaintiff?
2. Whether the item 17 property in the "A" schedule and first and second in the "B" schedule property is owned by the first defendant by virtue of sale deed and auction purchase respectively?

3. Whether the suit is bad for non joinder of necessary parties?
4. Whether the plaintiff is entitled for declaration and permanent injunction?
5. What other relief the plaintiff is entitled .

Additional issues:

With these issues the trial Court after examining the witnesses on both sides dismissed the suit. Against the dismissal, plaintiff preferred A.S.109/1996 in which the suit was remanded back for giving an opportunity to the plaintiffs to cross examine the first defendant and to adduce further evidence on both sides. On remand the defendants 2 to 4, the legal heirs of the first plaintiff, were transposed as plaintiffs on the death of Venkataraman. The legal representatives of the plaintiffs predeceased son Narayanasamy were impleaded as defendants 6 to 7. Two additional witnesses were examined on behalf of the plaintiff and the first defendant was cross-examined by the plaintiff.

Gist of the findings of the Courts below:

8. The suit filed by one Venkaraman @ K.V.Raman as family manager, for declaration and injunction in respect of 17 items of properties under A schedule and 2 items of properties under B schedule. On his demise, pending suit, three of his sons who were already arrayed as defendants 2 to 4 were transposed as plaintiffs 2 to 4. The legal heirs of his pre-deceased son Narayanasamy were also impleaded as defendants, consequence to the plea raised by the first defendant regarding non joinder of necessary parties.

9. In the trial, second plaintiff Ramasamy was examined as P.W.4. He has relinquished his claim in respect of items 2, 3, 5, 7, 9 to 16 in the "A" schedule property and contested the case in respect of the remaining items of the suit properties. The trial court passed a decree of declaration and injunction in respect of items 2 and 4 under the A Schedule and dismissed the suit in respect of other items of properties. On appeal by the plaintiffs the lower appellate court partly allowed the appeal by modifying the trial court decree by including items 1, 6 and 8 under A schedule in addition to items 2 and 4 and item 1 of the B schedule. In the result, the declaration and injunction relief prayed by the plaintiffs in respect of items 2,3,5,7, 9 to 17 of the A Schedule and item 2 of the B schedule was dismissed.

10. Aggrieved by the Order of the lower Appellate Court modifying the trial Court judgment and decree the present appeal is preferred by the first defendant, who claims title over item 17 and items 1 and 2 in the "B" schedule property.

11. The second plaintiff V.Ramasamy s/o Venkatarama Iyer, who is the first respondent in the second appeal has preferred a cross objection in respect of the property shown as item 17 in the A schedule bearing S.No. 71/23. His contention in the cross objection is that, the lower appellate court ought not to have excluded this property from granting the relief of declaration since it was originally purchased by Narayanasamy in the revenue sale on 20.05.1964 and he in turn executed a release deed to him and his father on 06.03.1968 . Therefore, the alleged purchase of this property by the first defendant Ranganathan who is the appellant in the second appeal is not valid. Having title and patta in his name, he alone is entitled for the declaration in respect of item 17 of A schedule. Further an application under Order 41 Rule 27 of CPC to receive the certified copies of the Sale Certificates as additional documents is also filed by him.

12. At the time of admission, this Court has formulated the following substantial questions of Law:-

1. Whether the lower Appellate Court is justified in abandoning the right of the first defendant when the same was declared by the Civil Court under Ex.B16 and B17?

13. In the second appeal, the appellant/first defendant reiterates his claim over the item 17 in A Schedule through Ex B-2 sale deed executed by Chellammal, the mother of the first plaintiff and right over the items 1 and 2 of the B schedule properties by virtue of the decree passed in OS 919/1987 as confirmed in AS 146/2000 marked as Ex B-16 and Ex B-17 respectively. Whereas it is contended on behalf of the plaintiffs/respondents and petitioner in cross objection that Chellammal has no right to alienate item 17 of the A schedule property and it was subject matter of revenue sale held in the year 1964 for the debts of Venkataraman. In the auction Venkataraman's son Narayanasamy has purchased it. Later he released his right in favour of his father Venkataraman and brother Ramasamy vide Ex A-1. In this release deed, the Appellant / first defendant who now claims title of the property under Ex B-2 is one of the witness. Thereafter, the revenue receipts and chitta were transferred in the name of the plaintiff. In respect of properties under B schedule, in Ex A-6, which is the certified copy of the unregistered deed of release the appellant has released his right over items 1 and 2 in the B

schedule property in favour of the plaintiffs.

14. The reasoning found in the judgment of the lower appellate court for modifying the trial court judgment bristles with following legal infirmities:-

a) The sale deed Ex B-2 dated 11.12.1959 executed by Chellammal in favour of appellant cannot be brushed aside without evidence to show that Chellammal had no right to alienate the property. The records taken for evidence reveals that Chellammal who is the mother of Venkataraman has sold the property under a registered document as early as 11.12.1959. Later for the debts of her son Vekataraman, along with other properties, this property has also been brought to sale. In the revenue sale held in the year 1964 her grand son Narayanasamy has purchased it. The inclusion of a property in revenue auction which was already alienated by the mother itself not valid and proper. The purchaser of the property in the auction sale is none other than the grand son of Chellammal. The property has been brought to sale for the debt of the father and the auction purchaser was the debtor's son. Later, he has released it to his father and brother. So eventually the property is transferred within the family members ignoring the fact that one of the properties i.e. item 17 of the A schedule brought for revenue sale was already sold by Chellammal, as early as 1959. So no title could pass on to Narayanasamy in respect of this property though he has purchased it in revenue sale, since the debtor venkataraman himself had no title on the day when the property was brought to sale. Just because, the appellant was signatory to the later release deed executed by Narayanasamy, it will not make the earlier sale deed void. The witness to the document is only for the execution of the document and not for the truthfulness of its content. In short, the covenants found in the document will not bind the witness. Witness role is restricted to execution of the document and not further. Therefore the finding of the lower appellate court in respect of item 17 of the property is set at naught.

b) The lower appellate court has erred in relying Ex.A-1 a release deed of Narayanasamy to reject Ex B-2. The lower appellate court gravely erred in its reasoning without tracing the title of item 17 shown under A schedule. Therefore except pointing out the error in the observation about the title deed Ex B-2 in the light of Ex A-1 no further relief is warranted as far as item 17 of the A schedule is concern.

c) In respect of B schedule properties, once again the lower appellate court has erred in relying upon Ex A-6 an unregistered release deed purported to have been executed by the appellant. A release in immovable property through an unregistered document is per se not valid and inadmissible in evidence. The original of this document has been marked in an

earlier proceedings and the certified copy has been admitted into evidence and relied by the lower appellate court to untitle the appellant, the right he obtained through the revenue sale. It is the admission of the plaintiffs in the plaint itself that this document though executed on 14.05.1969 when attempted to get registered before the sub registrar, Thirukovilur, he refused to register it. The appellant/first defendant in his written statement has denied the execution of this document and questioned its validity. While so, contrary to law, the lower appellate court has relied upon an inadmissible document to overlook Ex B-16, and B-17 which are declaratory decree passed by the Courts in favour of the appellant.

d) Similarly, while the trial court, after examination of evidence held that for items 6 and 8 of A schedule properties there is no evidence to prove title or possession in favour of the plaintiffs. Whereas the lower appellate court on the premise that the entire suit A and B schedule properties are the properties of the plaintiffs family had granted relief without any acceptable evidence despite certain items of properties given up by the plaintiffs themselves. The learned appellate court judge had though discussed the exhibits and depositions at length due to poor understanding of law has erred in modifying the well considered judgment of the trial court both on facts and law.

15. In the result, the appeal is allowed. Cross Objection is dismissed. The lower appellate court judgment is reversed and the trial court judgment is restored. The Civil Miscellaneous Petition has been filed to receive additional document belatedly and therefore it is not entertained. Further, in the light of the observation of this court in respect of the revenue auction sale of the property covering item 17 of the A schedule property, this additional document no way enhance the case of the plaintiffs. Hence CMP is dismissed. No costs.

Sd/-
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Assistant Registrar

//True Copy//

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Sub Assistant Registrar

To

1 I Additional Subordinate Judge, Villupuram

2 The Principal District Munsif, Tirukoilur

+lcc to Mr.V. Raghavachari, Advocate, S.R.No.10025

+lcc to Mr.N. Suresh, Advocate, S.R.No.10650

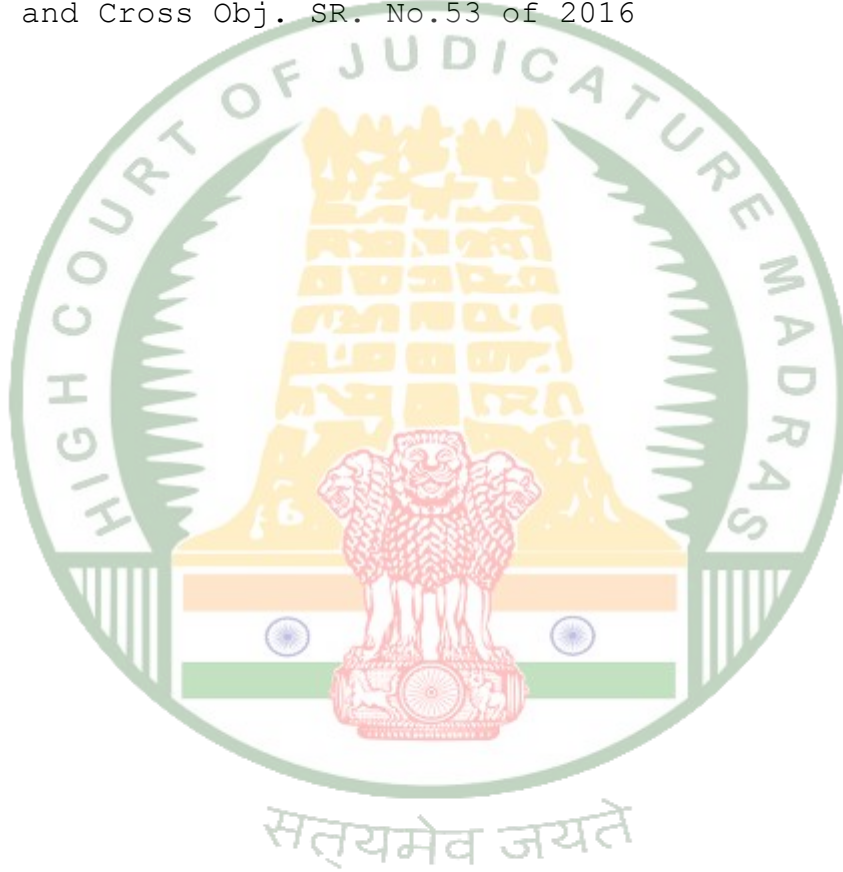
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