

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2016

PRONOUNCED ON : 04.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.226 of 2011

and

M.P.No.1 of 2011

1. Jalaja Kumari
2. Nageswaran
3. Aravind
4. Athira

(2 to 4 are LRs of the deceased Thara)

Cause title accepted vide order of

Court dated 11.02.2011 made in

M.P.No.1 of 2011 in SA.SR.4881/2011

... Appellants/Respondents/Defendants

Vs.

- 1.Thayarammal (deceased)

- 2.Sundarambal

(Cause title amended vide order

of court dated 15.02.2012 made

in CMP.No.2/2011 in S.A.No.226/2011)

... Respondent/Appellant/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Additional Subordinate Judge Court at Chenglepet dated 03.08.2010 passed in A.S.No.63 of 2006 reversing the judgment and decree of the District Munsif Court at Chenglepet dated 20.04.2006 in O.S.No.160 of 1997.

For Appellants : Mr. Praveen Alexander

For Respondent : Mr. N.A.Nissar Ahmed

JUDGMENT

Challenge in this second appeal is made by the defendants against the judgment and decree dated 03.08.2010 passed in A.S.No.63 of 2006 on the file of the Additional Subordinate

Court, Chenglepet reversing the judgment and decree dated 20.04.2006 made in O.S.No.160 of 1997 on the file of the District Munsif Court, Chenglepet.

2. The suit has been laid by the plaintiff for declaration and permanent injunction.

3. The case of the plaintiff, in brief, is as follows:

The plaintiff purchased "Inam Punjai" Survey No.50/1 of an extent of 0.04 cents from one Kannammal under a registered sale deed dated 11.09.1959. On the northern side of the said property an extent of 0.18 cents was there belonging to Bodi Maistry Vagaiyara, who sold the same for a sum of Rs.55/- to the plaintiff in 1960 and as the sale consideration is less than Rs.100/- no sale deed was taken. Subsequently, the plaintiff has also purchased an extent of 0.05 cents on the further northern side of the above said property in survey No.50/1F1C 'Inam Punjai' from Bodi Maistry Vagaiyara and others under a registered sale deed dated 04.10.1977. The above said properties are in the possession and enjoyment of the plaintiff as one block. One T.G.Subramanian Ganapadigal has purchased another 0.10 cents in Survey No.50/1F1C out of 0.47 cents (old Survey 50/1) from Kannaiah Maistry @ Kanaikan Maistry S/o Krishnappa Maistry on 05.02.1974. In the above said sale deed, the suit property and the northern side of the suit property purchased by the plaintiff has been shown as the Eastern boundary. The suit property is an Inam land. The plaintiff is paying necessary inam charges to the Government and after the abolition of Minor Inams under Minor Inam (Abolitions and Conversion into Ryotwari) Act, 1963, Ryotwari patta was issued to the plaintiff bearing No.137. The plaintiff has been paying kists for the suit property. UDR patta was also given to the plaintiff in respect of the suit property and the other properties bearing No.317, the plaintiff also obtained new patta, for the suit property after the original patta was misplaced. While so, the defendants, without any authority, right or title over the suit property, attempted to interfere with the possession and enjoyment of the plaintiff in respect of the suit property and the plaintiff has applied for encumbrance certificate and it revealed nil encumbrance over the suit property. However, as the defendants unlawful acts persisted, the plaintiff has been necessitated to institute the suit for necessary reliefs.

4. The case of the defendants, in brief, is as follows:

The suit is not maintainable either in law or on facts. After denying all the allegations contained in the plaint, according to the defendants, the oral sale pleaded by the

plaintiff in respect of the suit property is false. Neither Bodi Maistry Vagaiyara nor the plaintiff have title or possession of the suit property at any point of time. Under the partition deed dated 25.07.1996 between Kishtappa Maistry S/o. Late Kannigan Maistry and Thayathi Vagaira, an extent of 0.69 cents including the suit property fell to the share of Kishtappa Maistry and after his demise, his son Purushothamman was in possession and enjoyment of the suit property and he executed the registered power of attorney deed dated 30.10.1995 in favour of S.Gajendran permitting him to sell the suit property of an extent of 0.20 cents in the middle portion of Survey No.50/1F1C. The joint patta was issued by mistake depicting in the name of Mariappan along with Purushothamman and under the registered sale deed dated 19.02.1997, the power agent sold 0.10 cent South out of the suit property to the second defendant for Rs.45,000/- and on the same day, the power agent has also sold 0.10 cent of the remaining extent in the suit property in favour of the first defendant for a sum of Rs.45,000/- and pursuant to the above said sale deeds, the defendants 1 & 2 have taken possession of the respective portions and enjoying the same. The defendants and their predecessors have also prescribed title to the suit property by adverse possession. The oral sale pleaded by the plaintiff is invalid, the documents filed by the plaintiff will not clothe her title or possessory right over the suit property. Hence, the suit is liable to be dismissed.

5. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to 24 were marked. On the side of the Defendants' DWs 1 and 3 were examined and Exs.B1 to 6 were marked .

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial court was pleased to dismiss the suit. Aggrieved over the same, the plaintiff preferred the first appeal and the first appellate court was pleased to set aside the judgment and decree of the trial court and decreed the suit as prayed for. Challenging the same, the second appeal has been preferred by the defendants.

7. The second appeal was admitted and the following substantial question of law is formulated for consideration in this second appeal.

"Whether the lower Appellate Court was legally right in upholding the claim of the plaintiff's title and possession especially when the title of the plaintiff obtained by oral sale and his predecessor-in-title had not been established by leading any cogent evidence either oral or documentary?"

8. The plaintiff claims title to the suit property under an oral sale, which, according to the plaintiff, took place in the year 1960. According to the plaintiff, she had purchased the suit property for a sum of Rs.55/- from Bodi Maistry Vagaiyara and inasmuch as the sale consideration was less than Rs.100/- no sale deed was taken for the same and according to the plaintiff, the suit property has been in her possession and enjoyment and inasmuch as the defendants, without any authority, had interfered with her possession and enjoyment unlawfully, the plaintiff has been necessitated to lay the suit against the defendants. The plaintiff claims declaration of her possessory right in the suit property and for consequential permanent injunction.

9. The oral sale pleaded by the plaintiff is vehemently challenged by the defendants. According to the defendants, the case of the plaintiff that she had purchased the suit property from Bodi Maistry Vagaiyara under the oral sale is false and imaginary and it is stated that the defendants had purchased the suit property under the sale deeds dated 19.02.1997 from one S.Gajendran, the Power agent of Purushothamman S/o Kishtappa Maistry, who, according to the defendants, was the owner of the suit property.

10. Therefore, the only point that requires consideration in this appeal is whether the plaintiff has established her plea of oral sale in respect of the suit property and whether pursuant to the above said oral sale, the plaintiff has been in possession and enjoyment of the suit property, so as to enable her to seek the reliefs sought for in the suit.

11. The plaintiff's case is that she has purchased an extent of 0.04 cents from Kannammal in Survey 50/1 under the registered sale deed 11.09.1959 and the said sale deed has been marked as Ex.A1. According to the plaintiff, after the above said sale deed, she has purchased the suit property under the oral sale from Bodi Maistry Vagaiyara for a sum of Rs.55/- during the year 1960. The suit property is stated to be situated to the North of the property purchased by the plaintiff under Ex.A1. Further, the case of the plaintiff is that she had purchased an extent of 0.05 cents in Punjai Survey No.50/1F1C on 04.10.1977, which is stated to be situated on the further northern side of the suit property from Bodi Maistry's sons Govinda Maistry and others and the above said sale deed has been marked as Ex.A3.

12. The trial court, on the reasoning that when the plaintiff had purchased an extent of 0.04 cents in suit survey number under Ex.A1, being a registered sale document, did not accept the plea of the plaintiff of her oral sale of the suit

property in the year 1960, the oral sale for Rs.55/- to an extent of 0.18 cents, and so on a comparison, inasmuch as 0.04 cents was purchased for Rs.150/- under Ex.A1 dated 11.09.1959, the oral sale, for less than Rs.100/-, which took place in the year 1960 of an extent of 0.18 cents could not be accepted to be a true one and only on that ground, the trial court disbelieved the version of the plaintiff's case. However, as rightly pointed out by the first appellate court, the above reasoning of the trial court cannot be accepted.

13. It is found that under Ex.A1, the plaintiff had not only purchased 0.04 cents but a total extent of 55 cents including the 4 cents for a sum of Rs.150/-, so a registered sale deed was taken for the said transaction. Therefore, it could be seen that as found by the first appellate court at the rate of Rs.3/- per cent, the sale deed had been taken under Ex.A1 for the total extent covered under the said transaction. Next year, the plaintiff has purchased 0.18 cents and therefore, it is obvious that the market value of 0.18 cents would have been only less than Rs.100 and accordingly, it is found by the lower appellate court that the plea of the plaintiff that she had orally purchased the suit property measuring an extent of 0.18 cents during the year 1960 is plausible.

14. The plaintiff's case is that one T.G. Subramania Ganapadigal has purchased an extent of 0.10 cents in the suit survey number from Kannaiah Maistry @ Kanaikan Maistry on 05.02.1974 and the said sale deed has been marked as Ex.A3. It is also found from the evidence adduced by the parties, one Arunachala Gounder has also purchased an extent of 0.10 cents in the suit survey number from Kishtappa Maistry on 25.02.1974. The copy of the above said sale deed has been marked as Ex.A15. A perusal of Ex.A3, would go to show that as rightly found by the lower appellate court, the property comprised therein is stated to be situated to the west of Punja lands belonging to Bodi Govinda Maistry and Subramanian Chetty. Therefore, as rightly pleaded by the plaintiff, the suit property purchased by the plaintiff has been shown as the eastern boundary in respect of the property comprised in Ex.A3. Similarly, a perusal of A15 would also go to show that the property alienated under Ex.A3 has been described situated to the north of the property comprised in Ex.A15 and that apart, the plaintiff's property has been shown as the eastern boundary i.e. situated to the west of property of Subramanian Chetty. Therefore, as rightly pointed out by the first appellate court, a perusal of the recitals found in Ex.A3 and A15 would go to show that inasmuch the plaintiff has purchased the suit property in the year 1960 from Bodi Maistry Vagaiyara, her property has been shown as the eastern boundary in the sale deed marked as Exs.A3 and A15.

15. To buttress her case that pursuant to her oral sale, the plaintiff had been enjoying the suit property, according to the plaintiff, she has been issued patta and also paying kist and also the land being Inam punjai had paid due inam charges to the Government and to evidence the same, the plaintiff has marked as Exs.A4 to A8 being the receipts for the payment of Inam charges and the patta issued to her has been marked as Ex.A9. The kist receipts have been marked as Exs.A10 to 13 and Exs.A19 to 23 and the computerised patta has been marked as Exs.A16 and 18 and Grama Natham patta has been marked as Ex.A17. Therefore, as rightly found by the first appellate Court, a cumulative analysis of the above said documents, coupled with the above facts evidencing the oral sale of the suit property by the plaintiff and also, her possession and enjoyment of the same, pursuant to the oral sale, would only establish that it is only the plaintiff, who is in possession and enjoyment of the suit property.

16. The plaintiff has rightly claimed the reliefs sought for in the suit based upon her possession and enjoyment of the suit property. As adverted to earlier, the plaintiff has prima facie established that she has orally purchased the suit property from Bodi Maistry Vagaiyara and pursuant to the above said sale, she has been given patta in respect of the suit property and also, she is paying kist etc., and the kist receipts have also been marked to evidence her possession and enjoyment of the suit property. Countering the case of the plaintiff, according to the defendants, they claim that they had purchased the suit property from one Purushothamman S/o. Kishtappa Maistry under Exs.B4 and 5 on 19.02.1997. It is the case of the defendants that they had purchased the suit property from the Power agent of Purushothamman and the copy of the power of attorney deed issued in favour of one Gajendran examined as DW3 has been marked as Ex.B2. The evidence adduced on the side of the defendants would only go to indicate that it is only the plaintiff, who has been in possession and enjoyment of the suit property and not the defendants.

17. Now, as seen above, the defendants claim title on the basis, that they have purchased the suit property from Purushothamman through his power agent S.Gajendran. A perusal of Ex.B2 power of attorney deed would go to show that the source of title of Purushothamman to the suit property is shown to be a partition deed dated 13.10.1983. Though in the written statement, the defendants have claimed that the properties fell to the share of Kishtappa Maistry and Vagaiyara under the partition deed dated 27.05.1966, the power agent from whom they claim to have purchased the suit property under Exs.B4 and 5, would, in his evidence admit that as per the power of attorney deed, Purushothamman's title traces to the partition deed dated

13.10.1983. In this connection, DW3 in his evidence has admitted that while executing the power of attorney deed under Ex.B2, he was not handed over any partition deed and the particulars of Ex.B2 were furnished only by Purushothamman and there is reference about the partition deed dated 13.10.1983 in Ex.B2 and he had not seen the said partition deed and also not obtained the copy of the same from the sub registrar office. Further, he would also admit in his evidence, he had not seen any kist receipts paid by Purushothamman in respect of the suit property and the suit property is surrounded on all four sides by land and as per the recitals found in Ex.B2, the land stated to be situated on the east is survey No.50/1AFB3 which belongs to the plaintiff's husband and the lands situated to the north and south belongs to the plaintiff and on the western side, the lands of Subramanian Ganapadigal and Arunachala Mudhaliar are located. Therefore, even as per the evidence of DW3, it could be gathered that though Purushothamman is stated to have claimed title through a partition deed 13.10.1983, the power agent has not cared to verify the same and also the said deed or the copy of the same has not been placed before the courts below. The reason for the same has not been disclosed.

18. Further, the first defendant examined as DW1, during cross examination has admitted the recital found in Ex.B2 that the lands of the plaintiff is situated to the north and south is correct and the land situated on the east in survey 1FC3 belongs to the plaintiff and the land situated on the west in survey Nos.50/1C21C3 and 50/1FC3 belongs to Subramanian Ganapadigal and Arunachala Mudhaliar and it is correct that the lands of the plaintiff are situated on all the three sides and the same is also incorporated in her sale deed and in the description of the suit property also, the lands of the plaintiff is stated to be surrounded on all the three sides. Further, she has also admitted that Purushothamman had given a power deed to Gajendran and based upon the said power of attorney deed, she had purchased the property and she had seen Ex.B2 power of attorney deed and there is a reference in Ex.B2 that Purushothamman had obtained the property under the partition deed dated 13.10.1983 and the same particulars are mentioned in her sale deed Ex.B4 also and though, she would claim that she had seen the above said partition deed, she has admitted that she has not filed the copy of the same. When the source of title of her vendors viz. Partition deed dated 13.10.1983 has not been placed for the consideration of the Court, the claim made by the defendants that they were given title to the suit property under the so called partition deed 13.10.1983, without placing any material to substantiate the same, cannot be countenanced in any manner.

19. Rani wife of Purushothamman has been examined as DW4. DW4 in her evidence has admitted that her husband had two

sisters Govindammal and Mangalamammal and her father-in-law had not executed any document in respect of the property and though they had directed to describe the land in the power of attorney deed as Grama natham, it has been recorded as punjai and she has seen the suit property and the lands of the plaintiff are situated on all the three sides of the suit property, on the western side, the land of Subramanian is situated and she has further admitted categorically that it is false to state that a partition took place in the year 1983 and she has heard about the oral sale through her father-in-law. Therefore from the above admission of DW4, it could be squarely seen that there is no partition deed effected on 13.10.1983 as claimed by the defendants. When the source of title of their vendor Purushothamman has not been established in any manner and when it is also not proved that Purushothamman, at any point of time, had been in possession and enjoyment of the suit property by obtaining patta and paying kist etc., to state that the defendants 1 & 2 have purchased the suit property from him through his Power Agent DW3 without verifying his title cannot be accepted in any manner.

20. That apart, other than Exs.B4 and 5, the defendants are also placing reliance on Ex.B3 patta. The defendants claim to have purchased the property under Exs.B4 & 5 on 19.02.1997. However, the patta said to have been issued in their favour is dated 06.01.1997. As rightly pointed out in Ex.B3 patta, the District has been described as Chengalpattu M.G.R.District. However, at that point of time, it is admitted that there is no existence of Chengalpattu MGR district. Therefore, it is highly doubtful whether ExB3 would relate to the suit property and issued lawfully. Further, when it has been admitted by DW1 that only 10 months after the purchase, she had applied for patta, it does not stand to reason as to how Ex.B3 patta had come to be issued on 06.01.1997 much prior to their purchase. Even further, DW1 has admitted that though she had applied for patta after her purchase, she has not been granted patta. As found earlier, there is no document produced on the side of the defendants to establish that the defendants vendor Purushothamman had enjoyed the suit property. Further, DW4 has admitted that Ex.B3 patta has been issued only after the death of her father-in-law and again reiterated that on all the three sides of the suit property, the lands of the plaintiff are situated on the south, north and east.

21. In the light of the above discussions, it could be seen that the defendants have made a false claim to the suit property, taking advantage of the plea of oral sale made by the plaintiff in respect of the same. On the other hand, the plaintiff has established by adequate proof in the nature of preponderance of probabilities that she had orally purchased the

suit property from her vendor and she had been enjoying the suit property along with her other properties purchased by her contiguously and to establish, she had been in possession and enjoyment of the suit property, the plaintiff has also produced patta and also marked kist receipts and nothing has been pointed out to discard the oral and documentary evidence adduced on the side of the plaintiff. When it has been admitted on behalf of the defendants through their evidence, as discussed above, that the plaintiff's land is situated on all the sides of the suit property as described in the plaint, it could be seen that the plaintiff has established beyond doubt that she has got legal right and title over the suit property and accordingly, the suit property is in her possession and enjoyment as claimed by her.

22. In such view of the matter, the contention of the defendant's counsel that the lower appellate court has erred in upholding the plaintiff's possessory title and possession of the suit property without the production of acceptable oral and documentary evidence does not merit acceptance. Resultantly, the substantial question of law involved in this second appeal is answered in favour of the plaintiff and against the defendants.

At the end, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms
To

1. The Additional Subordinate Court,
Chenglepet.

2. The District Munsif Court,
Chenglepet.

+1cc to Mr.Praveen Alexander, Advocate Sr.1121
+1cc to Mr.N.A.Nissar Ahmed, Advocate Sr.657

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