

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2017

PRONOUNCED ON : 18.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.574 of 2011
and
M.P.Nos.1 & 2 of 2011

Sundari	...	Appellant
	Vs.	
Utpal N.Shah		
"Shriji Kripa"		
Alwarpet, Coonoor-1,		
Nilgris District.	...	Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Subordinate Court at Udhagamandalam, dated 27.09.2007 in A.S.No.43 of 2007 confirming the judgment and decree of the District Munsif Court at Coonoor, dated 09.03.2007 in O.S.No.90 of 1999.

For Appellant : Mr.R.Parthasarathy

For Respondents : Mr.A.K.Kumarasamy

JUDGMENT

Challenge in this second appeal is made by the defendant against the judgment and decree dated 27.09.2007 made in A.S.No.43 of 2007 on the file of the Sub Court, Udhagamandalam, confirming the judgment and decree dated 09.03.2007 made in O.S.No.90 of 1999 on the file of the District Munsif Court at Coonoor.

2. The second appeal has been admitted and the following substantial questions of law are formulated for consideration in this second appeal.

" (i) Whether the Courts below are right in decreeing the suit when the vendor of the respondent got title only in respect of 0.02-8/16 cents under Ex.A1 and without any title his vendor sold 0.02-11/16 cents under Ex.A2?

(ii) Whether the respondent is entitled to the relief of recovery of possession when the respondent has no title in respect of the entire 0.02-11/16 cents and he has title only in respect of 0.02-8/16 cents?

3. The suit has been laid by the plaintiff for possession and damages.

4. The plaintiff claims title to the suit property by virtue of a sale deed dated 25.04.1994 executed in his favour by G.Regina mary and the copy of the sale deed has been marked as Ex.A2. Further, according to the plaintiff, G.Regina mary had purchased the above said

property from Mrs.Antonyammal W/o.late S.Muthusamy Pillai and her son Arockiasamy by virtue of a sale deed dated 19.01.1987 and the copy of the same has been marked as Ex.A1. It is to be noted that the vendors of G.Regina mary viz., Mrs.Antonyammal is the grandmother of the defendant and Arockiasamy is the father of the defendant. Further, according to the plaintiff, inasmuch as the defendant made attempts to interfere with his possession and enjoyment in respect of the suit property and also attempted to damage the suit property, it is his case that he preferred several complaints against the defendant with the police and the copies of the above said complaints had been exhibited as Exs.A3 to 5 and the receipt issued by the police has been marked as Ex.A6. Further, according to the plaintiff, the defendant, without any authority persisted with her attempts, thereby had encroached into the suit property and put up a shed thereon and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate reliefs. It is the further case of the plaintiff that though an extent of 0.02-8/16 Acres had been purchased by G.Regina mary under Ex.A1 by virtue of resettlement of survey by the Government, the extent had been enlarged to 0.02-11/16 acres and the same continue to be in her exclusive possession and enjoyment without any obstruction or disturbance, till the same was conveyed to the plaintiff under Ex.A2.

5.The main defence put forth by the defendant is that by virtue of the compromise decree dated 24.04.1995 entered in O.S.No.429 of 1973 on the file of the District Munsif Court, Coonoor, the copies of the decree and the judgment of the same being marked as Exs.B1 & 2 respectively, it is stated that the suit property had been put in possession of the defendant's mother Arockiamary and in such view of the matter, according to the defendant, the sale transactions relied upon by the plaintiff marked as Exs.A1 & 2 for claiming title to the suit property are hit by the principles of lis-pendens and it is the further case of the defendant that on obtaining the permission from her mother, she had put up the shed in the suit property and therefore, according to the defendant, the plaintiff is not entitled to seek the recovery of possession of the suit property from the defendant as the plaintiff has no title to the suit property.

6. It is found that O.S.No.429/1973 had been laid by the deceased G.Asirvatham Pillai against the defendant's parents viz., M.Iruthayasamy and Arockiamary. It is also found that the above said suit pertains only to the properties situated in Survey Nos.550 and 551. Therefore, it could be seen that as rightly found by the courts below, the suit property, i.e., the property situated in R.S.No.549, in particular, is not the subject matter of the above said suit. Now,

according to the defendant, a compromise decree had been entered in the above said suit and thereby, the suit property, according to her, had been left to the possession of her mother Arockiamary and therefore, the sale transactions marked as Exs.A1 & 2 would not legally confer title on the plaintiff in respect of the suit property. In other words, according to the defendant, Exs.A1 & 2 are hit by the principles of lis pendens. However, as rightly found by the Courts below, it could be seen that the compromise decree has been passed in O.S.No.429 of 1973 only on 24.04.1995. It is also found by the Courts below that the compromise memo prepared in respect of the same and the certified copy of which has been marked as Ex.B3 would go to show that the same had been prepared by the plaintiffs 11 to 13 in O.S.No.429/1973 and presented in the Court on 18.04.1995 and only thereafter, accepting the same, it could be seen that the compromise decree had been passed in O.S.No.429/1973 on 24.04.1995. As rightly found by the Courts below, much earlier to the same, it could be seen that G.Regiamary had purchased the suit property from the defendant's grandmother and father under Ex.A1 on 19.01.1987. Therefore, it could be seen that at the time of purchase of the suit property by G.Regiamary under Ex.A1, the property situated in suit survey No.549 is not the subject matter of O.S.No.429 of 1973. Further, as rightly found by Courts below, the plaintiff had purchased the suit property from G.Regiamary under Ex.A2 on

25.04.1994. It is, therefore, evident that nearly one year prior to the filing of the compromise memo marked as Ex.B3 in the Court on 18.04.1995 by the plaintiffs 11 to 13 of O.S.No.429/1973, the plaintiff has purchased the suit property under Ex.A2 from G.Reginamary. Even, at the time of the purchase of the suit property by the plaintiff under Ex.A2, admittedly, the property situated in suit survey No.549 is not the subject matter of O.S.No.429/1973. In such view of the matter, at the time, when the sale transactions under Exs.A1 and A2 are made the suit property situated in survey No.549 is not the subject matter of O.S.No.429/1973 and when for the first time the suit property had come to be taken in or projected as the subject matter of O.S.No.429/1973 only by way of the filing of the compromise memo on 18.04.1995, it could be seen that as rightly found by the Courts below, the sale transactions Exs.A1 & 2 are not hit by the principles of *lis pendens*.

7. Further, as rightly found by the Courts below, admittedly, neither G.Reginamary nor the plaintiff are parties to O.S.No.429/1973. Admittedly, till 18.04.1995, the suit survey number is not the subject matter of O.S.No.429/1973. When even prior to the filing of the compromise memo in the above said suit, the suit property situated in survey No.549 had already been conveyed by the defendant's grandmother and her father to G.Reginamary and thereafter also,

further transferred to the plaintiff under Ex.A2, it does not stand to reason as to on what basis the suit property had come to be entered in the compromise memo marked as Ex.B3 filed in O.S.No.429/1973. Even a perusal of Exs.B1 to 3 cumulatively would go to show that it has not been explained as to on what basis the property comprised in survey No.549 had been included in the compromise memo and on what basis, it has been stated to be put in the possession of Arockiamary, the mother of the defendant. Other than stating that the plaintiffs 11 to 13 have agreed not to interfere with the possession and enjoyment of the property in R.S.No.549 with Arockiamary, the second defendant in the said suit, nothing has been mentioned as to on what basis Arockiamary had remained in possession of the suit property, whether on the basis of title or on some other ground. When it is found that even prior to the compromise decree, the property comprised in R.S.No.549 had been alienated, particularly, the suit property had been alienated under Exs.A1 and 2, it could be seen that the clause (3) of the compromise memo forming part of the compromise decree passed in O.S.No.429/1973 would not in any manner either bind the plaintiff or her predecessor in title G.Regiamary in any manner.

8. It is admitted by the defendant during the cross examination that she has no property in R.S.No.549. That apart, no material

whatsoever has been placed by the defendant that either she or her mother or any one in her family had title to the property comprised in R.S.No.549 after Exs.A1 & 2. As seen from the evidence adduced by the respective parties, it could be seen that originally the entire extent in R.S.No.549 belonged to one Hararun Sait and the defendant's grandfather Muthupillai had obtained gift of an extent of 31 cents in the above said survey number from him. Further, it is also found that the said extent had been subsequently alienated by Muthu Pillai and his wife Antonyammal and their son Iruthayasamy to various persons including G.Reginamary and when questions were put with reference to the same to the defendant, the defendant would only say that she is not aware of the same. Be that as it may, when no material whatsoever has been placed by the defendant to hold that her predecessor in title had title to any of the extent in R.S.No.549 after Exs.A1 and 2 and when the defendant herself has admitted that she does not own the property in R.S.No.549, the case of the defendant that she had put up the shed in the suit property on the permission granted by her mother as such cannot be countenanced in any manner. At the foremost, the defendant has to prima facie establish some trace of title over the suit property in some way or the other but that has not been established by her. Hence, her case that she had put up the shed on the suit property on the oral permission granted by her mother cannot be accepted readily. Perhaps, it is seen that the

defendant traces title to the suit property in favour of her mother on the basis of the compromise decree passed in O.S.No.429 of 1973. However, when the compromise decree passed in the above said suit does not, as such, confer any title of the suit property in favour of Arockiamary, the defendant's mother and when the defendant has also not placed any proof to hold that her mother had legal title and been in possession and enjoyment of the same, it could be seen that the defendant without any semblance of title is laying a false claim over the suit property in order to defeat the plaintiff's lawful title to the same claimed under Exs.A2 and A1 respectively. As rightly found by the Courts below, the defendant has not pleaded any enmity between her mother and her father or between her parents and her grandparents particularly grandmother. Therefore, when it is found that the defendant's grandmother and father had alienated the suit property under Ex.A1, it would have been made only to the knowledge of the defendant's mother. When under Ex.A2, the plaintiff had purchased the suit property from G.Regiamary and when the defendant has not placed any material whatsoever to claim title to the suit property or entitled to be in the legal possession of the suit property, it is found that the plaintiff has title to the suit property under Exs.A1 and 2 as determined by the Courts below.

9. The case of the plaintiff is further buttressed by the fact that patta in respect of the suit property had been granted in his favour which has been marked as Ex.A7 and a perusal of Ex.A7 would go to show that the extent of the property described in the plaint schedule had been found to be in the possession and enjoyment of G.Reginamary and accordingly, after the conveyance of the suit property to the plaintiff under Ex.A2, it could be seen that patta had been issued in favour of the plaintiff which had been marked as Ex.A7. Ex.A7 also supports the plaintiff's title to the suit property as described in the plaint, particularly, the larger extent found to be in the possession of the plaintiff's vendor and the plaintiff during the resettlement of survey made by the Government. If according to the defendant, the resettlement of survey made by the Government had been wrongly done and by the same any extent of her property had been annexed with the plaintiff's property nothing prevented the defendant from making suitable representation to the concerned authorities and thereby seek appropriate reliefs. In the light of the above discussions, it could be seen that the plaintiff has entirely made out a case that he has title to the suit property as described in the plaint and the findings and conclusions of the Courts below in upholding the plaintiff's title to the suit property do not call for any interference.

In the light of the above position, the substantial questions of law formulated for consideration in this second appeal are answered in favour of the plaintiff/respondent and against the appellant /defendant. In conclusion, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.01.2017

Index : Yes/No
Internet: Yes/No
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To

1. The Subordinate Civil Court,
Udhagamandalam.
2. The District Munsif Court,
Coonoor.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.574 of 2011
and
M.P.Nos.1 & 2 of 2011

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