

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2017

PRONOUNCED ON : 13.03.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.627 of 2011

and

M.P.No.1 of 2011

M.Sekar

Pappa (died)

...

Appellant

Vs.

1. S.C. Rajamanickam

2. M.Rani

3. M.Shanthi,

4. M.Padhmini

5. M.Banumathi

6. M.Sarala

7. M.Kalaiselvi

...

Respondents

(R6 & R7 given up vide
order dated 13.02.2017)

Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 01.04.2011 passed in A.S.No.51 of 2006 by the learned principal Sub Judge, Krishnagiri in confirming the judgment and decree dated 30.06.2006 passed in O.S.No.158 of 2004 by the Judicial Magistrate - cum - District Munsif, Utangari.

For Appellant	: Mr.M.A.Gouthaman
For Respondent No.1	: Mr.J.Hariharan for M/s.V.Nicholas
Respondent No.2	: Set exparte
For Respondent Nos.3 to 5	: No appearance
Respondent Nos.6 & 7	: Given up

JUDGMENT

Challenge in this second appeal is made by the defendants impugning the judgment and decree dated 01.04.2011 passed in A.S.No.51 of 2006 on the file of the Principal Sub Court, Krishnagiri, confirming the judgment and decree dated 30.06.2006 passed in O.S.No.158 of 2004 on the file of the Judicial Magistrate - cum - District Munsif, Utangari.

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 were correct in clubbing the issues of declaration of title and possession together and deciding the same based on

the patta issued by the Revenue Authorities?

(ii) Whether the Courts below have committed an error in not taking note of the fact that the plaintiffs pleaded title based on the sale deed of Natesa Achary and others and also on account of adverse possession, which plea is mutually destructive?

(iii) Whether unilateral grant of patta by revenue authorities can be the yardstick to decide issue of possession of suit schedule property when the same has been done without any opportunity to contesting parties and there are no independent records to prove title and possession?

(iv) Whether a sale intended to defeat the creditors would protect subsequent purchaser who connived with the debtors and whether such sale is protected and whether by virtue of such sale, the subsequent purchaser is entitled for declaration of title?"

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

4. The plaintiff claims title to the suit property based upon the sale deed dated 17.05.1965, which has been marked as Ex.A1. In addition to that, the plaintiff also relied upon the patta granted in his favor in respect of the suit property. Per contra, the defendants claim title to the suit property on the basis of the Court auction sale and in this connection, they relied upon the sale certificate, which has been marked as Ex.B1 and the delivery Athachi marked as Ex.B4.

5. It is found that the first defendant's father and the second defendant's husband Manickka Naidu had obtained money decree against the vendor of the plaintiff and in execution of money decree, it appears, the suit property had been brought to auction through the Court process and accordingly, based upon the culmination of the auction proceedings in favour of Manicka Naidu, the defendants claim title to the suit property as adverted to supra.

6. As seen from the evidence adduced by the respective parties, it is found that the sale deed, upon which the plaintiff claims title to the suit property, is dated 17.05.1965. The suit laid against the vendor of the Plaintiff in S.C No.1162 / 1965 has been presented on 09.09.1965 and taken on file on 13.09.1965. This could be evidenced from the suit register extract marked as Ex.A2. It is also found that the suit property has come to be attached on 21.12.1966, much after the sale deed dated 17.05.1965. Further, as seen from the suit register extract marked as Ex.A2, it is found that the suit in S.C.No.1162 of 1965 was decreed on 09.12.1965 and thereafter, in execution of the decree, it is found that attachment was made on 21.12.1966 and the sale was effected on 26.05.1969. Therefore, it could be seen that as rightly determined by the Courts below that on the date of attachment itself, the judgment debtor i.e. the vendor of the plaintiff had no title to the suit property. That apart, as seen from the endorsement found in Ex.B1 sale certificate and also, in Ex.B3 attachment warrant, it is found that the decree holder/ auction purchaser had knowledge about the purchase of the suit property by the plaintiff under the sale deed dated 17.05.1965. However, the endorsement found therein reads, as if that the sale effected on 17.05.1965 is nominal and not binding upon the decree passed in S.C.No.1162/1965. However, even prior to the

laying of the above said Small cause suit, the vendor had effected the sale of the suit property in favour of the plaintiff. It does not stand to reason as to on what basis, the endorsement has come to be made that the sale effected on 17.05.1965 is a nominal one and not binding on the decree passed in S.C.No.1162/1965. With reference to the same, as rightly found by the Courts below, nothing has been placed on record to enable the Courts below as to how the Executing Court had come to the conclusion that the sale deed in favour of the plaintiff is a nominal one and not binding upon the decree that had been passed in S.C. No. 1162/1965. In such view of the matter, when no material is placed to buttress the above said facts, it could be seen that the execution proceedings levied against the vendor of the plaintiff, as such, would not bind upon the plaintiff. Therefore, it could be seen that the Courts below have rightly held that the Court auction sale proceedings would not and could not have precedence over the sale effected in favour of the plaintiff in respect of the suit property under the sale deed dated 17.05.1965.

7. As adverted to supra, the plaintiff claims title to the suit property based upon the sale deed dated 17.05.1965, whereas, the defendants claim title to the suit property based upon the Court

auction sale and the defendants have not established that the sale deed effected in favour of the plaintiff is a nominal one and not binding upon them. That apart, the defendants have also not placed any material to hold as to how the Executing Court had come to such a conclusion against the plaintiff's vendor as well as the plaintiff. It is not the case of the defendants that the plaintiff's vendor and the plaintiff had been given an opportunity by the Executing Court before coming to the conclusion that the sale deed dated 17.5.1965 is a nominal one and not binding on the decree passed in S.C.No.1162 of 1965. In such view of the matter, no interference could be made in the findings of the Courts below that the Court auction sale effected in favour of the defendants would not bind upon the plaintiff in any manner.

8. Barring the Court auction sale, it appears the defendants have also laid a claim over the suit property on the plea of adverse possession. However, as regards the defendants' plea of adverse possession, as rightly found by the Courts below, no acceptable material has been placed to hold that the defendants have prescribed title to the suit property by way of adverse possession. The plea of adverse possession raised by the defendants has been rejected by the

Courts below on sound and convincing reasons. No material, as such, has been placed by the defendants to warrant any interference with reference to the above said findings of the Courts below.

9. In this second appeal, the main focus made by the appellant's counsel is that the plaintiff has obtained patta in respect of the suit property long after the sale deed dated 17.05.1965. No doubt, the patta had been granted in favour of the plaintiff much after the above said sale transaction. But as seen above, the plaintiff has not laid the claim to the suit property based upon the patta issued by the Revenue Department. On the other hand, it is found that the plaintiff has laid the claim to the suit property only on the basis of the sale deed marked as Ex.A1 and as an additional material, in support of his case, the plaintiff has also relied upon the patta. That apart, it is found that the suit property being a Grama Natham, it is evident that the same would not remain vested with the Government. In such view of the matter, the Courts below have rightly held that the patta, as such, would not confer title on the suit property on the parties concerned.

10. In the light of the above discussions, it is found that the sale effected in favour of the plaintiff under Ex.A1 has not been established to be a nominal transaction and not binding upon the defendants. On the other hand, it is found that the defendants are made aware of the purchase of the suit property by the plaintiff under Ex.A1 much prior to the attachment/Court auction proceedings and knowing about the sale transaction, it is found that the defendants have ventured to purchase the suit property through the Court auction sale proceedings. However, when the defendants have not placed any material before the Courts below as to on what basis, the Executing Court had come to the conclusion that the sale effected in favour of the plaintiff is a nominal one and not binding upon the decree passed in S.C.No.1162/1965, particularly, without providing an opportunity to the plaintiff as well as his vendor to project their case, it could be seen that the auction proceedings in favour of the defendants and their predecessor in interest would not bind upon the plaintiff.

11. In the light of the above discussions, it is found that no substantial question of law is involved in this second appeal. In any event, the substantial questions of law formulated for consideration in this second appeal are, in the above lines, answered in faovur of the plaintiff and against the defendants.

In conclusion, the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
sms

13.03.2017

To

1. The Principal Sub Court, Krishnagiri.
2. The Judicial Magistrate - cum - District Munsif, Utangari.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
S. A.No.627 of 2011
and
M.P.No.1 of 2011

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<http://www.judis.nic.in>