

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2017
PRONOUNCED ON : 27.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.681 of 2011

1. Mahaboobee (deceased)
2. Masthan Bibi ... Appellants/Respondents/Plaintiffs

(Appellant 2 brought on record
as LR of the deceased sole
appellant vide court order
dated 07.02.2017 made in
M.P.No.1 of 2014 in CMP 8897/2016)
in S.A. 681/11

Vs.

1.Venkatesan (deceased)
2.Pattabi
3.Rajendran
4.Kamalakannan
5.Lakshmi
6.Prema
7.Usharani
8.Kutti (alias) Kotteswari

... Respondents/Appellants/
Defendants

(RR2 to 8 Brought on record
as LRs of the deceased sole
Respondent vide Order of this
Court dated 07.02.2017 made
in M.P.No.1 of 2014 & CMP
No.8897/2016) in S.A. 681/11

Second Appeal is filed under Section 100 of Civil Procedure Code, against the decree and judgment passed in A.S.No.17 of 2010 dated 21.01.2011 on the file of the Sub Court, Poonamallee, partly reversing the Decree and Judgment in O.S.No.287 of 1998 dated 24.11.2009 on the file of the Principal District Munsif Court, Poonamallee.

For Appellant
No.2
For Respondents

: Mr.M.V.Seshachari
:
: No appearance

JUDGMENT

In this second appeal, the plaintiff has impugned the judgment and decree dated 21.01.2011 passed in A.S.No.17 of 2010 on the file of the Sub Court, Poonamallee, partly reversing the judgement and decree dated 24.11.2009 passed in O.S.No.287 of 1998 on the file of the Principal District Munsif Court, Poonamallee.

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

3. The suit property is stated to be measuring an extent of 11 cents in survey No.9. The plaintiff claimed to have purchased a portion of the suit property i.e. Southern 5 cents from Sreenivasan under the registered sale deed dated 14.09.1973 marked as Ex.A1. According to the plaintiff, at the time of the conveyance of the Southern 5 cents under Ex.A1, her vendor Sreenivasan also handed over possession of the 7 cents to her and thus, according to the plaintiff, she is in possession and enjoyment of the entire suit property and further, it is stated that recognizing her possession, as regards the Northern 7 cents, the Government had assigned the same in favour of the plaintiff. However, when it is found that excluding 5 cents, the remaining extent on the Northern could only be 6 cents, it could be seen that the plaintiff has wrongly claimed that the Northern portion measures 7 cents in the suit survey number.

4. As regards the purchase of Southern 5 cents by the plaintiff under Ex.A1 from one Sreenivasan, the defendant has raised the plea of Benami. According to the defendant, he and the plaintiff's husband were very close friends and accordingly, it is he, who had purchased the entire suit property, as such, Benami in the name of the plaintiff's husband and later, he came to understand that the sale deed had been taken in the name of the plaintiff by her husband. Be that as it may, as regards the plea of Benami put forth by the defendant, it is found that the Courts below have rightly found that the defendant has miserably failed to establish his case of Benami. No infirmity is found in the findings of the Courts below in disbelieving the plea of Benami put forth by the defendant.

5. As seen from the evidence adduced in the matter, it is seen that excluding 5 cents on the Southern side in the suit survey number, the Northern 6 cents is a Meikal Poramboke land belonging to the Government. Accordingly, it is found that the plaintiff's vendor has also no title in respect of the said Northern portion. If really, the plaintiff's vendor had any title over the said portion, the same also would have been

conveyed to the plaintiff under Ex.A1. However, under Ex.A1, only the Southern 5 cents had been conveyed to the plaintiff. Now, it is the case of the plaintiff that recognizing her possession of the Northern portion, the Government had assigned patta in her favour, which has been marked as Ex.A2. The suit property is stated to be situated in Paleripattu Village in survey No.9. However, as rightly found by the first appellate Court, Ex.A2 is found to be related to the property situated in Paruthipatti Village, with reference to survey No.53, and the same has been found to be assigned to the third party. In such view of the matter, when the suit village, the suit survey number and also, the name of the plaintiff is not found to be co-related with the entries found in Ex.A2 and when the plaintiff has also failed to establish that she or her vendor Srieenivasan had been in possession and enjoyment of the Northern portion, at any point of time and the same is also found to be Meikal Poramboku land belonging to the Government, it is found that as rightly found by the first appellate Court, Ex.A2 would not in any manner uphold the plaintiff's claim of title over the Northern portion of 6 cents in the suit survey number. Therefore, the first appellate Court has rightly rejected the plaintiff's case, as regards the Northern 6 cents in the suit survey number. No infirmity, whatsoever, is found with reference to the same.

6. As regards the claim of possession of the defendant of the suit property, it is found that the defendant has established his possession, as regards the Northern portion i.e. 6 cents. In this connection, documents marked as Exs.B1 to 3 would go to show that recognizing the defendant's possession of the Northern portion, the same being a Poramboku land, it is found that "B" memo had been issued to him and he has also paid necessary penal charges. That apart, it is also found that the defendant had been residing in the said portion of the property, even from 1986 onwards and this could be seen from the documents marked as Exs.B4 to 10 cumulatively. Therefore, the first appellate Court has rightly found that the defendant has established his possession and enjoyment of the Northern 6 cents and accordingly, found that the plaintiff is not entitled to lay any claim over the said portion. As regards the Southern 5 cents, though the defendant's claimed to be in possession and enjoyment of the same, it is found that the defendant has taken the plea of permissive possession of the same from the plaintiff. However, he would state that the permissive possession plea has not been really taken by him and it has been wrongly taken as a plea by his advocate in the written statement. However, considering the defence set out in the written statement, it is found that the defendant having taken the plea of permissive possession, thereafter, cannot turn a hostile attitude towards the plaintiff, as regards the southern 5 cents. No doubt, for the sole reason that the plaintiff's

case of tenancy, as regards the suit property, not being established, it can not be held that the defendant is also having title to the Southern 5 cents. No document, whatsoever, has been placed by the defendant to show that he is entitled to Southern 5 cents in the suit survey number. On the other hand, as adverted to earlier, the plaintiff has established her claim of title to the said portion through Ex.A1. The plea of Benami set out by the defendant, as seen earlier, is not established. Therefore, the first appellate Court has rightly held that the plaintiff would be entitled to get the relief sought for, only as regards the southern 5 cents and as regards the Northern 6 cents, it has rightly found that the defendant is in possession and enjoyment of the same. With reference to the above said findings of the first appellate Court, nothing has been pointed out in this second appeal to warrant any interference with reference to the same.

7. The plaintiff has also sought the relief of damages from the defendant. However, as rightly found by the first appellate Court, when the quantum of damages has not been fixed and the plaintiff has also not paid the court fees, as regards the same, the first appellate Court has rightly rejected the claim of damages sought for by the plaintiff. There is nothing to interfere with reference to the same also.

8. In such view of the matter, it is found that the decision relied upon by the appellants' counsel reported in (2010) 2 MLJ 1039 (Special Tahsildar, Adi Dravidar Welfare Scheme, Thiruvallur V. M.Gopinathan) is found to be not applicable to the facts and circumstances of the case at hand.

9. In the light of the above discussions, the judgment and decree of the first appellate Court is found to be based upon correct appreciation of the evidence on record and also proper findings and conclusions and not liable to interfere with.

At the end, no substantial question of law is found to be involved in the second appeal. Accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed, if any.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge , Poonamallee.
2. The Principal District Munsif , Poonamallee.

+1 CC to Mr. M.V.Seshachari, Advocate sr 12374

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EV (CO)
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