

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2017

PRONOUNCED ON:23.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN
S.A.No.740 of 2011

&

M.P.No.1 of 2011

1.Pappa
2.Valarmathi
3.Manickkam

... Appellants/Respondents/
Respondents

Vs.

1.Sadasivam
2.Manicka Udayar
3.Arumugam

...1st Respondent/Appellant/1st Respondent

...Respondents 2 to 3/Respondents 4 &
5/Respondents 4 & 5

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 30.04.2010 passed in A.S.No.83 of 2007 on the file of the Principal Subordinate Judge, Vridhachalam, reversing the judgment and decree dated 19.02.2007 passed in O.S.No.64 of 2003 on the file of the Principal District Munsif Court, Vridhachalam.

For Appellants : Mr.S.Mukundan
for M/S.Sarvabhauman Associates

For Respondents: Mr.V.Anand

J U D G M E N T
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Challenge in this second appeal is made by the defendants 1 to 3 against the Judgment and decree dated 30.04.2010 passed in A.S.No.83 of 2007 on the file of the Principal Subordinate Judge, Vridhachalam, reversing the judgment and decree dated 19.02.2007 passed in O.S.No.64 of 2003 on the file of the Principal District Munsif Court, Vridhachalam.

2.The second appeal has been admitted and the following substantial question of law is formulated for consideration.

(a)Whether the judgment and decree of the Courts below in decreeing the suit in part by the trial court and in full by the first appellate court are based upon perverse findings and misdirected against the evidence on record?

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

4.The suit property is stated to be an extent of 0.07 cents in resurvey Nos.41/15C and 41/15D within the specific boundaries. Now according to the plaintiff, he claims title to the suit property based upon the Sale Deeds dated 27.08.1983 marked as Ex.A1 and 28.01.1985 marked as Ex.A2. As regards the purchase of a portion of the suit property to an extent of 0.3 ½ cents under Ex.A1, by the plaintiff from Arjunan and others, the same is not disputed by the defendants. However, as regards the claim of the plaintiff that he had also purchased an extent of 0.3 ½ cents under Ex.A2 in the suit survey numbers from the fifth defendant Arumugam, the same has been challenged.

5.Despite the defence set out by the defendants challenging the claim of title to a portion of the suit property by the plaintiff alleged to have been purchased by him under Ex.A2, the plaintiff has not amended the plaint to seek the relief of declaration in respect of the suit property as such. However, as per the case of the plaintiff, his claim of title to a portion of the suit property under Ex.A1 has not been controverted.

6.Now according to the defendants, the total extent of 0.27 cents in S.No.41/15, originally belonged to Meykappa Udayar, Ayyasamy Udayar and Natesa Udayar. Out of the above said extent of 0.27 cents, the northern most extent of 0.9 cents belonged to Meykappa Udayar, the middle portion of 0.09 cents belonged to Ayyasamy Udayar and the southern portion of 0.09 cents belonged to Natesa Udayar.

7.The further case of the defendants is that the suit property is situated in the middle portion of 0.09 cents belonging to Ayyasamy Udayar. The plaintiff examined as PW1 has

also admitted during the cross examination that originally the suit property belonged to Ayyasamy Udayar and that Duraisamy, Manicka Udayar Rayappan, Arjunan and Ramasamy are the sons of Ayyasamy Udayar. As per the evidence let in by the respective parties, it could be seen that the plaintiff proceeds to lay a claim over the property purchased by him under Ex.A2 from the fifth defendant Arumugam on the footing that Arumugam had purchased the said property from Arjunan, Mookan and Ramasamy under the Sale Deed dated 27.08.1993, which has been marked as Ex.A20. The Courts below have on the basis that the other heirs of Ayyasamy Udayar not having thrown any challenge to the alienation made to the fifth defendant Arumugam under Ex.A20 and thereafter by the fifth defendant Arumugam to the plaintiff under Ex.A2, thereby concluded that inasmuch as the other heirs of Ayyasamy Udayar are not allotted the said property comprised under Ex.A20 and A2, they did not challenge the above said alienation till date. Accordingly, the Courts below have accepted the validity of Ex.A20 Sale Deed and found that Arumugam had title to the property comprised under Ex.A20. Now according to the plaintiff he had purchased the said property from Arumugam, the fifth defendant under Ex.A2. However, insofar as this case is concerned, the fifth defendant Arumugam himself had disputed the claim of purchase of the property under Ex.A2 and according to him he had not executed the sale deed in favour of the plaintiff marked as Ex.A2. However, repudiating the claim of the fifth defendant and confirming that it is only the fifth defendant, who had conveyed an extent of 3 ½ cents in the suit survey number under Ex.A2 to him, the plaintiff has taken steps to compare the LTI of Arumugam found in Ex.A20 with that of his admitted LTI through an expert and based upon the evidence of the expert examined as PW5 and also the documents marked as Exs.X1 to X4 established that it is only the fifth defendant, who had alienated the property under Ex.A2 to the plaintiff.

8. Accordingly, the Courts below have also accepted the case of the plaintiff as regards his claim of purchase of a portion of the suit property under Ex.A2 from the fifth defendant. As regards the above findings of the Courts below no exception as such could be taken in any manner both factually as well as legally.

9. As adverted to earlier, the suit has been laid by the plaintiff simpliciter for permanent injunction. The defendants have also challenged the claim of the plaintiff that he is in the possession and enjoyment of the suit property as described in the plaint. Now as per the case of the plaintiff, the suit property is stated to be situated in re-survey Nos.41/15C, 41/15D of a total extent of 0.07 cents.

10.From the evidence adduced by the respective parties, it could be seen that, as rightly found by the Courts below, the suit survey numbers namely S.No.41/15C, 41/15D under the UDR scheme had been further sub-divided i.e., S.No.41/15C has been sub-divided as S.No.41/15C1, 41/15C2, 41/15C3 and S.No.41/15D has been sub-divided as S.Nos.41/15D1 to 41/15D4. The same could be evidenced from the documents marked as Ex.B7 & B18, the 'A' register extract of the UDR scheme and also the Commissioner's report and plan marked as Exs.C1 to 3. Further, from the above said documents, it could also be seen that out of the subsequent sub divisions made in the suit survey numbers now the road lies in S.Nos.41/15C3 & 41/15D3 and the lane portion lies in S.No.41/15D4. The above said documents reinforce the same. It could therefore be seen that the suit survey numbers had been sub-divided under the UDR scheme and it is found that road portions and the lane portion are also found in the suit survey numbers as such. That the plaintiff has also been made aware of the said divisions effected under the UDR scheme could be seen from the document marked as Ex.A19 dated 30.09.1997. Further, it could also be seen that the plaintiff has also challenged the sub divisions made in the UDR scheme through the representation, Ex.A35, dated 21.08.1995 to the concerned authorities. It is also found from Ex.B8 and B9, the patta granted to the defendants 1 and 2 in respect of their properties, their properties are situated to the west of the suit survey numbers.41/15C, 41/15D. Further, it could also be seen that the plaintiff has also presented an appeal petition to the revenue authorities challenging the sub-divisions effected under the UDR scheme under the document marked as Ex.A32. It is also found that the defendants had to have access only through the road and the lane portions situated in S.Nos.41/15C3, 41/15D3 and 41/15 D4 to reach the Mangalam road. The same could also be seen from the Commissioner's report and plan marked as Exs.C1 to C3 cumulatively.

11.In the light of the above sub-divisions effected under the UDR scheme in respect of the suit survey numbers, the trial court on the basis that the plaintiff having failed to establish that he is in possession of a portion of the suit property earmarked as road and lane in S.Nos.41/15C3, 41/15D3 and 41/15D4 declined the relief of permanent injunction sought for by the plaintiff insofar as the above sub-divisions are concerned and accepted the case of the plaintiff as regards the other portions of the suit property situated in S.Nos.41/15C1 and 41/15C2 and 41/15D1 and 41/15D2 and accordingly granted the relief of permanent injunction in favour of the plaintiff inasmuch as the suit has been laid by the plaintiff simpliciter for permanent injunction. Accordingly, it is found that the plaintiff is

able to establish his possession only in respect of the portions as decreed by the trial court and the remaining portions being the road and the lane and also in the usage of the defendants for having access to reach the main road on the eastern side from their properties, it could be seen that no exception could be taken to the findings of the trial court in partly decreeing the suit in favour of the plaintiff.

12. Aggrieved over the judgment and decree of the trial court, it is found that the plaintiff has preferred the first appeal and the defendants 1 to 3 have preferred the cross appeal. The first appellate court on a reappraisal of the evidence had accepted the plaint in its entirety and thereby allowed the appeal preferred by the plaintiff and consequently set aside the judgment and decree of the trial court and decreed the suit in its entirety in favour of the plaintiff. The first Appellate court has dismissed the cross appeal preferred by the defendants 1 to 3. As against the judgment and decree of the first appellate court dismissing the cross appeal, the defendants 1 to 3 have not preferred any appeal. On the other hand, it is found that the defendants 1 to 3 have preferred the present appeal only as against the Appeal Suit No.83 of 2007 laid by the plaintiff.

13. The first appellate court has also accepted the findings of the trial court as regards the purchase of the suit property by the plaintiff under Ex.A1 and A2. However, the first appellate court has proceeded with the case on the footing that inasmuch as the sub-divisions of the suit survey numbers effected under the UDR scheme cannot be made detrimental to the rights of the plaintiff in its entirety i.e., the properties purchased under Exs.A1 and 2 and inasmuch as the plaintiff has also preferred the appeal against the sub-divisions effected under the UDR scheme, set aside the judgment and decree of the trial court declining the relief to the plaintiff in respect of certain portions of the suit property and instead decreed the suit in its entirety in favour of the plaintiff.

14. As rightly put forth by the learned counsel for the appellants, the sub-divisions effected under the UDR scheme is known to the plaintiff and the same could be seen from Ex.A19, as adverted to earlier. As regards the sub-divisions effected under the above said scheme, the plaintiff has also sent his representation, which has been marked as Ex.A35. It is found that an appeal petition has also been preferred by the plaintiff under Ex.A32, challenging the sub-divisions effected. However, when the sub-divisions had been effected under the UDR scheme to

the knowledge of the plaintiff and when it is found that only the road portions and the lane portion are lying in S.Nos.41/15C3, 41/15D3, 41/15D4 and those portions are not shown to be in the possession and enjoyment of the plaintiff as such by placing acceptable and reliable evidence, as rightly put forth by the learned counsel for the appellants, the first appellate court has erred in decreeing the suit in its entirety and the first appellate court should have only confirmed the judgment and decree of the trial court. The above argument of the learned counsel for the appellants seems acceptable. When no material as such has been placed by the plaintiff to show that he is in the possession and enjoyment of the entire extent of 0.07 cents in the suit survey numbers, the documents marked on the side of the plaintiff as regards the same namely Ex.A16 and A23 found to be not supporting the case of the plaintiff and when admittedly, the road portions and the lane portion are found to be in the suit property and when it is also found that only through the above said portions, the defendants can have access to reach the Mangalam Pettai road situated at the eastern side from their properties, it could be seen that the first appellate court has erred in decreeing the suit laid by the plaintiff in its entirety ignoring the basic fact that the plaintiff has failed to establish his possession and enjoyment of the said portions as put forth in the plaint. The oral and documentary evidence adduced on the side of the plaintiff did not point out that, as found by the trial court, he is in the possession and enjoyment of the entire extent of the suit property inclusive of the road portions and the lane portion, which are now found to be lying in the suit survey numbers under the UDR scheme. If at all the plaintiff is aggrieved over the sub-divisions effected under the UDR scheme, as rightly argued by the learned counsel for the appellants, the plaintiff has to work out his remedy by proceeding further in his appeal before the concerned authority and cannot seek the relief sought for with reference to the entire extent of the suit property sans proof of the same.

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15. In the light of the above discussions, the judgment and decree of the first appellate court in decreeing the suit filed by the plaintiff in its entirety cannot be accepted and they are found to be based upon the perverse findings and misdirected against the evidence on record. On the other hand, it is found that the judgment and decree of the trial court in decreeing the suit in part in favour of the plaintiff are found to be based upon the correct appreciation of the evidence on record and also upon the proper findings and conclusions. The substantial question of law formulated in this second appeal is answered accordingly.

16.In conclusion, the Judgment and decree dated 30.04.2010 passed in A.S.No.83 of 2007 on the file of the Principal Subordinate Judge, Vridhachalam are set aside and the judgment and decree dated 19.02.2007 passed in O.S.No.64 of 2003 on the file of the Principal District Munsif Court, Vridhachalam are confirmed. Accordingly, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Vridhachalam.
2. The Principal District Munsif Court,
Vridhachalam.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to M/S.Sarvabhauman Associates, Advocate sr.4238

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