

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2017

PRONOUNCED ON : 24.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.766 of 2011

and

M.P.No.1 of 2011

Kumaravel ... Appellant/2nd defendant

Vs.

1.Rajendiran

2.Chinnasamy Gounder

... 1st Respondent/Plaintiff

1st Respondent/1st defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.7 of 2010 on the file of the Sub Court, Perambalur, dated 07.01.2011 in confirming the judgment and decree in O.S.No.550 of 2004 on the file of the District Munsif Court, Perambalur, dated 17.07.2008.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr. R.Agilesh

No.1.

For Respondent : No appearance

No.2.

JUDGMENT

Challenge in this second appeal is made by the second defendant against the judgment and decree dated 07.01.2011 made in A.S.No.7 of 2010 on the file of the Sub Court, Perambalur, confirming the judgment and decree dated 17.07.2008 made in O.S.No.550 of 2004 on the file of the District Munsif Court, Perambalur.

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

3. As per the evidence adduced in the matter, it is found that the suit property originally belonged to the family of the first defendant. It is the case of the plaintiff that the first defendant, during the year 1979, sold the suit property for a sum of Rs.90/- by way of oral sale to Selvam, the mother-in-law of the plaintiff, in the presence of Nallu Gounder, Venkatasubbu Iyer and also delivered possession of the suit property to Selvam and pursuant to the same, Selvam had taken possession of the suit property and been enjoying the same, by paying necessary kists and obtaining patta and also cultivating the suit property and thus, it is stated that Selvam was the owner of the suit property. It is the further the case of the plaintiff that Selvam had alienated the suit property in favour of the plaintiff on 19.10.2000 by way of a sale deed and thus, it is contended that based upon the above said sale deed, the plaintiff acquired title to the suit property and pursuant to the same, the plaintiff has been in possession and enjoyment of the suit property by paying kist, obtaining patta, etc., and inasmuch as the defendants, without any authority, attempted to interfere with the possession and enjoyment of the plaintiff in respect of the suit property, he has been necessitated to lay the suit seeking for appropriate reliefs.

4. The defendants have taken a plea that the oral sale pleaded by the plaintiff from the first defendant to his mother-in-law Selvam is not true and also, they have disputed the title of the plaintiff in respect of the suit property pursuant to the sale deed dated 19.10.2000. According to the defendants, the suit property belonged to the first defendant and accordingly, when the plaintiff made attempt to change the patta for the suit property in his favour, the same was resisted and after the enquiry, the patta had been granted in respect of the suit property in favour of the first defendant and aggrieved over the same, according to the defendants, the plaintiff has preferred the present suit. It is also stated by the defendants that on coming to know that the second defendant had made an arrangement to purchase the suit property from the first defendant, according to them, the plaintiff and his mother-in-law have colluded together and created documents and thereby, laid the suit falsely against the defendants. According to the defendants, the suit property is in the possession and enjoyment of the second defendant pursuant to his purchase of the same from the first defendant and hence, the suit is liable to be dismissed.

5. The Courts below have found that it is only the plaintiff and his predecessor in interest, who are in possession and enjoyment of the suit property and for coming to the above said conclusion, the Courts below have placed reliance upon the kist receipt, Adangal, Patta, and Farmers identity card, marked as Exs.A2 to 5 and 12. Therefore, it is found that right from the

oral purchase, it is noted that Selvam and thereafter, the plaintiff, pursuant to the sale deed dated 19.10.2000, the sale deed having been marked as Ex.A1, it is only the plaintiff, who is in possession and enjoyment of the suit property.

6. No doubt, as already adverted to, originally the suit property belonged to the first defendant. However, after the oral sale pleaded by the plaintiff, which took place in the year 1979, it has been found by the Courts below that thereafter, it is only Selvam and the plaintiff, who are found to be in possession and enjoyment of the suit property. It is also found by the Courts below that no material, as such, has been placed by the defendants to hold that after the year 1979, the first defendant had been in possession and enjoyment of the suit property as a rightful owner. Therefore, it could be seen that accordingly, the Courts below have accepted the oral sale pleaded by the plaintiff and held that inasmuch as the first defendant had ceased to have any right over the suit property after the oral sale, the defendants are unable to place any material to establish that from 1979 onwards, the first defendant is in possession and enjoyment of the suit property.

7. On a perusal of the evidence adduced in the matter, it is found that trouble started between the parties, when the plaintiff moved the Revenue Authorities seeking patta in respect of the suit property pursuant to Ex.A1 sale transaction. It is found that the same had been resisted and no doubt, the patta had been issued in favour of the first defendant. Accordingly, it is found that the defendants have also marked the computerised patta as Exs.B1(series). It is also admitted that challenging the proceedings of the Revenue Authorities in granting patta in favour of the defendants, the plaintiff has moved the higher authorities with reference to the same, challenging the grant of patta in faovur of the defendants and it is found that the proceedings are still pending.

8. In this second appeal, the main contention that has been projected by the appellant's counsel, is that the plaintiff has failed to establish the oral sale pleaded as according to him, inasmuch as the value of the suit property, even during the year 1979, is more than Rs.100/-, the plea of oral sale should not be accepted and in such view of the matter, according to him, Selvam cannot derived a valid title over the suit property on the claim of the oral sale and therefore, the plaintiff is also not entitled to claim any right or title over the suit property under Ex.A1. On the other hand, according to the plaintiff, inasmuch as the property was sold to Selvam by the first defendant for a sum of Rs.90/- during the year 1979, no sale deed was taken and accordingly, the property was transferred to Selvam by way of oral sale accompanied with delivery of possession. The plaintiff has specifically pleaded that the

possession was handed over by the first defendant to Selvam in the presence of two persons. It is admitted that the above said two persons are no more. Even then, the plaintiff is able to establish that pursuant to the said oral sale, it is only Selvam and thereafter, pursuant to Ex.A1, it is only the plaintiff, who has been in possession and enjoyment of the suit property. As adverted to supra, no material, as such, has been placed by the defendants to show that from 1979 onwards, the first defendant had been in possession and enjoyment of the suit property.

9. In the written statement, the defendants have not taken any plea that even during the year 1979, the value of the suit property was more than Rs.100/-. Their only plea is that the oral sale pleaded by the plaintiff is not true. Other than that plea, no specific plea has been made that the value of the suit property, during the year 1979, is more than Rs.100/-. In such view of the matter, the Courts below have rightly held that when the first defendant had agreed to sell the suit property to Selvam by way of oral sale for a sum of Rs.90/- and with reference to such a sale transaction, the law does not require any registered deed, it could be seen that the plea of oral sale accompanied by delivery of possession is acceptable. The same has also been established by the plaintiff by marking convincing documents as adverted to earlier. Countering the same, it has been found that the defendants have not placed any documentary proof to establish that it is only the first defendant, who has been in possession and enjoyment of the suit property even after 1979.

10. As regards the conversion of patta in favour of the defendants, as rightly found by the Courts below, when the parties are sorting out their issue over the suit property by approaching the Civil Court, it does not stand to reason as to how the Revenue authorities would be competent to decide the question of title in respect of the suit property. Therefore, the grant of patta in favour of the defendants, as such, would not be sufficient to hold that the oral sale pleaded by the plaintiff is false. That apart, it is also found that the further proceedings have been initiated by the plaintiff, challenging the patta granted in favour of the defendants and it is admitted that the same is still pending. The pendency of the proceedings before the Revenue authorities would not in any manner prevent or place an embargo on the Civil Court in deciding the issue of title in respect of the suit property. Therefore, it is found that the Courts below have rightly held that the plaintiff has established the oral sale in favour of Selvam and in such view of the matter, after the said oral sale, it is found that the first defendant has ceased to have any right over the suit property. Therefore, the case of the defendants that the first defendant has alienated the suit property in favour of the second defendant by way of a sale deed

dated 19.08.2002 marked as Ex.B2, as such, cannot be accepted. It has not been established by the defendants that on the date of Ex.B2, the first defendant had a valid title over the suit property.

11. The defendants have failed to plead that the value of the suit property during the year 1979 was on the higher side i.e. more than Rs.100/- and when even during the course of trial, they have not placed any material to hold that the value of the suit property is on the higher side at that point of time, hence, the present plea put forth by the appellant's counsel that the plaintiff has failed to establish that the value of the suit property is less than Rs.100/- and therefore, the plaintiff's case should be rejected, as such, cannot be countenanced. No where, it has been pleaded or established by the defendants that the value of the suit property, at that point of time, is more than Rs.100/-.

12. In the light of the above position, the Courts below have rightly held that the plaintiff has established the oral sale and also his title over the suit property, pursuant to Ex.A1 and accordingly, granted the reliefs sought for by the plaintiff. No infirmity is noted in the judgment and decrees of the Courts below in upholding the plaintiff's case and no interference is called for with reference to the same.

13. The Counsel for the 2<sup>nd</sup> defendant, in support of his case, placed reliance upon the decisions reported in 1922 15 L.W.page 464 (Madam Pillai Vs. Badrakali Ammal alias Pothia Pillai), 1988 - 1 - L.W.590 (James V. Y.Davidson) and 2007-2-L.W.1008 (Nagammal V. Valliammal), as regards the position that when the value of the property is more than Rs.100/- the transfer of the property could be made only by way of registered instrument. However, when it is found that the plaintiff has established the oral sale put forth by him, the above said authorities would not be applicable to the facts and circumstances of the case at hand.

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

Sd/-  
Asst.Registrar

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Sub Asst. Registrar

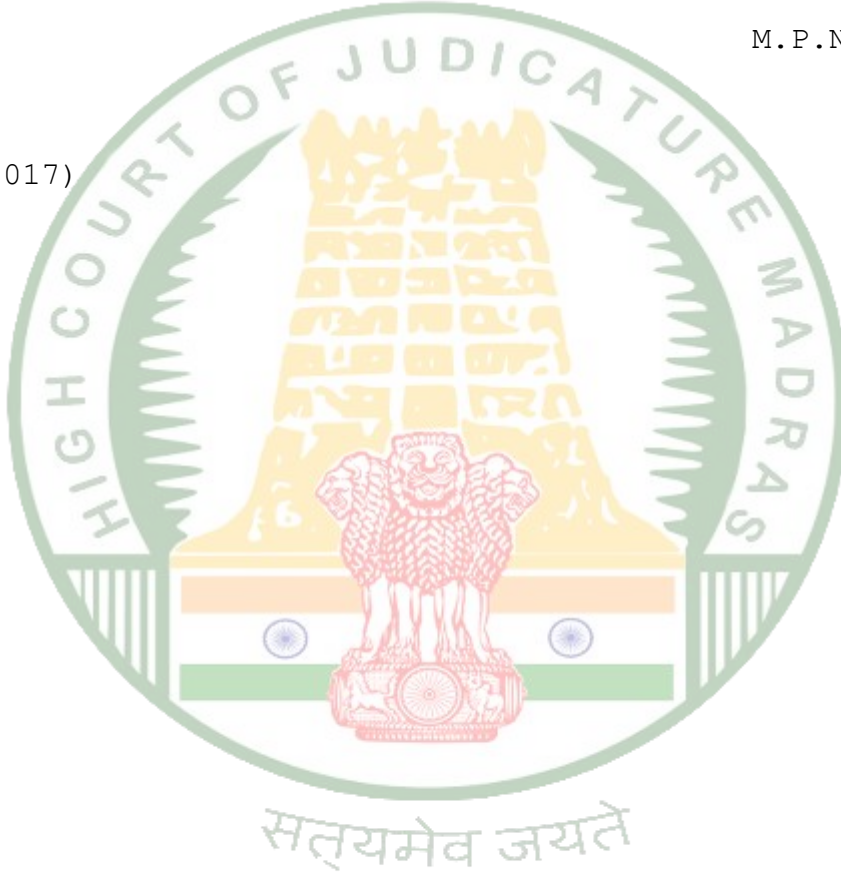
To

- 1.The Sub Court, Perambalur.
- 2.The District Munsif Court, Perambalur.

+1cc to M/S. T. DhanaSekaran, Advocate Sr. 12206  
+1cc to M/S. V. Raghavachari, Advocate Sr. 11776

Pre-delivery Judgment in  
S. A.No.766 of 2011  
and  
M.P.No.1 of 2011

AD (CO)  
VR(03/04/2017)



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