

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2017

PRONOUNCED ON : 16.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.775 of 2011

1.Jayaraman
2.Sadayan

...

Appellants

Vs.

Chinnapillai

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 22.12.2009 passed in A.S.No.37 of 2007 on the file of the Sub Ordinate Judge at Kallakurichi concurring with the judgment and decree dated 11.01.2007 passed in O.S.No.694 of 2003 on the file of th III Additional District Munsif at Kallakurichi.

For Appellants : Mr.N.Ramesh

For Respondent : Mr.V.Manohar

JUDGMENT

In this second appeal, the plaintiffs have impugned the judgment and decree dated 22.12.2009 made in A.S.No.37 of 2007 on the file of the Sub Court, Kallakurichi, confirming the judgment and decree dated 11.01.2007 made in O.S.No.694 of 2003 on the file of the III Additional District Munsif Court, Kallakurichi.

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

" whether the judgment and decree of the Courts below in dismissing the suit are based upon perverse findings and conclusions and misdirected against the evidence on records."

3. As seen from the evidence adduced by the respective parties, both the plaintiffs and the defendant claim title to the suit property from Palanimuthu. It is, therefore, evident that both admit that Palanimuthu was the original owner of the suit property. Now, according to the plaintiffs, they had purchased the suit property from Palanimuthu under Ex.A1 dated 07.11.2003. It is also admitted that Ex.A1 is presented for registration on 11.11.2003. Therefore, it

could be seen that Ex.A1 would come into effect from the date of the execution of the document i.e. 07.11.2003. Per contra, the defendant claims to have purchased the suit property from Palanimuthu under Ex.B1, which is dated 12.11.2003. It is also found that Ex.B1 is presented for registration only on 13.11.2003. Therefore, it could be seen that if Ex.B1, is held to be a valid document, it would take effect only from 12.11.2003.

4. In the light of the above position, when both the plaintiffs and the defendant claim title to the suit property from the same person i.e. Palanimuthu and when it is found that under Ex.A1 dated 07.11.2003, Palanimuthu had already conveyed the suit property to the plaintiffs, it does not stand to reason, as to how thereafter, he would be competent to convey the suit property to the defendant under Ex.B1 on 12.11.2003. It has not been established by the defendant that on the date of Ex.B1, Palanimuthu had title over the suit property and he had the competency to convey the same to the defendant under Ex.B1. Therefore, as rightly put forth by the plaintiffs counsel, when the Courts below have found that Palanimuthu had already conveyed the suit property to the plaintiffs under Ex.A1, they should not have accepted the case of the defendant on the basis of Ex.B1 as according to him, on the date of

Ex.B1, Palanimuthu cease to have any title over the suit property.

5. Taking into consideration the date of execution and registration of both Exs.A1 & B2, it could be seen that in both ways, Ex.A1 has come into existence prior to Ex.B1 and in such view of the matter, as rightly put forth, Section 47 of the Indian Registration Act would not have any application to the facts and circumstances of the present case.

6. The first appellate Court has accepted the case of the defendant on the footing that Ex.B1 is preceded by a sale agreement dated 15.07.2003 marked as Ex.B9 and therefore, held that inasmuch as Ex.B1 had been executed in tune with Ex.B9, it shall have priority over Ex.A1. However, it is found that no material has been placed to hold that the plaintiffs are aware of the existence of Ex.B9 on the date of Ex.A1. It is also found that Ex.B9 is an unregistered document. Under Ex.B9 the defendant cannot claim any legal title over the suit property as such. The position being above, the first appellate Court has erred in accepting the case of the defendant merely on the footing that Ex.B1 is preceded by the sale agreement marked as Ex.B9. The authenticity of Ex.B9 is not admitted by the plaintiffs.

7. The Courts below have also refused to accept the case of the plaintiffs on the footing that the plaintiffs have not established the pleas made by them in the plaint, as regards having independent title over the suit property prior to Planimuthu. No doubt, the plaintiffs have made a claim in the plaint that they were in possession and enjoyment of the suit property for several years and subsequently, in the family partition, the same had been allotted to them and they had permitted Planimuthu to reside in the same and inasmuch as patta had been conveyed in favour of Palanimuthu, they had chosen to purchase the suit property from Palanimuthu and thus, they have title to the suit property. The fact remains that inasmuch as the plaintiffs seek the reliefs sought for in the plaint, only on the basis of the sale deed that they had obtained from Palanimuthu i.e.Ex.A1, it could be seen that the pleas made by the plaintiffs with reference to their possession and enjoyment of the suit property prior to the conferment of title of the suit property in favour of Palanimuthu and their failure to establish the same would not in any manner affect the plaintiffs' case. It cannot also be held that the two pleas set out by the plaintiffs are mutually contradictory or destructive. A perusal of the plaint wholly would go to show that the plaintiffs seek the reliefs of declaration and permanent injunction only on the basis of Ex.A1

and not in other ways. In such view of the matter, when Ex.A1 is found to be a valid sale deed obtained from the lawful owner and when it is also found that pursuant to Ex.A1, the plaintiffs are also enjoying the suit property as seen from the patta marked as Ex.A5, it is found that the Courts below have erred in negating the reliefs sought for by the plaintiffs.

8. When the defendant has failed to establish that on the date of Ex.B1, Palanimuthu had title to the suit property, consequently, it is found that Ex.B1 is an invalid document. In such view of the matter, the Courts below have erred in holding that the plaintiffs have to seek the relief of cancellation of Ex.B1 before seeking the reliefs sought for in the plaint. However, as rightly argued by the plaintiffs counsel, when Ex.B1 is found to be an invalid document and also not conveying any valid title to the defendant, there is no need for the plaintiffs to set aside the same. That apart, it is found that as rightly put forth by the plaintiffs, as they have sought for the larger relief i.e. the relief of declaration, as regards the suit property based on Ex.A1 and when it is found that Ex.A1 conveys a valid title to the plaintiffs in respect of the suit property, the plaintiffs are found to be entitled to seek the reliefs sought for.

9. In the light of the above mentioned reasons, it is found that the Courts below have, based on perverse findings and conclusions and also misdirected against the evidence on record, rejected the plaintiffs' case and upheld the defendant's version. Hence, the substantial question of law formulated for consideration in this second appeal is answered in favour of the plaintiffs and against the defendant.

In conclusion, the judgment and decree of the Courts below are set aside and the suit laid by the plaintiffs is decreed as prayed for. Accordingly, the second appeal is allowed. No costs.

Index : Yes/No
Internet: Yes/No
sms

16.02.2017

To

1. The Sub Court, Kallakurichi.
2. The III Additional District Munsif Court, Kallakurichi.

T.RAVINDRAN,J.

sms

Pre-delivery Judgment in
S. A.No.775 of 2011

16.02.2017