

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Judgment Reserved on : 19.07.2017

Judgment Pronounced on : 15.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.875 of 2011

and

M.P.No.1 of 2011

1.Udayakumar

2.Logambigai

... Appellants/Respondents/Defendants

Versus

Perumal

... Respondent/Appellant/Plaintiff

This second appeal is filed under Section 100 of CPC, against the judgment and decree dated 14.10.2008 passed by the learned Subordinate Judge, Madhuranthagam, in A.S.No.8 of 2007 reversing the judgment and decree dated 30.08.2001 passed by the learned District Munsif, Madhuranthagam in O.S.No.22 of 1997.

For Appellants : Mr.S.Anburaj

For Respondent : Mr.K.Govi Ganesan

JUDGMENT

The above second appeal arises out of the Judgment and Decree dated 14.10.2008 passed in A.S.No.8 of 2007 on the file of the learned Sub Judge, Madhuranthagam, allowing the suit in O.S.No.22 of 1997 in full by modifying the judgment and decree dated 30.08.2001 passed in the suit in O.S.No.22 of 1997 by the learned District Munsif, Madhurandhagam.

2. For the sake of convenience, the parties before this Court herein after will be referred to as they were arrayed in the original suit before the trial Court.

3. One Perumal, the plaintiff/respondent herein instituted the suit in O.S.No.22 of 1997 on the file of District Munsif Court, Madhuranthagam against the defendants/appellants

herein seeking to declare his title over the suit property and for permanent injunction restraining the defendants from interfering with his possession and enjoyment of the suit property. The suit property is a house site measuring an extent of 1-1/2 cents out of 12 cents in Survey No.3A/1A of Thirupattur Village in Cheyyur Taluk, Chengai Anna District. The Plaintiff claims that the suit property was purchased by him from the father of the defendants, namely, deceased Narayanasamy on 31.12.1992 for valuable consideration under Ex.A1 sale deed. Ever since the plaintiff purchased the property on 31.12.1992 for sale consideration of Rs.4,000/-, he is in possession and enjoyment of the property by paying Kist and the patta stands in his name. The said Patta is produced as Ex.A2 and the Kist receipts are produced as Ex.A3 and Ex.A4.

4. Before the trial Court, the plaintiff examined four witnesses including himself and produced Exs.A1 to A4 documents to substantiate his claim. On the other hand, disputing the claim of the plaintiff, the defendants who are the children of plaintiff's vendor Narayanasamy contended that the sale deed in favour of the plaintiff is not value and the property sold to the plaintiff under Ex.A1 is the separate property of their mother Amirthammal and it is false to claim that the property was sold for the benefit of the defendants and the joint family. The defendants contended that their father Narayanasamy has no right to alienate the property and the plaintiff even assuming has purchased the property for valuable consideration is not entitled to seek the relief of declaration, since Ex.A1 sale deed non-est. The defendants also contended that they are in possession and enjoyment of the property. It is further contended by the defendants that 0.3 cents of the property in suit Survey No.3A1, was purchased by their mother Amirthammal in her own name as per Ex.B1 sale deed and it is his absolute property. The defendants also stated that no partition of the suit survey number property took place and as they are in possession and enjoyment of the property, the relief sought for by the plaintiff cannot be entertained. The first defendant examined himself as D.W.1 and produced one document on their side to support their contention.

5. On the basis of the materials placed before it, the trial Court held that as the defendants admitted that their father Narayanasamy has right for one cent in the property, he is entitled to sell one cent only and as such held the plaintiff is entitled for declaration to the extent of one cent in the suit property and accordingly decreed the suit for one cent only instead of 1-1/2 cents as sought for by the plaintiff and also granted the relief of permanent injunction in respect of 1 cent only.

6. Aggrieved over the said finding of the trial Court, rejecting his claim to the extent of 1-1/2 cents in the suit property, the plaintiff preferred the first appeal and on the basis of the material placed before it, the first appellate Court allowed the appeal and by granting declaration for the entire extension of the suit property of 1-1/2 cents and decreed the suit in O.S.No.22 of 1997 in full. The defendant did not file any appeal or cross appeal against the finding of the trial Court in O.S.No.22 of 1997.

7. Aggrieved by the judgment and decree of the first appellate Court, which decreed the suit in full, this second appeal has been preferred by the defendants and the second appeal was admitted on the following substantial question of law.

1. Whether the Courts below are right in granting the declaration in favour of the respondent, when the respondent's vendor had undivided 1/3 share in the property of his wife of extent of 12 cents?

2. Whether the suit for declaration is maintainable when the appellants are co-owners along with the plaintiff/respondent, in the absence of suit for partition?

8. The plaintiff is purchaser of the suit property from one Narayanasamy who is the father of the defendants herein as per Ex.A1 sale deed dated 31.12.1992. The plaintiff claimed that he is in possession and enjoyment of the property, ever since the date of purchase, by paying Kist and Patta also stands in his name. The plaintiff produced Ex.A2 Patta, and Exs.A3, Ex-A4 Kist receipts in support of his contention. The plaintiff claims that he purchased the suit property for valid sale consideration of Rs.4,000/- and he is entitled for declaration and injunction as sought for by him as the defendants are trying to interfere with his possession. The plaintiff also examined P.Ws.2 to 4 to prove that he is in possession and enjoyment of the property.

9. On the other hand, disputing the claim of the plaintiff, it is contended by the defendants, who are the children of the plaintiff's vendor Narayanasamy, that the suit property was purchased by their mother Amirthammal and as such their father Narayanasamy is not entitled to sell the property and the sale effected in favour of the plaintiff is non est and no title and possession to the plaintiff. Hence, the defendants seeks dismissal of the suit.

10. It is true that the suit property was originally purchased in the name of the defendants' mother Amirthammal, who

is the wife of the plaintiff's vendor Narayanasamy, as per Ex.B1 sale deed on 30.09.1969. As per the said document in suit Survey No.3A/1, an extent of 0.03 cent has been purchased in the name of Amirthammal. The defendants pointing out the same, contends that their father Narayanasamy who never looked after the family properly, has no right to execute Ex.A1 sale deed in favour of the plaintiff for 1-1/2 cents and therefore the plaintiff has no right to seek declaration and injunction as stated above. The defendants have not denied the execution of Ex.A1 sale deed, but only contends that the sale deed executed by their father is not valid. According to the defendants, the property was purchased by their mother and it belongs to all the legal heirs and their father has no right to sell the property. Admittedly, when Ex.A1 sale deed was executed in favour of the plaintiff, the mother of the defendants Amirthammal has passed away. There is nothing on record to show that Amirthammal left behind any Will or any other documents bequeathing her property to any body else. In such circumstances, her husband namely, the vendor of the plaintiff Narayanasamy and their children the defendants herein are the legal heirs of said Amirthammal and as such they are entitled to equal share in the property left behind by Amirthammal. In the trial Court, as the plaintiff failed to prove the fact of Amirthammal owning more than three cents, it is concluded that Amirthammal possess only three cents as per Ex.B1 sale deed and the three legal heirs namely, Narayanasamy and two defendants are each entitled for 1/3rd share and thereby the plaintiff's vendor Narayanasamy was entitled to sell only one cent in the suit survey number and accordingly trial Court declared the plaintiff title to the extent of one cent only in the suit survey number, even though under Ex.A1 sale deed, the plaintiff has purchased 1-1/2 cents. However, in the first appellate Court, the plaintiff produced additional documents marked as Ex.A5 and A6 to show that the deceased Amirthammal owned 12 cents in the suit survey number and as such her legal heirs the deceased Narayanasamy(husband) and the defendants(children) are entitled to 1/3rd share (each 4 cents) in suit survey number and therefore, the deceased Narayanasamy is entitled to sell 1-1/2 cents to the plaintiff under Ex.A1 sale deed. As per Ex.A5 sale deed, Amirthammal has purchased 9 cents in the suit survey number on 07.03.1967. It is evident from the sale deed produced by the plaintiff and defendant marked as Ex.A5 and Ex.D1 respectively that the said Amirthammal owned 12 cents in the suit Survey No.3A/1A. Further, the plaintiff also produced Ex.A6 chitta extract in the first appellate Court, to prove that patta for an extent of 1-1/2 cents in suit Survey No.3A/1A of Thirupattur Village in Cheyyur Taluk, Kancheepuram District stood in the name of Amirthammal wife of Naraynasamy. It is therefore clear that the entire extent of 12 cents of suit survey number was owned by Amirthammal wife of Narayanasamy. Even though, the documents

marked as Ex.A5 and Ex.A6 was objected to by the defendants, the first appellate Court entertained the petition to receive the additional documents and marked those documents.

11. As rightly pointed out by the learned counsel appearing for the plaintiff that Ex.A5 certified copy of the sale deed and Ex.A6 chitta extract and Ex.A5 sale deed was executed in 1967 and following Exs.B11 and A5 sale deeds, patta for entire extent of 12 cents in suit survey number stood in the name of Amirthammal, there is nothing on record to show that any one else owned the property in the suit survey number and the defendants has not disputed the fact of Amirthammal purchasing the property as per Ex.A1 and A5 sale deeds. In such circumstances, it is apparent that the entire extent of 12 cents in suit Survey No.3A/1A was purchased and belongs to Amirthammal. Even though it is claimed that Narayanasamy purchased the property in the name of his wife, as the sale deed stood in the name of Amirthammal, the property has to be treated as absolute independent property of the said Amirthammal. As stated earlier, there is no evidence placed before the Court to show that Amirthammal executed any Will or any other documents relating to her property. In such circumstances, after the demise of Amirthammal, her husband Narayanasamy and children, the defendants herein are entitled to equal share in the property. In such circumstances, each of them are entitled to four cents in suit survey number. The husband of Amirthammal, namely, Narayanasamy has sold 1-1/2 cents out of the suit survey number to the plaintiff under Ex.A1 sale deed for sale consideration of Rs.4,000/-with specific boundaries. There is no dispute about the identity of the property as the four boundaries are clearly demarcated in the sale deed. As per the evidence of the plaintiff and also as per the averments in the sale deed Ex.A1, it appears the property was sold away to settle the loan incurred to meet the expenses of defendants marriage.

12. Even though the defendants contended that their father Narayanasamy was a drunkard and never looked after the family properly, there is no independent evidence to corroborate the same. The plaintiff has stated that he purchased the property in the year, 1992 and the defendants were aware of them, P.Ws.2 to 4 have categorically stated in their evidence that Narayanasamy was originally in enjoyment of the property and after Ex.A1 sale deed, the plaintiff is in possession and enjoyment of the property. In such circumstances, the defendants kept quiet till the demise of Narayanasamy and thereafter only are threatening to disturb the possession of the plaintiff.

13. As stated above, the plaintiff has produced Ex.A2

Patta in his name to prove that after purchase of the property, the patta was transferred in his name and also produced Exs.A3, A4 Kist receipts in support of his claim that he is in possession and enjoyment of the suit property. The same is not rebutted by the defendant. Thus it is apparent that the plaintiff is in possession and enjoyment of the property and both the Courts below have appreciated the evidence and recorded the finding to the effect that the plaintiff is in possession of the property and therefore no ground is made out for interference with the appreciation of evidence on records by the Courts below.

14. The learned counsel appearing for the defendants contended that the plaintiff is not entitled to assert any right of title against the defendants who are the joint owners of the property. It is also pointed out that even assuming the plaintiff is bonafide purchaser he is entitled to bring the claim for partition only and not for declaration. The learned counsel for the defendants also contended that the execution of Ex.A1 sale deed is not established and therefore, the claim of the plaintiff cannot be entertained and the finding of the first appellate Court is liable to be set aside.

15. As stated above, on the basis of Ex.A1 sale deed, Patta has been transferred and kist has been collected. Further, the defendants have not placed any evidence before the Court disputing the execution of Ex.A1 sale deed by their father. In such circumstances, for the reasons stated above, the finding of the first appellate Court that the entire lands of 12 cents in suit survey number belongs to Amirthammal as per Ex.A5 sale deed and after her demise, her legal heirs, the defendants and their father Narayanasamy are each entitled to $\frac{1}{3}$ rd share (4 cents each in suit survey number) is just and proper. Since, the deceased Narayanasamy who is entitled for four cents in suit survey number, executed the sale deed Ex.A1 to the plaintiff for 1- $\frac{1}{2}$ cents only with clear cut boundaries, the claim of the plaintiff that he is entitled for declaration is to be entertained and the reasons stated by the first appellate Court, for the same is correct and proper and needs no interference. The learned counsel appearing for the plaintiff also pointed out that the trial Court itself has given declaration for 1 cent in the suit property and the defendants have not preferred any appeal against the same and that itself will go to prove the plaintiff's claim is just and proper. Thus, for the reasons stated above, the substantial question of law raised in this appeal is answered against the defendants/appellants herein and the appeal has to fail.

16. In the result, the Second Appeal is dismissed and the Judgment and Decree passed in A.S.No.8 of 2007 dated 14.10.2008 by the learned Sub Judge, Madhuranthagam is hereby

confirmed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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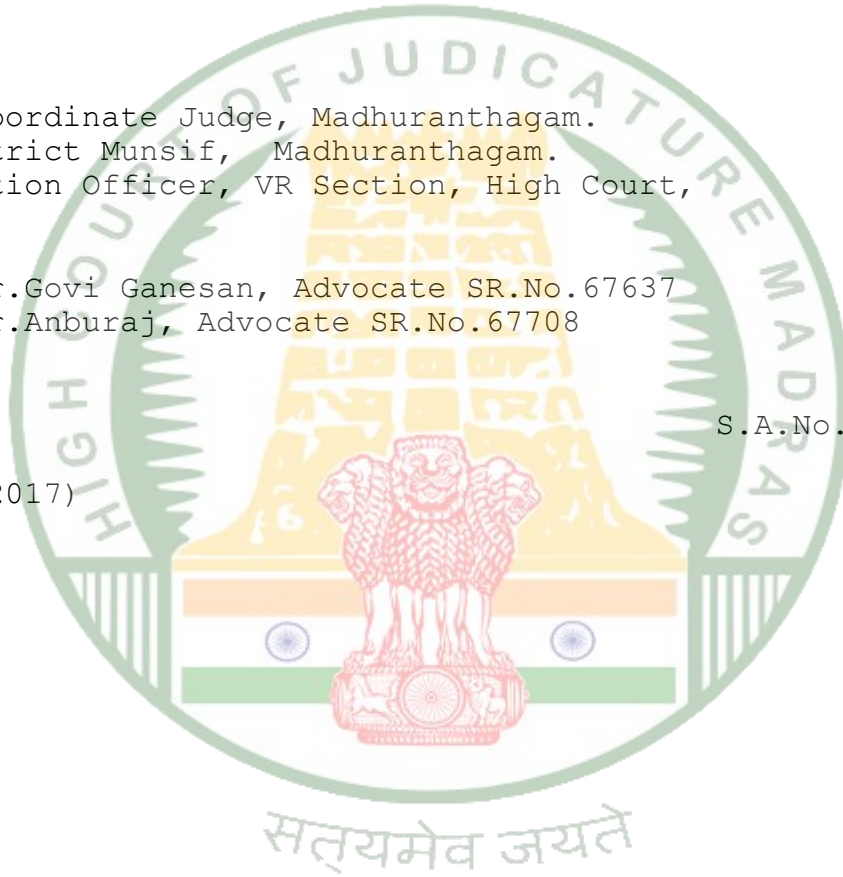
To

1. The Subordinate Judge, Madhuranthagam.
- 2.The District Munsif, Madhuranthagam.
- 3.The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.Govi Ganesan, Advocate SR.No.67637
+1cc to Mr.Anburaj, Advocate SR.No.67708

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GN(12/12/2017)



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