

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.10.2017

PRONOUNCED ON : 02.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.Nos.1207 & 1208 of 2001

R.Natarajan ... Sole Appellant in
S.A.No.1207 of 2001 &
first appellant in
S.A.No.1208 of 2001
Lalitha ... Second appellant in
S.A.No.1208 of 2001
Vs.
1. Kanagavalli
2. Rajendran
3. Kumar
4. Radhakrishnan ... Respondents in both the
second appeals

Second Appeals are filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 06.11.2000 made in A.S.Nos.22 & 24 of 1999 on the file of the Subordinate Court, Panruti confirming the judgment and decree dated 14.06.1999 made in O.S.Nos.74 & 256 of 1993 on the file of the District Munsif, Panruti.

For Appellant : Mr.R.Agilesh
in both appeals
For Respondents : Mrs.R.Meenal
in both appeals

COMMON JUDGMENT

S.A.No.1207 of 2001

Second appeal No.1207 of 2001 is directed against the Judgment and decree dated 06.11.2000 made in A.S.No.22 of 1999 on the file of the Subordinate Court, Panruti confirming the judgment and decree dated 14.06.1999 made in O.S.No.74 of 1993 on the file of the District Munsif, Panruti.

S.A.No.1208 of 2001

Second appeal No.1208 of 2001 is directed against the Judgment and decree dated 06.11.2000 made in A.S.No.24 of 1999 on the file of the Subordinate Court, Panruti, confirming the judgment and decree dated 14.06.1999 made in O.S.No.256 of 1993 on the file of the District Munsif, Panruti.

3. O.S.No.74 of 1993 has been laid for declaration, possession and mesne profits by the respondents, where as, O.S.No.256 of 1993 has been laid by the appellants for specific performance.

4. It is found that both suits were jointly tried and accordingly, common evidence was recorded for both suits in O.S.No.74 of 1993 and O.S.No.256 of 1993 and accordingly, parties are referred to as per their rankings in O.S.No.74 of 1993 in the present second appeals also.

5. The case of the plaintiffs in both suits, in brief, is that the suit property belonged to Thangavel Padayachi and his sons viz. the plaintiffs 2 to 4 and the first plaintiff is the wife of the deceased Thangavel Padayachi, who died on 03.08.1987 and till November, 1992, the plaintiffs were in possession and enjoyment of the suit property and taking advantage of the fact that the plaintiffs are not residing in the suit Village, the defendants, who are nearby inhabitants of the suit property, unlawfully trespassed into the suit property during November, 1992 and are in illegal occupation of the suit property and in such view of the matter, according to the plaintiffs, they had been necessitated to lay the suit in O.S.No.74 of 1993 for appropriate reliefs. Further, they also pleaded in O.S.No.256 of 1993 in their written statement that the sale agreements dated 11.02.1981 and 17.03.1981 said to have been executed by Thangavel Padayachi in favour of the first defendant are not true and valid documents and also, the suit is barred by limitation and the suit property does not belong to Thangavel Padayachi exclusively and on the other hand, the same belongs to Thangavel Padayachi and his sons and their ancestral family property and based upon the above said sale agreements, the first defendant is not entitled to seek any reliefs and the defendants unlawfully encroached into the suit property and only as a counter blast to the suit laid by the plaintiffs in O.S.No.74/1993, the defendants have filed O.S.No.256 of 1993 based upon invalid sale agreements and inasmuch as the plaintiffs refused to accede to the demand of the defendants to convey the suit property in their favour, the defendants have unlawfully trespassed into the suit property and hence, the suit in O.S.No.256 of 1993 is liable to be dismissed.

6. The case of the defendants is that the suit property absolutely belonged to Thangavel Padayachi and he had agreed to convey the suit property to the first defendant for a sum of Rs.3,100/- and accordingly, received a sum of Rs.1,100/- as advance on 11.02.1981 and executed the sale agreement with reference to the same in favour of the first defendant agreeing to receive the balance amount of Rs.2000/- on or before 25.02.1981 and execute the sale deed in favour of the first

defendant. The first defendant was always ready and willing to pay the balance sale consideration and get the sale deed executed. Subsequently, Thangavel Padayachi for providing education to his children sought the balance sale amount + additional amount of Rs.400/- and accordingly, on 17.03.1981, the first defendant paid a sum of Rs.2,400/- to Thangavel Padayachi in the presence of the witnesses and obtained renewed sale agreement on the same date, where under, Thangavel Padayachi agreed to execute the sale deed on or before 30.06.1981 agreeing to incur the expenses for the sale deed also and entrusted the possession of the suit property in favour of the first defendant and accordingly, since then, it is only the first defendant, who has been in possession and enjoyment of the suit property and Thangavel Padayachi instead of executing the sale deed, delayed the same and died in the year 1987 and after his death, the first defendant requested the plaintiffs to execute the sale deed and the same was delayed by the plaintiffs one way or the other and on the other hand, laid the false suit in O.S.No.74 of 1993 as if the defendants have trespassed the suit property illegally and hence, the plaintiffs are liable to execute the sale deed in respect of the suit property in favour of the first defendant and accordingly, the suit in O.S.No.256 of 1993 has been laid for appropriate reliefs and hence, prayed for decreeing the above said suit and the dismissal of O.S.No.74 of 1993.

7. In support of the plaintiffs case, PWs 1 & 2 were examined and Exs.A1 to 9 were marked. On the side of the defendants, DWs1 to 5 were examined and Exs.B1 to 10 were marked.

8. At the time of the admission of both second appeals, the following substantial questions of law were formulated for consideration;

"1. Whether the Courts below legally right in holding that the suit was barred by limitation?

2. Whether the interpretation given by the Court below for Act 54 of Limitation Act is sustainable?"

9. According to the plaintiffs' version, the suit property belonged to Thangavel Padayachi and his three sons. Per contra, according to the defendants, the suit property absolutely belonged to Thangavel Padayachi. In any event, it is seen that the suit property, after the demise of Thangavel Padayachi on 03.08.1987, had been inherited by his legal representatives viz., the plaintiffs. Now, according to the defendants, Thangavel Padayachi had agreed to convey the suit property in favour of the first defendant for a sum of Rs.3,100/- and received an advance of Rs.1,100/- on 11.02.1981 promising to

execute the sale deed in respect of the suit property after receiving the balance sale consideration of Rs.2000/- on or before 25.02.1981 and accordingly, executed the sale agreement in favour of the first defendant on 11.02.1981. However, it is pleaded that subsequently, Thangavel Padayachi demanded additional sum from the first defendant and on 17.03.1981, the first defendant paid a sum of Rs.2,400/- to Thangavel Padayachi in the presence of the witnesses and accordingly, fresh sale agreement dated 17.03.1981 was executed between the parties and Thangavel Padayachi agreed to execute the sale deed in favour of the first defendant in respect of the suit property on or before 30.06.1981, however, Thangavel Padayachi had not executed the sale deed as promised till his demise and after his death, the plaintiffs had also delayed the execution and on the other hand, laid the false suit in O.S.No.74/1993 and hence, according to the defendants, they had been necessitated to lay the suit for specific performance in O.S.No.256/1993.

10. The plaintiffs have disputed the sale agreements projected by the defendants as false and invalid documents and according to them, Thangavel Padayachi had not executed the above said sale agreements as put forth by the defendants and the defendants, taking advantage of the absence of the plaintiffs, illegally trespassed into the suit property during November, 1992 and been in occupation of the same and the plaintiffs are the owners of the suit property and as the defendants had refused to surrender the possession to the plaintiffs, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs in O.S.No.74 of 1993. It is found that only after the laying of the suit in O.S.No.74 of 1993, the defendants have chosen to lay their suit for specific performance in O.S.No.256 of 1993 on 04.03.1993. In O.S.No.256 of 1993, the defendants have sought for the relief of specific performance in respect of the sale agreements dated 11.2.1981 and 17.03.1981. According to the defendants, the first agreement was made on 11.02.1981 and the same had been renewed on 17.03.1981. The above said sale agreements had been disputed by the plaintiffs claiming that they are concocted and invalid documents and based on the same, the defendants are not entitled to seek any right in the suit property.

11. The main issue involved in the lis as seen from the various contentions put forth by the respective parties, whether the suit laid by the defendants in O.S.No.256 of 1993 is barred by limitation. Now, according to the defendants, as per the renewed agreement dated 17.03.1981, Thangavel Padayachi had agreed to execute the sale deed in respect of the suit property on or before 30.06.1981. If really, the above said renewed sale agreement is true and based on the same, Thangavel Padayachi had

agreed to execute the sale deed in respect of the suit property in favour of the first defendant, when under the above said document, according to the defendants, Thangavel Padayachi had received the entire sale consideration, as rightly determined by the Courts below, the defendants would have endeavoured to obtain the sale deed from Thangavel Padayachi on or before 30.06.1981 or immediately thereafter in accordance with law. However, it is found that till the death of Thangavel, on 03.08.1987, the defendants have not endeavoured to obtain the sale deed from him based upon the renewed sale agreement dated 17.03.1981. The plea of the defendants that Thangavel Padayachi had been delaying the execution as such cannot be accepted in any manner. The defence projected on the part of the defendants that from 17.03.1981 to 30.06.1981 and even thereafter, till his death, Thangavel Padayachi had been delaying the execution of the sale deed, even after receiving the entire sale consideration as such cannot be believed and accepted. Therefore, as rightly found by the Courts below, inasmuch as the above said sale agreements had not really come into existence between the parties, it is found that the defendants have not endeavoured to obtain the sale deed from Thangavel Padayachi till his death. Even assuming for the sake of arguments that Thangavel Padayachi had delayed the execution of the sale deed, nothing prevented the defendants from resorting to the legal process to get the sale deed executed from him at the earliest. However, till his death, it is seen that the defendants have not moved their little finger to obtain the sale deed from him pursuant to the renewed sale agreement dated 17.03.1981.

12. That apart, even after the death of Thangavel Padayachi, it is seen that the defendants have not taken steps to obtain the sale deed from the plaintiffs and the contention that the plaintiffs, despite their requests, had been delaying the execution as such cannot be accepted without any material pointing to the same. It is seen that if according to the defendants, the plaintiffs had further delayed the execution of the sale deed, nothing prevented the defendants from taking further legal steps i.e. to institute the suit against the plaintiffs immediately for obtaining the sale deed in respect of the suit property in the manner known to law. On the other hand, it is seen that the defendants have chosen to lay the suit for specific performance only after the plaintiffs have laid the suit against the defendants for declaration and possession. Therefore, it is seen that nearly 12 years, after the date fixed in the renewal agreement, the defendants have laid the suit for specific performance on 04.03.1993. In such view of the matter, it is found by the first appellate Court that the suit is clearly barred by limitation. As rightly determined by the first appellate court, in the renewal agreement, the date for

completion of the sale transaction has been fixed on 30.06.1981. Therefore, it is seen that as rightly determined by the first appellate court, when the date has been fixed for the performance in the sale agreement, the three years period contemplated under Article 54 of the Limitation Act begins to run from such date fixed and accordingly, it is seen that if really, the defendants had the inclination to complete the sale transaction, they should have endeavoured to lay the suit within three years from 30.06.1981. On the other hand, only 12 years thereafter, they have chosen to lay the suit. It is thus found that the first appellate court has rightly invoked the first limb of Article 54 of the Limitation Act to the case at hand and correctly determined that the defendants' suit laid beyond the three years period from 30.06.1981 is hit by the law of limitation.

13. However, it is contended that the period has been periodically extended by Thangavel Padyachi as well as the plaintiffs and hence, it is stated that the suit is not barred by limitation as such and further, it is argued that in such view of the matter, the cause of action for the defendants to lay the suit for specific performance would arise only, when the defendants have notice that the performance is refused. When it is the evidence of the first defendant that despite his requests to complete the sale transaction, Thangavel Padayachi had been delaying the same and further, when it is the case of the defendants that after the death of Thangavel Padayachi, the plaintiffs had been evading to complete the sale transaction, the above case of the defendants itself would go to show that they are very well aware that Thangavel Padayachi or the plaintiffs had not accepted their request for completing the sale transaction. That apart, the contention now put forth that the time limit has been gradually extended is not borne out by any material and if parties had agreed to extend the time limit as rightly argued, either Thangavel Padayachi during his life time or the plaintiffs would have extended the time limit by making the necessary endorsements in the renewed sale agreement or the parties would have endeavoured to enter into a new sale agreement fixing a fresh time limit for completing the sale transaction. On the other hand, it is found that as there was no consensus ad item between the parties to complete the sale transaction at any point of time, it is seen that even assuming the case of the defendants that the sale agreements projected in the matter are true, they have not entered into any fresh agreement extending the period of limitation for completing the sale transaction.

14. That apart, it is seen from the evidence of DW1 that he has knowledge about the disinclination of the plaintiffs to complete the sale transaction by executing the conveyance in his

favour in respect of the suit property during 1988 itself. In this connection, DW1 has admitted that he had convened the Panchayat as regards the completion of the sale transaction and if really, the parties had amicably settled the issues between them during the said Panchayat, the plaintiffs would have executed a fresh sale agreement in favour of the defendants or would have extended the time limit by making necessary endorsements for completing the sale transaction. On the other hand, no such time limit has been extended by the plaintiffs for completing the sale transaction, this would only go to show that as rightly determined by the first appellate court, inasmuch as the plaintiffs have stoutly resisted the claim of the defendants as regards the completion of the sale transaction and accordingly, the parties had not been able to arrive at a settlement in the alleged Panchayat as spoken to by DW1, it is clear that DW1, even during 1988 itself, is aware of the refusal of the plaintiffs to complete the sale transaction. Therefore, as rightly determined by the trial Court, at least three years from the date of such refusal, the defendants should have instituted the suit for the relief of specific performance and on the other hand, it is found that only three years thereafter i.e. only on 04.03.1993, the defendants have laid the claim for equitable relief of specific performance. Therefore, at that angle also, as rightly determined by the Courts below, the suit is clearly barred by limitation.

15. It is contended on the part of the defendants that inasmuch as the possession of the suit property has been handed over to them pursuant to the renewed sale agreement on 17.03.1981 itself, they had not endeavoured to seek the relief of specific performance immediately. However, as rightly determined by the first appellate Court, it is found that no valid and acceptable document has been placed by the defendants to show that they were put in possession of the suit property on 17.03.1981 pursuant to the renewed sale agreement. On the other hand, it is seen from the documents placed by the respective parties and as rightly determined by the first appellate Court, it is only the plaintiffs, who had been in possession and enjoyment of the suit property for a long period of time by obtaining patta and paying necessary kist and only during November 1992, it is seen that the defendants, taking advantage of the absence of the plaintiffs, had trespassed into the suit property unlawfully and thereafter, seem to have paid kist in respect of the suit property and therefore, the above facts also would only go to show that the defendants were not put in possession of the suit property pursuant to the renewed sale agreement dated 17.03.1981 as put forth by them and on the other hand, as held by the Courts below, they have unlawfully trespassed into the suit property as put forth by the plaintiffs and accordingly, in such view of the matter, the

contention raised that as the defendants were enjoying the suit property, they had not taken immediate steps to lay the suit for specific performance as such cannot be accepted. If according to the defendants, they had really parted with the entire sale consideration on 17.03.1981 itself to Thangavel Padayachi, they should have taken all the steps to complete the sale transaction immediately thereafter, on the other hand, despite the specific time limit fixed for completing the sale transactions by 30.06.1981, the conduct of the defendants that even thereafter for a period of 12 years having not evinced interest to lay the suit for obtaining proper title to the suit property would only go to show that the defendants had not been entrusted with the possession of the suit property as pleaded by them and it is found that only after the plaintiffs have laid the suit, as a counter blast to the same, the defendants have come forward with their suit for specific performance and in such view of the matter, the first appellate Court has rightly discountenanced the suit laid by the defendants and rightly accepted the case of the plaintiffs and in such view of the matter, it is found that the Courts below have rightly held that the suit laid by the defendants is barred by limitation and the interpretation of the first appellate court for invoking the first limb of Article 54 of the Limitation Act for holding that the suit is barred by limitation is legally sustainable and accordingly, the substantial questions of law were formulated in this second appeal are answered against the defendants/appellants and in favour of the plaintiffs/respondents.

16. The counsel for the appellants relied upon the decision reported in AIR 2006 SC 1556 (Gunwantbhai Mulchand Shah & Ors.V.Anton Elis Farel & Ors) in support of his contentions. The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

17. In conclusion, the second appeals fail and accordingly, are dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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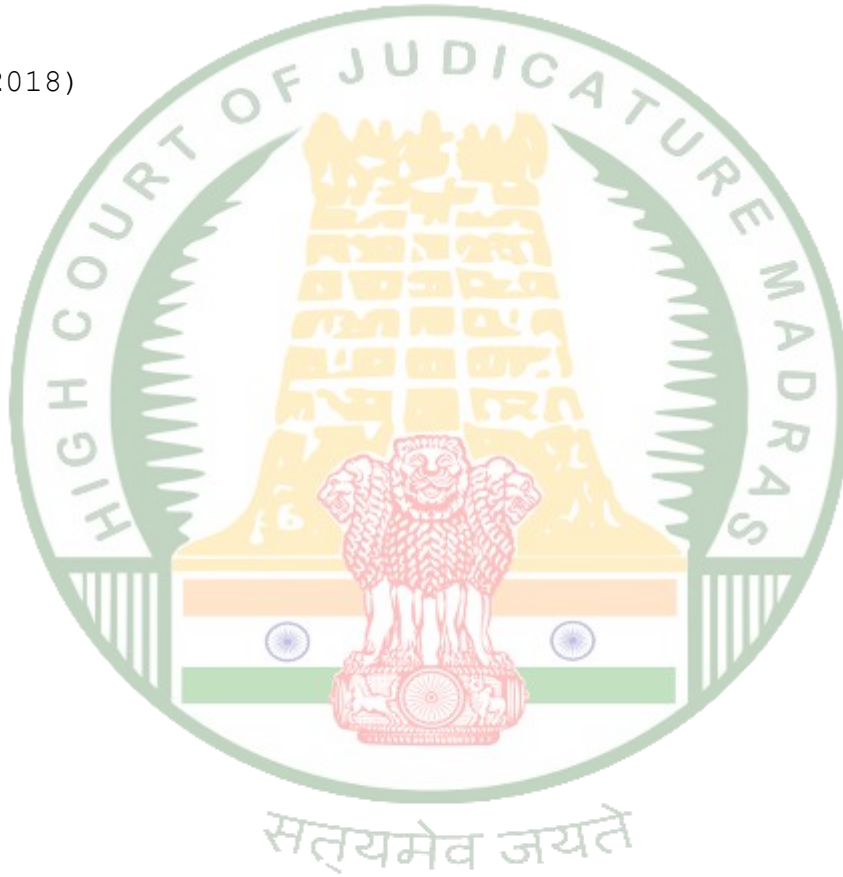
To

1. The Subordinate Court, Panruti.
2. The District Munsif, Panruti.
3. The Section Officer, VR Section, High Court, Madras.

+ 2 ccs to Mrs. R. Meenal, Advocate Sr.77917, 77918

S. A.Nos.1207 & 1208 of 2001

CNR(CO)
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