

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2017
PRONOUNCED ON : 22.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1476 of 2001

Palanivel ...Appellant/Respondent/Plaintiff

Vs.

1. Muthu Gounder (Deceased)
2. Saraswathi
3. Chinnathai ... Respondents/Appellants/Defendants

(R2 and R3 are also recorded as LRs
of the deceased R1 vide order
of the Court dated 20.11.2017)

Prayer: Second Appeal filed under Section 100 of Civil
Procedure Code, against the judgment and decree of the
Subordinate Court, Kallakurichi in A.S.No.99/1998 dated
12.07.2001 in reversing the judgment and decree of the 1st
Additional District Munsif Court, Kallakurichi in O.S.N.835/1990
dated 13.07.1998.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.A.G.Rajan

JUDGMENT

This second appeal is directed against the judgment and
decree dated 12.07.2001 passed in A.S.No.99/1998 on the file of
the Subordinate Court, Kallakurichi, reversing the judgment and
decree dated 13.07.1998 passed in O.S.N.835/1990 on the file of
the First Additional District Munsif Court, Kallakurichi.

2. Parties are referred to as per their rankings in the
trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the
properties described in the plaint were purchased by the
plaintiff from one Palaniappan and Matheswaran, the lawful
owners thereof, under a registered sale deed dated 14.09.1988
and from the date of purchase, the plaintiff is in possession
and enjoyment of the said properties by obtaining patta, chitta
and paying kist etc., Thus, the plaintiff is the owner of the

suit properties and enjoying the same and the defendants have got no right or title over the suit properties and the defendants 2 and 3 are the adjacent land owners and their father is the first defendant and out of enmity, the defendants with a view to grab the suit properties are trying to trespass into the same illegally and hence, the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. The defendants deny that the first item of the suit properties belongs to the plaintiff by way of purchase from one Palaniappan and Matheswaran, under the sale deed dated 14.09.1988 and he is in possession and enjoyment of the same as full owner thereof, as claimed in the plaint. The first item of the suit properties belongs to the defendants and the same had been in their continuous possession and enjoyment and originally it belonged to Mottaiyan and others. They had alienated the first item of the suit properties containing total extent of 7.33 acres, to one Ponnusamy under a registered sale deed dated 25.11.1966 and Ponnusamy, by way of an unregistered sale deed 17.3.1968, had sold the same in favour of the first defendant and since then, it is only the defendants, who had been in possession and enjoyment of the total extent of 7.33 acres and the same thereafter, got subdivided as S.No.204/1 measuring 4.60 acres and S.No.204/5 measuring 2.86 acres in patta nos. 392 & 486 respectively and the defendants had given S.Nos.204/1 measuring 4.60 acres to one Jayaraman under Bokkium, subsequently, it is only the defendants who are in possession and enjoyment of the said property and the plaintiff has no title and possession of the first item of the suit properties and the plaintiff, without giving notice to the defendants, fraudulently obtained revenue records mutated in his name with the aid of the officials and even thereby, the plaintiff cannot lay any claim to the first item of the suit properties and the plaintiff has also not whispered in the plaint as to how Palaniappan and Matheswaran had acquired title to the first item of the suit properties and the same is stoutly disputed by the defendants and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case P.Ws 1 to 3 were examined, Exs.A1 to A9 were marked. On the side of the defendants, DWs 1 and 2 were examined and Exs.B1 to B11 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant the reliefs in favour of the plaintiff as prayed for. On appeal, the first appellate Court was pleased to set-aside the judgment and decree of the trial Court as regards the first item of the suit properties and confirmed the judgment and decree of the trial Court as regards the second item of the suit properties and by allowing the appeal, dismissed the suit laid by the plaintiff as regards the

first item of the suit properties. Assailing the same, the present second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

“ Whether the lower appellate Court was right in dismissing the suit in respect of suit item No.1? ”

9. The suit properties are shown in two items and the dispute between the parties is only as regards the first item situated in R.S.No.204/1C 0.50.0 ares (1.24 acres). The plaintiff claims title to the disputed property by way of purchase from one Palaniappan and Matheswaran under a registered sale deed dated 14.09.1988. The said sale deed has been marked as Ex.A1. The defendants are disputing in toto, the title of Palaniappan and Matheswaran in respect of the disputed item and thus, it is the specific case of the defendants that Palaniappan and Matheswaran had no legal competency to convey the disputed item in favour of the plaintiff under Ex.A1. It is also challenged by the defendants that Palaniappan and Matheswaran had never enjoyed the disputed item as full owners thereof at any point of time, by retaining the same in their possession and enjoyment. In such view of the matter, when the plaintiff lays the claim of title to the first item from Palaniappan and Matheswaran, his vendors and when the said case of the plaintiff is seriously contested by the defendants, at the foremost, the plaintiff has to establish that their vendors had a valid title as regards the disputed item. However, it is found that the plaintiff has miserably failed to establish the same. In the plaint, the plaintiff has not whispered as to how Palaniappan and Matheswaran had acquired a valid title as regards the disputed item. The plaint is conspicuously not containing any particulars with reference to the same. The sale deed Ex.A1 under which the plaintiff claims title to the disputed item, on a perusal, it is seen that there also, there is no clear mentioning as to how Palaniappan and Matheswaran had acquired title to the disputed item and all that Ex.A1 would state is that Palaniappan and Matheswaran had exercised ownership over the disputed item by obtaining patta in the name of Palaniappan and thereby claiming to be the owners, alienated the disputed item to the plaintiff under Ex.A1. It is thus seen that Ex.A1 also does not disclose as to how the plaintiff's vendor, above stated, had acquired a valid title as regards the disputed item. There is a mention that the patta stands in the name of Palaniappan. The said patta has not been filed. Be that as it may, even assuming that patta stands in the name of Palaniappan, when patta cannot be equated to a document of title and no relief could be granted as regards the title, based upon the revenue records, it is seen that absolutely there is no material placed on the part of the plaintiff to establish that his vendors had a valid title as regards the disputed item and had

the legal competency to convey the same to him by way of Ex.A1.

10. Palaniappan has been examined as PW3, PW3 as well as the plaintiff, in their evidence would state that originally the disputed item was granted by way of assignment to one Jayaraman and the said assignment being marked as Ex.A7 and it is their further case that Palaniappan, PW3 had purchased the disputed item from Jayaraman by way of an unregistered document, which according to them, had got destroyed and however, as Palaniappan had exercised full ownership over the disputed item, accordingly, in that capacity, it is their contention that he had alienated the disputed item along with Matheswaran in favour of the plaintiff under Ex.A1. Thus, it is seen that as per the testimony placed through the mouth of PWs 1 and 3, Palaniappan, the vendor of the plaintiff, is said to have acquired title of the disputed item only by way of an unregistered document. However, when no title could be conferred to any person by way of an unregistered document and when there is no material placed on record to hold that Palaniappan had exercised absolute ownership over the disputed item and when it is not the case of the plaintiff that Palaniappan had acquired title to the disputed item by way of prescription, on account of long and continuous enjoyment, it found that, as rightly held by the first appellate Court, Palaniappan and his son Matheswaran would not be legally competent to convey the disputed item to the plaintiff by way of Ex.A1. Therefore, as rightly held by the first appellate Court, the plaintiff has miserably failed to establish that he has acquired a valid title as regards the disputed item by way of Ex.A1, when it is seen that the vendors of the plaintiff had no legal competency to convey the said item in favour of the plaintiff under the said document.

11. The other documents marked by the plaintiff, namely, the patta obtained under the UDR scheme marked as Ex.A2, the kist receipts marked as Ex.A3 and Ex.A4, Chitta marked as Ex.A5 and adangal marked as Ex.A6 standing in the name of the plaintiff by themselves would not confer any valid title to the plaintiff as regards the disputed item and as rightly determined by the first appellate Court, all those documents seem to have emanated on the basis of the UDR patta granted in the name of the plaintiff as regards the disputed item. However, when the plaintiff has not been established to have acquired a valid title with reference to the disputed item, it is seen that the above mentioned revenue records marked on the side of the plaintiff would not in any manner advance his case, so as to entitle him to obtain the relief of declaration as regards the disputed item. Therefore, the revenue records as above referred to have been rightly not considered by the first appellate Court for granting the relief sought for by the plaintiff with reference to the disputed item.

12. It is the contention of the plaintiff that in the partition deed effected amongst the defendants 2 and 3 under Ex.A9 partition deed, the eastern boundary is shown as belonging

to Palaniappan and based on the said boundary recital, the Courts should hold that it is only Palaniappan who had been enjoying the disputed item. However, as found by the first appellate Court, on the basis of such stray boundary recital as found in Ex.B9, in the absence of any other acceptable and reliable materials pointing that Palaniappan has acquired a valid title as regards the disputed item, no safe credence could be attached to the above said boundary recital in isolation to uphold the claim of title of Palaniappan in respect of the disputed item.

13. The defendants trace title to the disputed item by way of the purchase of the same comprising of the total extent of 7.33 acres, on the footing that the same originally belong to Mottaiyan and others and he had sold the total extent in favour of one Ponnusamy by way of a registered sale deed dated 25.11.1966, which document has been marked as Ex.B1 and further according to the defendants, Ponnusamy had alienated the same, in favour of the first defendant, by way of a sale deed dated 17.03.1968 and it is found that though the said document had been an unregistered one, subsequently, it has come to be registered on payment of necessary stamp duty and registration charges by the defendant and thus, according to the defendants, it is only they who had been exercising absolute ownership and enjoying the same by obtaining patta paying kist etc., and with reference to the same, they have also placed revenue records for the consideration the first appellate Court. On a perusal of the materials placed by the defendants, both by way of oral and documentary evidence, the first appellate Court had held that it is only the defendants, who had established their claim of title to the disputed item and accordingly finding that the plaintiff has miserably failed to establish his claim of title as regards the disputed item and accordingly, dismissed the suit laid by the plaintiff in respect of the disputed item.

14. The trial Court seems to have entirely thrown the burden of proof on the shoulders of the defendants for upholding their case and on that basis, without considering that it is only the plaintiff who has to first establish his case for claiming the reliefs sought for, particularly, the plaintiff having laid the suit for the relief of declaration has completely fell in error, in accepting the plaintiff's case without he having placed any acceptable and reliable evidence to establish that his vendors had the legal entitlement to convey the disputed item in his favour. Accordingly, it is found that even assuming for the sake of arguments, that the defendants have failed to establish their defence version, that by itself would not lead to the conclusion that the plaintiff's case is true and the Court is not incumbent to grant the reliefs sought for by the plaintiff straightaway sans proof pointing to the establishment of the plaintiff's title to the disputed item. This cardinal principle has been failed to be observed by the trial Court and on the other hand, the first appellate Court, on a proper

appreciation of the records in the right perspective, both factual and legal aspects, had rightly found that the plaintiff has miserably failed to establish his title to the disputed item and accordingly, it is seen that the first appellate Court has accordingly, non-suited the plaintiff as regards the first item of the suit properties. The above determination of the first appellate Court does not call for any interference and accordingly, the substantial question of law formulated in this second appeal is answered.

15. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Court, Kallakurichi.
2. The 1st Additional District Munsif Court, Kallakurichi.

+1cc to Mr.V.Raghavachari, Advocate Sr.No.91894

+1cc to Mr.A.G.Rajan, Advocate Sr.No.92206

Copy To: The Section Officer,
VR Section, High court, Madras (2copies)

S. A.No.1476 of 2001

SSD(CO)

sm:25.1.2018

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