

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

S.A. No.715 of 2016

1.A.R.Jameela Hathoon

2.A.Thamija Begam

... Appellants/Plaintiff

versus

Samsul Hutha Begam

... Respondent/Defendant

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 24.03.2016 made in A.S.No.16/2015 on the file of Sub Court, Nagapattinam confirming the Judgment and Decree dated 17.02.2015 made in O.S.No.260 of 2010 on the file of District Munsif, Nagapattinam.

For Appellants : Mr.S.Balasubramanian

For Respondent : Mr.M.S.Palaniswamy

JUDGMENT

The plaintiffs before the Trial Court are the appellants before the Appellate Court as well as before this Court. The Appellants/ Plaintiffs filed O.S. No.260 of 2010 on the file of the Court of District Munsif, Nagapattinam, against the respondent prayed for mandatory injunction directing her to execute Rectification Deed in their favour, in respect of the property situate in Survey No.54/4 measuring to an extent of 1 acre 17 cents at Eravanchery Revenue Village, Nattarmangalam Village, Nagapattinam District and also for recovery of excess amount of Rs.3,825/- by way of sale consideration along with interest at the rate of 12% per annum from 15.04.1994 to 31.07.2010.

2.The plaintiffs would aver among other things that they are mother and daughter and the schedule mentioned property belonged to the defendant and vide registered Sale Deed dated 15.04.1994 (Ex.A2), the landed property in Survey No.54/4 situate in the above said village has been conveyed in favour of the husband of the first plaintiff namely Abdul Razeed and later he died on 27.04.1995 and the plaintiffs are his legal heirs. The plaintiffs would further aver that the purchaser of the property namely Abdul Razeed had executed a Settlement Deed dated 13.04.1995 in favour of the first plaintiff and for the purpose of change of patta, necessary application was submitted before the Tahsildhar, Nagapattinam on 15.03.2010

and they were informed that instead of stating Survey No.54/4 in the Sale Deed dated 15.04.1994 (Ex.A2) executed in favour of Abdul Razeed, it has been wrongly stated as Survey No.50/1 and therefore, the plaintiffs were directed to get rectification of the Survey Number in the above said sale deed.

3.The plaintiffs, in that regard, had repeatedly approached the defendant and they were un-successful and in this regard, they also sent a legal notice dated 03.05.2010 under Ex.A5. It was also served on the defendant on 05.05.2010 under Ex.A6. Despite receipt and acknowledgment, the defendant did not come forward to rectify the Sale Deed and therefore the plaintiffs had filed the suit.

4.The defendant had entered appearance and filed her written statement denying the averments made in the plaint and would contend that after the verification of the details of the property, land in Survey No.50/1 was conveyed in favour of the husband of the first plaintiff on 15.04.1994 (Ex.A2) and the possession of the said property was with the husband of first plaintiff and thereafter with the first plaintiff. After waiting for nearly 15 years, the plaintiffs came forward to file the present suit with a false allegation that instead of conveying the property in Survey No.54/4, the property in Survey No.50/1 has been conveyed and therefore, the suit is obviously barred by limitation and that the defendant prayed for dismissal of the suit.

5.The Trial Court, based on the pleadings, framed the following issues:

- (i) Whether the suit is barred by limitation?
- (ii) Whether the plaintiffs are entitled to a decree for mandatory injunction?
- (iii) Whether the plaintiffs are entitled for costs or other reliefs?

6.During the course of Trial, the Power of Attorney Agent of the plaintiffs, who is the husband of the 2nd plaintiff, was examined as P.W.1. Village Administrative Officer was examined as P.W.2 and Exhibits A1 to A12 were marked and through testimony of P.W.2, Exhibits X1 to X3 were also marked. The husband of the defendant was examined as D.W.1 and no document was marked.

7.The Trial Court, on consideration of the pleadings, oral and documentary evidence has held that P.W.1 in the course of his cross examination, admit about the wrong description of the Survey No. 54/4 in the Sale Deed dated 15.04.1994 (Ex.A2) even during the year 1996-1997, but did not take any step and belatedly approached the jurisdictional

Tahsildhar for grant of patta and since the suit for mandatory injunction has not been filed within a period of three years (1996-1997), it is barred by limitation and as such, the plaintiffs are not entitled to the relief of mandatory injunction. Insofar as the recovery of the payment of excess sale consideration is concerned, the Trial Court has held that with regard to the fixation of the sale consideration neither the sale agreement nor any other documents and oral evidence has been let in and in the light of the findings given, the suit is barred by limitation and the plaintiffs are not entitled to the relief of mandatory injunction and the suit is dismissed with costs vide judgment and decree dated 17.02.2015.

8.The plaintiffs, aggrieved by the said Judgment and Decree passed by the Trial Court, filed an Appeal in A.S.No.16/2015 on the file of Sub Court, Nagapattinam. The Appellate Court, on a consideration of grounds and other materials, has framed the point for consideration as to whether the appeal is to be allowed or not.

9.The Lower Appellate Court on the issue of limitation, found that the plaintiffs have approached the jurisdictional Tahsildhar for issuance of patta by means of application dated 15.03.2010 and it was returned on 18.03.2010 with a direction to get rectification on the same date and thereafter, a lawyer notice was sent to the defendant on 03.05.2010 and since cause of action for filing the suit arose on 31.05.2010, the suit is not barred by limitation. Insofar as the prayer made by the appellants/plaintiffs as to the rectification of the Survey No.54/4 under Ex.A2 Sale Deed from Survey No.50/1 to 54/4, the Lower Appellate Court found that the power of attorney of the plaintiffs, who was examined as P.W.1 has deposed that he is not in a position to tell the boundaries in respect of land in Survey No.50/1 and 54/4 and that further as per Ex.A.9/Patta stands in the name of the defendant in respect of Survey No.54/4, it was also accepted by P.W.2/the Village Administrative Officer, coupled with the fact that the plaintiffs have failed to produce necessary evidence to ascertain the fact that the land in Survey No.54/4 are with them, coupled with the fact that they have approached the Court after 15 years, thought fit to confirm the findings rendered in Trial Court and merely stating the said reasons, dismissed the Appeal vide impugned judgment and decree dated 24.03.2016. Challenging the legality of the same, the plaintiffs have filed the Second Appeal.

10.In the memorandum of Grounds of Second Appeal, the following substantial questions of law are raised:

"(i) Whether the Courts below right in holding that the plaintiffs are entitled to the relief of mandatory injunction by way of ratifying the defects in the sale deed?

(ii) Whether the Courts below are not right in rejecting the reliefs sought for by the plaintiffs while only in arithmetic error alone is existing in the conveyance?

(iii) Whether the Courts below are right in disallowing the relief of the value of shortage of extent of land purchased from the defendant in view of the fact that there is an arithmetic error in mentioning extent of the property owned to the defendant?

(iv) Whether the plaintiffs are entitled to the reliefs sought for in the plaint for mandatory injunction and for the money decree?"

11. The learned counsel appearing for the appellants/ plaintiffs would contend that when the plaintiffs had approached the jurisdictional Tahshildhar in the form of Application dated 15.03.2010 for getting patta in respect of the property purchased under Ex.A2, they were informed about the mentioning of in-correct Survey number in the schedule to the said document and thereafter, the lawyer notice was sent on 03.05.2010 which was acknowledged by the defendant on 05.05.2010 and within a period of 3 years, they have filed a Suit and as such the suit is not barred by limitation and also drew the attention of this Court to para 11 of the findings of the Appellate Court. It is the further submission of the learned counsel appearing for the appellants/ plaintiffs that P.W.2/Village Administrative Officer, Eravangeri had deposed that the land in Survey No.50/1 belonging to the first plaintiff and in the light of the same, there was no necessity to purchase the very same property under Ex.A2 sale deed dated 15.04.1994 and P.W.2 in the chief examination had deposed that the land in Survey No.54/4 stands in the name of the defendant and also under Exs.1 to 3 and in the light of the said evidence, the Courts below ought not to have upheld the case of the plaintiffs and decreed the suit and prays for appropriate orders.

12.Per contra, the learned counsel appearing for the respondent/defendant would submit that though the Appellate Court has held that the suit is not barred by limitation, however, in paragraph No.15 of the impugned judgment has held that the plaintiffs had approached the Court after 15 years from the date of submission of the application for transfer of patta during the year 1996-1997 and thereafter, found that the plaintiffs are guilty of delay and laches. It is also the submissions of the learned counsel appearing for the respondent/defendant that under Section 137 of the Limitation Act as admittedly the suit has been filed within a period of three years from the date on which right to apply accrues in favour of the plaintiffs. The learned counsel appearing for the respondent/defendant had also drew the attention of this Court to oral evidence of P.W.2. As per the said evidence, the first plaintiff is the owner of the land in Survey No.50/1 and

patta was also issued in favour of her (Ex.A.1) and before purchasing the property, due and proper enquiry has also been made. Thereafter, the property was purchased by the husband of the first plaintiff and at a very belated point of time, for the reasons best known to them, the plaintiffs had come forward to file the suit and the Courts below on a proper consideration has rightly raised a plea to reject the claim of the plaintiffs and in the light of the concurrent findings, substantial questions of law arise for consideration in the second appeal and prays for dismissal of the appeal.

13.This Court heard the submissions of the learned counsel for the appellants and the learned counsel for the respondent and also perused the materials placed on record.

14.The only substantial question arises for consideration is whether the suit is barred by limitation?

15.The Trial Court in the judgment, has extracted the evidence of P.W.1/Power of attorney agent of the plaintiffs, who is also the husband of the second plaintiff and he has conceded that during the year 1996-1997 that his mother in law, the first plaintiff has approached the jurisdictional Tahsildar and made an attempt to change the patta and the jurisdictional Tahsildhar told that it was not possible and the said fact had also been informed to the first plaintiff and subsequently, she has made 1 or 2 attempts and she had failed in her attempts and thereafter, the first plaintiff has approached the jurisdictional Tahsildhar in the form of an application dated 15.03.2010 for transfer of patta and it was returned for the reason that the extent of the land differs and thereafter, lawyer notice was sent on 03.05.2010 and it was received and acknowledged by the defendant on 05.05.2010. The Trial Court had dismissed the suit on the ground of limitation and the Lower Appellate Court has also held that since the suit has been filed from the date of cause of action on 31.05.2010, it is not barred by limitation. However in paragraph 15 of the impugned judgment, the Lower Appellate Court has observed that the application for transfer of patta was returned during the year 1996-1997 and the plaintiffs did not take any action. Only after 15 years, they approached for change of Survey Number as well as extent of the same.

16.In the light of the admission made by P.W.1, coupled with the fact that the suit was filed only on 11.08.2010, it was returned and re-presented on 12.11.2010 and it has not been filed within a period of 3 years from the date of rejection of the earlier application during the year 1996-1997, this Court is of the view that the suit is obviously barred by limitation and that apart the appellants/plaintiffs are also guilty of delay and laches. Insofar as the recovery of excess amount is concerned, since the cause of action arose during the year 1996-1997 and the suit was belatedly filed in the year 2010, the suit claim is also barred by limitation.

The learned counsel appearing for the Appellants/Plaintiffs submitted that the first plaintiff has already purchased the property in Survey No.50/1 and as such there is no necessity on her part to purchase the property by her husband under Ex.A.10. The fact remains that before purchasing the property, a due and proper enquiry was made and though the plaintiffs were aware of the fact that there are some discrepancies in Survey Number as well as the extent, they kept quiet for a long time and only in the year 2010, they have approached the jurisdictional Tahsildhar. The testimony of the jurisdictional Village Administrative Officer is also not coming to the aid of the plaintiffs. The Courts below on proper appraisal of the materials placed, has rightly reached the conclusion to reject the case of the plaintiffs.

17.In the light of the reasons assigned, the substantial questions of law with regard to the limitation, is answered in negative against the appellants/plaintiffs. This Court on entire materials is of the view that there is no error or perversity attached in findings rendered by the Courts below.

18.In the result, the second appeal is dismissed confirming the judgment and decree passed by the Courts below. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Subordinate Judge,
Nagapattinam

2.The District Munsif,
Nagapattinam.

3.The Section Officer,
V.R.Section, High Court, Madras.

+2 cc's to Mr.S.Balasubramanian, advocate,sr.14653

+1 cc to Mr.M.S.palaniswamy,advocate,sr.14929.

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