

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2017

PRONOUNCED ON: 07.12.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.678 of 2001

Gengadhara Mudaliar

Vs.

Appellant

1. Ezhumalai Naicker (Deceased)
2. Kathirvel Naicker
3. Veeraraghava Naicker (Deceased)
4. Kottai alias

Narayanasamy Naicker (Deceased)...

Respondents

(RR1, 3 & 4 are died. Memo is recorded vide order of Court dated 20.11.2017 made in Memo USR No.2682/2015 dated 16.04.2015 in memo dated 01.11.2017 in S.A.No.678/2001)

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 06.09.2000 made in A.S.No.34 of 1998 on the file of the Subordinate Court, Kanchipuram confirming the Judgment and decree dated 23.12.1997 made in O.S.No.667 of 1993 on the file of the District Munsiff Court, Kanchipuram.

For Appellant

: Mr.N.Ramanujam

For Respondent
No.2

: Mr.M.Sriram

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 06.09.2000 made in A.S.No.34 of 1998 on the file of the Subordinate Court, Kanchipuram, confirming the Judgment and decree dated 23.12.1997 made in O.S.No.667 of 1993 on the file of the District Munsiff Court, Kanchipuram.

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 plaintiff is the absolute owner of the plaint schedule property having been purchased the same from one Rajammal and another for a valid consideration under a registered sale deed dated 22.08.1981 and from the date of purchase, it is only the plaintiff, who is in possession and enjoyment of the suit property by obtaining patta and paying kist etc., and the plaintiff had been also granted patta under the UDR scheme and as per the Updating Registry Scheme, the extent of the suit property has been given as 0.08.5 hectares equivalent to 0.23 cents for each item

of the suit lands and the entire eastern side extent of survey No.31 belongs to Arulmigu Mariamman Temple, Vanniapettai @ Thimmaiyanpettai Village and this is also reflected under the UDR patta and though in the plaintiff's sale deed, the extent is mentioned as 0.20 cents, the actual extent in the possession and enjoyment of the plaintiff is 0.23 cents in the suit survey numbers and accordingly, under the UDR scheme, the plaintiff was granted patta for an extent of 0.23 cents and the plaintiff's lands had been subdivided in survey No.31/1A and the property belonging to the Mariamman Temple is located in Survey No.31/2A and at the time of purchase, the plaintiff had also been given the parent title deed dated 30.03.1899 and while so, the defendants claiming that the suit properties are the temple properties and thereby, attempted to interfere with the plaintiff's possession and enjoyment without any authority and hence, according to the plaintiff, he has been necessitated to lay 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 and it is false to state that the suit properties belonged to the plaintiff by way of a sale deed dated 22.08.1981 executed by one Rajammal and another and the suit properties, on the other hand, originally belonged to Kandasamy and

his brother Muchindi Naicker and both of them had gifted the same to Mariammal Temple as per the registered gift deed dated 30.03.1899 and from the date of the above said gift deed, the suit properties had been enjoyed only by the trustees of the temple and the temple had also been subsequently taken under the control of HR & CE and accordingly, the Velikathan Trees grown in the suit properties had been periodically auctioned by HR & CE Board by way of public auction and accordingly, the successful bidder in the auction held on 27.05.1993 viz., one Rajendiran, subsequently, sold the Velikathan trees in favour of the plaintiff and hence, the claim of the plaintiff, he had purchased the suit property by way of a sale deed dated 22.08.1991 from Rajammal and another cannot be accepted as the vendors of the plaintiff had no valid title to convey the the suit properties to the plaintiff and the plaintiff has not been in possession and enjoyment of the suit properties as put forth by him in the plaint and taking advantage of the fact that the plaint schedule properties are vacant site and the plaintiff, coming to know that the said lands are converted into plots and leased out to the third parties by HR & CE board, attempted to grab the suit properties one way or the other and hence, the plaintiff is not entitled to any of the reliefs claimed in the suit and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs1 and 2 were examined and Exs.A1 to 4 were marked. On the side of the defendants, DWs1 & 2 were examined and Exs.B1 to 4 were marked. Exs.C1 to 6 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to dismiss the suit. The plaintiff preferred the first appeal and in the appeal proceedings, it is found that the plaintiff has produced additional evidence and the same has come to be marked as Exs.A5 to 7. The first appellate Court, on a consideration of the materials placed, was pleased to confirm the judgment and decree of the trial Court and aggrieved over the same, the present second appeal has come to be laid.

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

" (i) Whether the lower appellate Court was right in its conclusion that the suit properties are belonged to the temple?

(ii) When there is no ambiguity as to specific S.No. Whether mentioning of boundaries is necessary?

(iii) Whether the first appellate Court is incorrect in not shifting the burden of proof to the shoulders of the respondents?

(iv) Whether the first appellate Court is correct in not holding that Ex.A3 is conclusive?"

9. The plaintiff claims title to the suit properties. According to the plaintiff, he had purchased the suit properties from one Rajammal and another by way of a registered sale deed dated 22.08.1981, which has been marked as Ex.A1. The suit properties are described as located in Kanchipuram Taluk, Thimmaiyanpet Village, Punja survey No.31/1A 0.08.5 Hectares 0.20 cents and punja survey No.32/1 0.08.5 Hectares 0.22 cents, in all measuring 0.17.0 Hectares equivalent to 0.42 cents and the above said properties, as described in the plaint, are claimed to have been acquired by the plaintiff from Rajammal and another under Ex.A1. However, it is found that as rightly determined by the Courts below, the plaintiff himself is not sure as to where the

properties said to have been acquired by him under Ex.A1 are located. If really, the plaintiff had purchased the properties from the true owners and accordingly, the true owners had conveyed a valid title to the plaintiff under Ex.A1, as rightly found, the plaintiff would have given a clear description of the suit properties, which, he had purchased by way of Ex.A1. However, though in Ex.A1, the properties alleged to have been purchased by the plaintiff are described by giving four boundaries, for the reasons best known to him, the plaintiff had not chosen to mention the boundaries, within which, each item of the suit properties are located. This has not been properly explained by the plaintiff. In this connection, as per Order 7 Rule 3 of the Civil Procedure Code, where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and in case, such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. However, as stipulated under the above provisions of law, the plaintiff has not disclosed the boundaries of the properties, conveyed under Ex.A1, though the said document contains the boundaries, despite the same, had not chosen to describe the suit properties clearly by giving the correct boundaries, within which, they are located. Further, it is also found that when the

defendants have disputed the title of the plaintiff's vendors, it is for the plaintiff to establish that his vendors had a valid title to the properties conveyed to him under Ex.A1. A perusal of Ex.A1 would go to show that the plaintiff's vendors are stated to have acquired the properties and therefore, if really, the plaintiff's vendors had acquired the properties by way of sale etc., necessary documents pointing to the same would have been placed by the plaintiff for the consideration of the Court. Despite the challenge made by the defendants that the plaintiff's vendors had no valid title to convey the suit properties to the plaintiff under Ex.A1, still, the plaintiff has not chosen to place any material to hold that his vendors had a valid title to convey the suit properties to him by way of Ex.A1. However, the plaintiff would claim in the plaint that he had been entrusted the parent document of title, which according to him, is a sale deed dated 30.03.1899 and the same had come to be marked as Ex.A2. However, as rightly found by the Courts below, a perusal of Ex.A2 would go to show that it does not pertain to the suit properties as such and on the other hand, it seems to be only a gift deed and the property mentioned therein had been gifted to Mariamman Temple and in such view of the matter, the case of the plaintiff that Ex.A2 is the parent title deed to the suit properties as such cannot be accepted in any manner.

10. To rectify the above said defects, it appears, the plaintiff had chosen to mark additional documents, during the proceedings of the first appellate Court, as Ex.A5 to 7 and had projected the same, as if they are the parent title deeds to the suit properties. However, as rightly found and determined by the first appellate Court, a perusal of Ex.A5 would go to show that an extent of 4 cents had been dealt with under the said document out of 84 cents in survey No.32 and similarly, an extent of 5 cents of land in the above said survey number had been dealt with under Ex.A6 and by way of Ex.A7 an extent of 5 cents had been dealt with in the same survey number and therefore, it is seen that as per the above said documents only an extent of 14 cents had been acquired by Rajammal's husband Kannappa Naicker and the said lands are to be situated to the North of Baattai and it is found that according to the plaintiff, the said lands covered under Exs.A5 to 7 related to the second item of the suit properties. However, in the plaint, the second item of the suit properties is shown to be measuring 22 cents in survey No.32/1. In such view of the matter, it is found that there is no basis or connection whatsoever that the lands covered under Exs.A5 to 7 are the properties described in the second item of the plaint schedule. In such view of the matter, when as per the

materials produced, even assuming for the sake of arguments that Rajammal had title in survey No.32/1 in respect of 14 cents of the land by way of Exs.A5 to 7, it has not been explained as to how come she could have validly conveyed an extent of 22 cents in favour of the plaintiff by way of Ex.A1. Similarly, it has not been explained as to how the plaintiff's vendors had acquired title to the first item of the suit properties, so as to entitle them to convey a total extent of 42 cents to the plaintiff as described in the plaint by way of Ex.A1 sale deed. Therefore, as rightly determined by the Courts below, the plaintiff cannot claim a valid title to the suit properties as per law under Ex.A1.

11. Further, it is found that when Ex.A2, claimed to be the parent title deed to the suit properties, does not reflect that the same relate to the suit properties as such and it only recites, as if some portion of the land had been gifted to the temple in survey 31 located within the specific boundaries and when there is nothing placed to correlate the property described in Ex.A2 with that of the suit properties, it is seen that as rightly found by the Courts below, Ex.A2 would not in any manner serve the case of the plaintiff either to hold that he has a valid title to the suit properties or to hold that the suit properties are

not gifted to Mariamman Temple and that, the properties gifted to Mariamman temple are located only on the eastern side of the suit properties as put forth by the plaintiff. If that be so, if according to the plaintiff, he had purchased the specific extent of the property in the suit survey numbers within the specific boundaries, what prevented the plaintiff from giving the clear discretion of the suit properties as purchased by way of Ex.A1 has not been explained by the plaintiff. On the other hand, as adverted above, the plaintiff has given vague description of the suit properties and also failed to establish that his vendors had a valid title to the same to enable them to legally convey the same to the plaintiff.

12. It is further found that though in this matter the advocate commissioner had inspected the suit properties on three occasions, as rightly found by the Courts below, his report and plan do not in any manner advance the case of the plaintiff as such to hold that the plaintiff has a valid title to the suit properties or to hold that the plaintiff is in lawful possession and enjoyment of the suit properties as claimed by him.

13. A reading of the plaint averments and also the testimony of PWs 1 and 2 adduced on behalf of the plaintiff would go to show that the plaintiff seems to make a claim to the suit properties by way of the UDR patta said to have been given to him under the Updating Registry Scheme. However, as rightly found by the Courts below, merely on the basis of the patta granted in the UDR scheme, we cannot conclude that the plaintiff has a valid title to the suit properties or that he is in lawful possession and enjoyment of the suit properties. The patta and the kist receipts paid subsequent thereto, not being the documents of title as such, on the basis of the same, no relief of declaration as such can be granted in favour of the plaintiff with reference to the suit properties.

14. The plaintiff's counsel contended that the defendants have not placed any acceptable and reliable material to show that the suit properties had been gifted to Mariammal Temple, that it is only the temple, which had been enjoying the suit properties through HR & CE Board by raising the Velikathan Trees, etc., therefore, it is stressed that the plaintiff should be granted the reliefs sought for. However, as rightly put forth by the defendant's counsel, the plaintiff having come forward with the suit claiming the reliefs of declaration and

permanent injunction on the footing that he has a valid title to the suit properties and that, the same are in his possession and enjoyment lawfully and when the above said facts, despite the the stiff challenge put to the plaintiff's case, had not been established by the plaintiff by acceptable and reliable materials and when in the light of the above discussions, the materials placed by the plaintiff cannot be accepted for upholding the claim of title to the suit properties, it is found that merely on account of the failure of the defendants to establish their version by itself, would not enable the plaintiff to claim the reliefs sought for in the plaint without making any attempt to establish his case at least prima facie with acceptable and convincing materials. Therefore, it is seen that the plaintiff is only attempting to pick holes in the defendants' case and thereby, seeking to grab the suit property one way or the other without establishing his entitlement to the same as per law and therefore, it is seen that the Courts below have rightly discountenanced the case of the plaintiff and in such view of the matter, the judgment and decree of the Courts below do not warrant any interference.

15. The Courts below have rightly found that the plaintiff has not made out the clear and correct description of the suit properties as

mandated under law and accordingly held that he is unable to establish his valid title to the suit properties and correctly held that the plaintiff, being the suitor, has failed to establish his case by placing acceptable and reliable evidence and hence, there is no need for shifting the burden of proof on the shoulders of the defendants for establishing their defence version and it is further found that the Courts below have rightly held that the patta document could not be construed as a document of title for conclusively holding that the plaintiff has title to the suit properties and on materials, the Courts below have also rightly found that the plaintiff in the garb of the present suit has only made an attempt to snatch the properties belonging to the temple and in such view of the matter, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff.

16. In support of the plaintiff's case, the plaintiff's counsel placed reliance upon the decisions reported in **2003 (1) CTC 478 (Tuticorin Diocesan Trust Association, thro' its procurator at Tuticorin and others Vs. thavamani and others), 1999 (II) CTC 290 (Dr.Ramarao Vs. The Divisional Engineer (Telegraphs) Telegraphs Office, Kaaraikudi and another), AIR 1999 MADRAS 213 (Rajiah Nadar Vs. Manonmani Ammal) and 2005 (4) CTC**

55 (Umabai and another Vs. Nilkanth Dhondiba Chavan (D) Lrs.

And another. 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 appeal does not merit acceptance and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, closed.

07.12.2017

Internet : Yes/No

Index : Yes/No

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To

1. The Subordinate Court, Kanchipuram.

2. The District Munsiff Court, Kanchipuram.

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T.RAVINDRAN, J.

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Pre-delivery judgment made in

S.A. No.678 of 2001

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