



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

S.A.(MD).No.551 of 2014

S.Chinnapillai (died)

1.S.Balasubramanian

2.S.Rajarathinam

3.S.Pandian

4.P.Rajamani

5.S.Pushpavalli

... Appellants /
Appellants / Defendants

Vs.

N.Meena,

W/o.Nithiyanandham,

rep. by her Power Agent

Nithiyanandham.

... Respondent /
Respondent / Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 16.08.2013, made in A.S.No.116 of 2006 by the learned Additional Subordinate Judge, Thanjavur, confirming the judgment and decree, dated 04.08.2006, made in O.S.No.104 of 2000 by the learned District Munsif, Thanjavur.

For appellants

... Mr.G.Karnan

For respondent

.... Mr.Suriyanarayanan.R.

JUDGMENT

The defendant, who had lost in both the Courts below, has filed this appeal challenging the judgment and decree passed in favour of the plaintiff for permanent injunction.

2.The case of the plaintiff is that she is the absolute owner of the suit property having purchased the same from one Sirguru Emam Alisha Kathari. The extent of the suit property is 17 cents. The vendor of the plaintiff, out of 22 cents, has sold 17 cents to the plaintiff. She is in possession of the same from the date of purchase i.e., on 17.08.1981. On 10.03.1983 one Samiayya has purchased an extent of 5 cents in the same Survey No.104/1B from the daughter of the vendor of the plaintiff. The property purchased by the said Samiayya is shown as "B" schedule property in the plaint plan and the property purchased by the plaintiff is shown as "A" schedule property in the plaint plan. The revenue records also stand in the name of the plaintiff.

3. The defendants, who are the legal heirs of the said Samiayya, had denied the title of the plaintiff contending that



the vendor of the plaintiff had already settled the suit property in favour of certain third parties on 13.07.1964. Therefore, the sale deed in favour of the plaintiff is invalid. The father of the defendants purchased the suit property from the daughter of the vendor of the plaintiff. Thus, they prayed for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiff, two witnesses were examined as PWs.1 and 2 and Exs.A1 to A9 were marked. On the side of the defendants, two witnesses were examined as DWs.1 and 2 and Exs.B1 to B9 were marked. On the above pleadings, the trial Court had decreed the suit and on appeal, the same was confirmed. Aggrieved by the same, the above appeal is filed by the defendants.

5. At the time of admission, only notice was ordered.

6. Heard the learned counsel for the appellants and the learned counsel appearing for the respondents.

7. So far as the plaintiff is concerned, the property has been purchased by her on 17.08.1981 from the original owner of the property. Whereas the father of the defendants have purchased a lesser extent of the property from the heirs of the same owner. In support of the case of the plaintiff, she has also filed chitta and the proceedings of the Tahsildar and the husband of the plaintiff was examined as PW1. The case of the defendants is that the suit property was settled in favour of the plaintiff's vendor's daughter from whom the defendants' father had purchased. Though the defendants mentioned about the settlement deed, dated 13.07.1964, their sale deed - Ex.B3, dated 10.03.1983, does not mention about the same. Admittedly, the settlement deed is of the year 1964 which is marked as Ex.B1. It is contended that Ex.B1 has been acted upon. Though it is stated that the deceased Samiayya, the father of the defendants, has been in continuous possession of the suit property from 1963 to 1991, there is no document produced to prove the possession. Both of them have also not chosen to examine any one of witnesses to speak about the title of the suit property. Admittedly, the plaintiff's sale deed is prior in point of time. The Courts below have felt that Exs.A2, A3, A5 to A9 are such documents to show the possession of the plaintiff, which are also not disputed by the defendants and hence, decreed the suit.

8. One another theory introduced by the defendants is that the property belonged to the Wakf Board and when the statutory tenants vacated the premises, the defendants' father occupied the same. However, the said fact has also not been established by the defendants. Admittedly, there were 22 cents of lands available of which the plaintiff had purchased 17 cents in the year 1981. It is not known whether the balance of 5 cents has been purchased by the



defendants subsequently in the year 1983. But, Exs.B4 to B9 would go to show that the deceased Samiayya got patta for 5 cents. Though the defendants had pleaded that the properties belonged to the Wakf Board, it has not been properly explained and not proved.

9. A mere perusal of the records would clearly go to show that the plaintiff has purchased the suit property earlier in point of time and she has been in possession of the same in her own right and the defendants, without any right and title, are unnecessarily interfering with the possession of the plaintiff by setting up a false case that the suit property belongs to the Wakf Board. Even assuming that the suit property belongs to the Wakf Board, it is not stated as to whether the said Wakf is a registered Wakf. Unless there is proper authority, the suit cannot be filed on behalf of the Wakf. In this case, it is only a statement of the defendants that the suit property belongs to the Wakf Board. As already stated, the plaintiff has established his possession and the Courts below, based on the same, has decreed the suit. The said decree does not suffer from any infirmity or irregularity to interfere in the second appeal. There is no question of law arising for consideration in this appeal.

10. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Sub Judge, Thanjavur.
2. The District Munsif,
Thanjavur.

+1cc to Mr.G.Karnan, Advocate Sr.No.71090

GCG

VB/KK/SAR4/04/09/2017/3P/4C

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