



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2017

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) Nos.697 to 700 of 2014

and

M.P.(MD).Nos.1, 1, 1 & 1 of 2014

1.Vijayakumar

2.Dineshkumar

... Appellants in all the appeals /
Appellants / Defendants

Vs.

Felix

... Respondent in S.A.(MD).No.697/2014/
Respondent / Plaintiff

Poongothai

... Respondent in S.A.(MD).No.698/2014/
Respondent / Plaintiff

Palanichamy

... Respondent in S.A.(MD).No.699/2014/
Respondent / Plaintiff

Santhanalakshmi

... Respondent in S.A.(MD).No.700/2014/
Respondent / Plaintiff

COMMON PRAYER: Second Appeals filed under Section 100 of C.P.C., against the common judgment and decree, dated 26.03.2014, made in A.S.Nos.258, 261, 264 and 267 of 2012 on the file of the I Additional Subordinate Judge, Tiruchirapalli, confirming the common judgment and decree, dated 13.08.2012, made in O.S.Nos.305, 347, 466 and 508 of 2009 on the file of the Principal District Munsif, Tiruchirapalli.

For appellants in all

the appeals

... Mr.M.Saravanan

For respondents in all

the appeals

.... Mr.R.Sundar

COMMON JUDGMENT

The defendants in the suits are the appellants in the above appeals. The plaintiffs had filed the suit for bare injunction restraining the defendants from disturbing their peaceful possession.



2. The case of the plaintiffs is that the suit properties originally belonged to one Periyannayagam. He had executed a registered Will in favour of one Rukmani Ammal. On the death of Periyannayagam, Rukmani Ammal became the absolute owner by virtue of the Will. The total extent covered by the said Will was 9440 sq. ft. The said Rukmani Ammal had mortgaged the suit properties with one Anthonisamy. As she had failed to discharge the mortgage, a suit in O.S.No.1844 of 1981 was filed and the properties were brought in public auction in E.P.No.446 of 1985. The vendor of the plaintiffs viz., one Loganathan had purchased the same in Court auction on 09.03.1988. The sale was also confirmed on 22.06.1988. The delivery was effected on 05.08.1988 in E.A.No.812 of 1988. The defendants herein were the parties to the execution proceedings as third and fourth respondents. After the purchase through Court auction, Loganathan had got the patta changed in his name. After almost 14 years, the said Loganathan divided the properties into plots and sold the same to the plaintiffs/respondents herein on 08.04.2005, 02.09.2002, 02.09.2002 and 09.12.2002 respectively. From the date of purchase, the plaintiffs are said to be in continuous possession and enjoyment of their respective property and subsequently, they changed the revenue records and obtained patta in their respective names. While the plaintiff in O.S.No.305 of 2009 started construction work in the plot purchased by him, the defendant entered into the property and tried to disturb the construction. Hence, the suit has been filed. Similarly, other plaintiffs also have filed the suit for injunction.

3. The defendants resisted the suit by raising various contentions. The fact that the suit properties were owned by Periyannayagam and the same was given in bequest in favour of Rukmani Ammal, who in turn mortgaged the same and allowed the same to be brought to sale, were all admitted by the defendants. According to the defendants, the extent covered under the decree is different from what was got by the said Rukmani Ammal under the Will. It is further stated that the total extent of the property is 9,440 sq. ft., whereas what was brought to sale was only 7534 sq. ft. There is a balance extent. When the property was brought to sale, the specific boundaries were not shown and the delivery was only on paper and the description on the delivery athatchi are different. Therefore, it is stated by the defendants that the said decree in O.S.No.1844 of 1981 is not binding on them and they are the absolute owners of the suit properties.

4. Before the trial Court, on the side of the plaintiffs, P.W.1 to P.W.5 were examined and Exs.A.1 to A.14 were marked, and on the side of the defendants, DW.1 was examined and Exs.B.1 to B.5 were marked. On the above pleadings, both the Courts below have ~~held~~ ^{found} that the plaintiffs have established their right and thus, decreed the suit. Aggrieved by the same, the above second appeals are preferred.



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

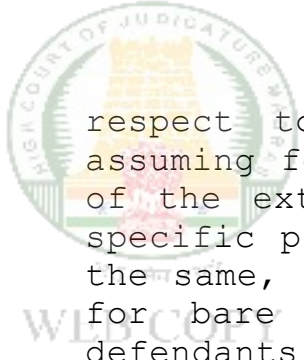
6. Heard the learned counsel for the appellants and the learned counsel appearing of the respondents.

7. As stated earlier, the plaintiffs and the defendants admitted that the properties had originally belonged to one Periyannayagam which was given to one Rukmani Ammal under a Will and the said Rukmani Ammal had been the absolute owner of the property, after the death of the said Periyannayagam. It is also not in dispute that the said Rukmani Ammal had mortgaged the properties and in discharge of the same, the properties were brought to auction by the Court. One Loganathan had purchased the properties in Court auction, which was subsequently confirmed and delivery was effected through the Court. The above said acts were all in the year 1988. During 2005, the said auction purchaser Loganathan had converted the property into house plots and sold to different persons, who are plaintiffs in the suit. While one of the plaintiffs attempted to put up construction in the suit property, the defendants resisted the same. The defendants are the sons of the said Rukmani Ammal. In fact, these two defendants were shown as third and fourth defendants in the Execution Petition and also in E.A.No.812 of 1988 filed for delivery of property.

8. It is the contention of the defendants that the measurement, as mentioned in Ex.B1 - Mortgage deed, dated 06.07.1973 and Ex.B4 - Will, dated 16.10.1967, are different. It is the specific case of the defendants that the balance extent belongs to them and that the plaintiffs cannot proceed with any kind of construction without dividing the suit properties. On the contrary, the learned counsel appearing for the plaintiffs contended that the above said contentions were raised by the defendants even in the execution proceedings.

9. As mentioned earlier, the defendants were shown as third and fourth respondents in E.A.No.812 of 1988, which was the application for delivery of possession. The very same contentions that are raised by defendants herein were raised there and the same were dealt with and orders were passed. Pursuant to the said orders, the plaintiffs have purchased the properties from the Court auction purchaser viz., Loganathan. Therefore, the defendants herein are estopped from raising the said contentions once again.

10. It is not disputed by the appellants/respondents that they were also parties to the execution proceedings. The Courts below found that in Ex.B4 - Will, there is no measurement given with



respect to the property, which also admitted by DW1. Even assuming for a moment that except what was mortgaged, the balance of the extent belongs to the defendants, in the absence of any specific plea about the measurements and documents in support of the same, the defendants cannot claim any right. This is a suit for bare injunction filed by the plaintiffs restraining the defendants from interfering with their possession. If at all the defendants/appellants were aggrieved, they would have raised this objection at the time of execution itself. Having failed in their objection at the time of sale and delivery of possession, the defendants are raising the plea of difference in extent after 14 years. On the other hand, the plaintiffs in all the suits have established their possession through the documents viz., Exs.A1 to A14. The documents would categorically go to show that the vendor of the plaintiffs had purchased the suit properties in Court auction and taken delivery through the Court and 14 years thereafter, the properties were sold to the plaintiffs and from the date of purchase, the plaintiffs have been in possession of the suit properties. Based on the same, the Courts below have granted the decree in favour of the plaintiffs which is confirmed by the lower appellate Court also. In such circumstances, there is no infirmity or irregularity in the judgment and decree passed by the Courts below for interference by this Court. Besides, there is no question of law arising for consideration in the above said facts.

11. In the result, these second appeals fail and accordingly, the same are dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The I Additional Subordinate Judge, Tiruchirapalli.

2.The Principal District Munsif, Tiruchirapalli.

3.The Record Keeper,

VR Section,

Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.R.Subramanian, Advocate, SR.No.71771

+One cc to Mr.R.Sundar, Advocate, SR.No.71832

gcg

RL/6C/4P/KK/SAR1/21/9/2017

<https://hcservices.ecourts.gov.in/hcservices/>

COMMON JUDGMENT IN

S.A. (MD) Nos.697 to 700 of 2014

09.08.2017