

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.126 of 2018
and C.M.P.No.2876 of 2018

1. N.Dayalan
2. D.Sundaresan
3. D.Sivanesan
4. D.Kumaresan
5. D.Murugesan
6. D.Ganesan

.... Appellants/Appellants/Plaintiffs

..vs..

1. Lakshmi
2. Samundeeswari
3. Mohana
4. The Tahsildar,
Ambattur Taluk,
T.I.Cycles Road, Ambattur,
Chennai 600 053.
5. The Sub Registrar,
Sub Registrar's Office,
Avadi, Chennai 600 054.
6. Andal
7. Asha

.... Respondents/Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 07.09.2017 passed in A.S.No.6 of 2014 on the file of Subordinate Judge, Poonamallee, Thiruvallur District by confirming the decree and judgment dated 25.10.2013 passed in O.S.No.444 of 2003 on the file of the District Munsif Court, Ambattur, Thiruvallur District in respect of issue Nos.2,4 and 5 are unsustainable.

For Appellant : Mr.M.Manivannan

J U D G M E N T

The plaintiffs, in a suit for declaration and for consequential permanent injunction, have filed the above Second Appeal, aggrieved by the fact that the relief of declaration has not been granted, though the relief of injunction was granted by

the trial Court and confirmed by the lower appellate Court.

2. It is case of the plaintiffs that the first plaintiff's father-Nathappa Reddiar entered into an Agreement of Sale with the original owner of the property, namely, Thayammal and Kannappa Mudaliar with respect to the suit schedule property. The plaintiffs 2 to 6 are the sons of the first plaintiff. It is stated that though an advance was originally paid, subsequently, the entire sale consideration was paid to the vendors. The said agreement Ex.A-1 is dated 21.06.1965. It is also stated that the possession was handed over to the said Nathappa Reddiar on the date of execution of Ex.A-1 itself. While so, the respondents 1 to 4, who are the strangers to the suit property, applied for patta claiming to be the legal heirs of the vendor of the first plaintiff's father and attempted to sell the suit property. Hence, the suit was filed.

3. The respondents/defendants denied the execution of Ex-A1 Agreement and that it is not true and valid. It is stated that the patta granted in favour of Nathappa Reddiar was cancelled and the same was granted in the name of the respondents. Therefore, the plaintiffs cannot claim any right or title over the suit property.

4. Heard the learned counsel for the appellants/plaintiffs and perused the materials available on record.

5. Learned counsel for the appellants/plaintiffs contended that though Ex.A-1 came to be executed as an agreement to sell, the sale should be deemed to be an oral one, as admittedly, the entire sale consideration was passed and the appellants are in possession of the suit property.

6. There is no reasons coming forth from the appellants as to why they have not got the sale deed executed by the owners of the property, pursuant to Ex.A-1. The said fact is also admitted by P.W.1. Hence, it is clear that no right could flow to the plaintiffs based on an agreement to sell.

7. So far the question of possession is concerned, admittedly the plaintiffs are in possession, pursuant to the sale agreement from the year 1965 and they have also obtained patta under Ex.A-2. But, however, it was later cancelled. The respondents 1 to 4 also never claimed any right to the suit property, as they had only patta in their favour. However, admittedly, the plaintiffs are in possession of the suit property.

8. The next relief sought for by the plaintiffs is for grant of permanent injunction restraining the fifth defendant

from changing the existing patta and other records from the name of the first plaintiff in favour of defendants 1 to 4. Though the relief has been sought for, it is seen from the records that in the enquiry by the revenue authorities, P.W.1- the first appellant has appeared and participated in the enquiry and thereafter, the patta in the name of the first appellant was cancelled, after due enquiry. Therefore, the lower appellate Court held that such relief sought for has already become infructuous, in view of the fact that the plaintiffs have participated in the patta proceedings.

The relief of declaration of title and injunction restraining the revenue authorities from changing the patta has been declined by the Courts below. However, recognising the possession of the appellants/plaintiffs, the Courts below have granted the relief of permanent injunction restraining the defendants 1 to 4 from interfering with the plaintiffs peaceful possession and enjoyment of the suit property.

9. In the light of the above facts and circumstances, the appellants/plaintiffs cannot be aggrieved by the judgment and decree passed by the Courts below and the contention raised by the appellants, does not merit any consideration in this appeal. There is no question of law involved in this appeal, much less, substantial question of law.

10. Accordingly, the Second Appeal is dismissed and the judgment and decree of the Courts below is confirmed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Subordinate Judge, Poonamallee, Thiruvallur District
2. The District Munsif Court, Ambattur, Thiruvallur District
3. The Section Officer,V.R.Section,High Court, Madras (2 copies)

+2ccs to Mr.M.Manivannan, Advocate, S.R.No.12677

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RSK(CO)
CS/09/04/18