

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.Nos.407 and 408 of 2018

S.A.No.407 of 2018

1. Lalitha Sankaran
2. S.Chitra ... Appellants /8th & 9th defendants
...Vs..

1. K.Kanthammal
Murugesu Naicker (died)
Dilli (died)
2. Damodaran
3. Gnanasekaran
4. John Raj Kumar
5. Gopal Reddy
6. V.Manikyana Rao ... Respondents /Defendants 1,5 to 7

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 22.09.2017 made in A.S.No.29 of 2015 on the file of the learned Additional Subordinate Judge, Chengleput, confirming the Judgment and Decree dated 24.06.2015 made in O.S.No.221 of 2009 passed by the learned District Munsif, Chengleput.

S.A.No.408 of 2018

1. Lalitha Sankaran
2. S.Chitra ... Appellants / Plaintiffs
...Vs..

1. K.Kanthammal
2. K.Kumar
3. K.Santhanam ... Respondents/ Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 22.09.2017 made in A.S.No.28 of 2015 on the file of the learned Additional Subordinate Judge, Chengleput, confirming the judgment and decree dated 24.06.2015 made in O.S.No.405 of 2008 on the file of learned District Munsif, Chengleput.

For Appellant : Mr.S.Rajasekar
(in both S.A.'s)

C O M M O N J U D G M E N T

Second Appeals are filed against the Judgment and decree dated 22.09.2017 made in A.S.Nos.29 and 28 of 2015 on the file of the learned Additional Subordinate Judge, Chingleput, confirming the judgment and decree dated 24.06.2015 made in O.S.Nos. 221 of 2009 and O.S.No.405 of 2008 respectively on the file of learned District Munsif, Chingleput.

2. The appellants in both the Second Appeals are Plaintiffs in O.S.No.405 of 2008 and the first respondent in both the Second Appeals is the Plaintiff in O.S.No.221 of 2009.

3. Issues and parties are one and the same in both the Second Appeals and hence they are disposed of by this common order. For the sake of convenience, the parties are referred to as appellants and respondents as arrayed in S.A.No.407 of 2018.

4. (a) O.S.No.405 of 2008 has been filed by the first respondent seeking for declaration and permanent injunction restraining the respondents in S.A.No.408 of 2018 from interfering with the appellant's possession and enjoyment of the suit property. The appellants purchased the suit property and other properties from one V.Manikyala Rao/6th respondent by the Sale Deed dated 16.07.2003, registered as document No.1781 of 2003. From the date of purchase, the appellants are in possession and enjoyment of the property till date and joint patta is issued to the appellants by factum of possession of the suit property. All the revenue records stood in the name of the appellants. The suit property originally belonged to one S.Gopal Reddy/5th respondent who had purchased the said property along with other properties by Sale Deed dated 20.09.1994. The said Gopal Reddy/5th respondent through his Power Agent one Raghunatha Rao sold the suit property along with other properties to the vendor of the appellants viz., one V.Manikyala Rao by the Sale Deed dated 24.05.2001. The said V.Manikyala Rao/6th respondent obtained patta in the suit properties along with other properties and he was levied kist for the suit property. He was in possession and enjoyment of the suit property. The appellants also perfected their title from the vendor's vendor by way of adverse possession and prescription. The respondents who are have no right or interest to the suit property, are interfering with the suit property by fabricating the document. The

appellants are in possession and enjoyment of the property. The appellants prevented their attempt on 03.12.2008 and 08.12.2008. The respondents are influential persons by men and money power. Hence, the appellants have filed the above suit.

4(b). The respondents in S.A.No.408 of 2018 filed written statement and denied all the averments made in the Plaint. According to the respondents, the suit property belonged to one Munusamy Naidu. The first respondent is his only daughter. Her father by registered settlement deed dated 24.02.1953 settled the suit property in S.No.47/5A, measuring an extent of 0.05 cents at Salavankuppam Village and other properties in favour of his wife Smt.Muniyammal, the mother of the first respondent. After the death of said Muniyammal, the first respondent as sole legal representative inherited the suit property and she is in possession and enjoyment of the property. All the revenue records stand in the name of the first respondent. The appellant's vendor and Vendor's vendor created documents and claimed title to the suit property. The alleged sale deeds are invalid and will not bind the respondents right, title or interest in the suit property. The first respondent has filed O.S.No.221/2009 for declaration of title and for permanent injunction to declare the three Sale Deeds dated 20.09.1994, 24.05.2001 and 16.07.2003 as null and void. The respondents are enjoying the suit property for several decades. Based on fabricated sale deeds and pattas, the appellants are threatening the respondents to grab the suit property. The appellants have no title to the suit property. The appellants are not in possession of the suit property and therefore prayed for dismissal of the suit.

5. O.S.No.221 of 2009 has been filed by the first respondent seeking for declaration of title, permanent injunction restraining the appellants and other defendants, from interfering with the first respondent's peaceful possession and enjoyment of the suit property and to declare Sale Deed executed by the fifth respondent in favour of the sixth respondent dated 24.05.2001 as well as the Sale deed executed by the 6th respondent in favour of the appellants in respect of suit property as null and void and not binding on the first respondent.

6. The appellants filed written statement on the same averments as made by them in Plaint in O.S.No.405 of 2008. In addition to that the, appellants have contended that the suit is barred by limitation. The first respondent has not produced any material to show that she is in possession of the land on the date of filing of the suit and the sale deed cannot be declared as null and

void beyond the limitation period as and when the first respondent came to know about the registration of the Sale Deed is not mentioned. The alleged settlement deed reveals that the first respondent's mother settled only 0.06 cents out of 0.23 cents and the first respondent has filed the suit for 0.05 cents and she has not explained as to what happened to balance 1 cent. The first respondent was not in possession on the date of filing of the suit. Without seeking recovery of possession, the first respondent cannot maintain the suit and prayed for dismissal of the suit filed by the first respondent.

7. Based on the Pleadings, the learned trial Judge framed necessary issues in both the suits. The respondents 2 to 6 in S.A.No.407 of 2018 (O.S.No.221 of 2009) who are the respondents 3 to 7 remained exparte in the suit. The Joint trial was conducted and evidence was recorded in O.S.No.405 of 2008, filed by the appellants. The first appellant examined herself as P.W.1 and marked 13 documents as Exs.A1 to A13. The first respondent examined herself as D.W.1 and marked fourteen documents as Exs.B1 to Ex.B14. The learned trial Judge considering the Pleadings, oral and documentary evidence, dismissed the suit O.S.No.405 of 2008 filed by the appellants and decreed the suit filed by the first respondent holding that title of the appellants is defective, not valid, not established possession and that first respondent has proved her title and possession by Exs.B1 to B5 and as possession follows title, granted consequential relief of permanent injunction.

8. As against the said Judgment and decree dated 24.06.2013 made in O.S.Nos. 229 of 2009 and 405 of 2008, the appellants filed two appeals in A.S.Nos.29 and 28 of 2015. The learned first Appellate Judge framed necessary points for consideration. The learned first Appellate Judge considering the materials on record, judgment of the Trial Court and arguments of the counsel for the parties, dismissed the Appeals, confirming the judgment of the Trial Court.

9. Against the said judgment and decree dated 22.09.2017 made in A.S.Nos. 29 and 28 of 2015, the appellants have come out with the present Second Appeals.

10. The learned counsel for the appellants contended that appellants have proved the title by Sale deeds. The appellants have produced Ex.A1-Sale deed for property measuring 1 acre 46 cents including the suit property. The first Appellate Court erred in holding that in item No.14 of the suit property under Ex.A1, no boundaries were given and Ex.A1-Sale deed has only two items of property and the entire extent of 1 acre and 46 cents

including the suit property were described in the form of a plan annexed to the sale deed. The respondents are relying on Ex.B1 - Settlement Deed and as per Ex.B1, settlement deed, six cents out of 23 cents in S.No. 47/5 was settled in favour of the mother of the first respondent by her father Munusamy. The first respondent filed the suit in O.S.No.221 of 2009 only for 5 cents. The first respondent did not explain as to what happened to another 1 cent. The appellants after sub-division of Survey No.47/5 purchased 5 cents in S.No.47/5A and 13 cents in S.No.47/5B. The remaining 5 cents in S.No.47/5B only belongs to first respondent. The Courts below relied on only the documents relied on by the respondents and placed much reliance on the oral evidence of the first respondent. The Courts below failed to consider the documents relied on by the appellants and suit property is different from the property mentioned in Ex.B1. The Courts below failed to see that Ex.B6 - encumbrance certificate produced by the first respondent shows that an encumbrance of the year 1982 in respect of 5 cents in S.No.47/5A. The Courts below failed to see that possession of larger extent of 2.81 acres in Ex.A3 and 1.46 acres in Ex.A1 have been with Appellant and their predecessors continuously without any interruption. The First Appellate Court did not give any finding regarding the authorities and citations produced by the appellants and whether it is applicable to the facts of the case. The courts below are erroneous in picking up portions of the evidence of parties and decided several issues in favour of the respondents, without considering the evidence in entirety. The suit filed by the first respondent is barred by limitation as the first respondent cannot question the Sale deed beyond the period of limitation.

11. Heard the learned counsel for the appellants and perused the materials on records.

12. The appellants have filed O.S.No.405/2008 for declaration of title as well as permanent injunction against the respondents 1 to 3 in S.A.No.408/2008. The first respondent filed O.S.No. 221 of 2009 against the appellants and others for declaration of title in respect of very same property and for permanent injunction. In addition to these reliefs, she also prayed for declaration to declare that three Sale Deeds as null and void. The appellants are tracing title from 1994, based on the Sale Deed executed by Murugesu naicker and others, the defendants 1 to 5 in O.S.No.221 of 2009 in favour of the fifth respondent who is the vendor. On the other hand, the first respondent is claiming title based on Settlement deed dated 24.02.1953 executed by her father securing the suit property in favour of her mother.

After the death of her mother, she has been in possession. The Courts below have considered both the documents and have held that the vendors, vendee of the appellants have not stated in the Sale Deed as to how they acquired title to the property mentioned in the said Sale deed. The two Sale Deeds document Nos.937/87 and 2135/93, were mentioned in the said Sale deed but no date has been mentioned. The appellants have not produced any of these documents. The Courts below considering these facts, have held that title of the appellants is defective. The appellants have produced patta standing in the name of their vendor and vendor's vendor. They also produced Chitta and kist receipts. Their documents are subsequent to the patta and kist receipts in the name of the first respondent. The patta produced by the first respondent herein is earlier to that of the appellants. Similarly the first respondent has produced the kist receipts issued in her name, which is of the year 1991. The kist receipts filed by the appellants are of the year 2002. The Courts below considered these documents and held that the first respondent has proved her title and possession. The Courts below have also held that possession follows title. As title of the appellant is defective and that they are not in possession of the suit property, the contention of the learned counsel for the appellants that courts below have not considered documents filed by the appellants, but considered the documents filed by the first respondent, is without merits.

13. As stated above, the Courts below have considered each and every document and have given cogent and valid reasons by accepting the documents produced by the first respondent.

14. The contention of learned counsel for the appellants that in Ex.B1, it is mentioned as 23 cents in S.No.47/5 and the said survey number was sub divided as S.Nos.47/5A and 47/5B. The balance 5 cents is a property covered under settlement deed. The property mentioned in the settlement deed is different from the suit property. The first respondent claiming 5 cents in S.No.47/5, wrongly claimed the suit property purchased by the appellants. The appellants have not pleaded that they have purchased 5 cents and 13 cents and the balance 5 cents belongs to first respondent and the first respondent is entitled to 5 cents in only S.No.47/5. It is not open to the appellants to raise this contention in the Second Appeals which is purely a question of fact, and it can be decided only by appreciation of evidence let in by the parties.

15. Similarly, the contention of the learned counsel for the appellants that the appellants have produced documents for larger extent comprising the suit properties, which is 5 cents and hence, the specific boundary of the suit property is not given in Ex.A1, is without merits. From the materials on record, the appellants have not let in any evidence in this regard for consideration of Courts below. The Courts below appreciated oral and documentary evidence and the judgment relied on by the learned counsel for the parties in proper perspective and dismissed the suit in O.S.No.405 of 2008 filed by the appellants and decreed O.S.No.221 of 2009 filed by the first respondent and dismissed the Appeals filed by the appellants/Plaintiffs.

16. There is no error in the said judgments warranting interference by this Court. No question of law much less than the substantial question of law has arisen in these Second Appeals.

17. In the result, these Second Appeals are dismissed confirming the Judgment and Decree of the I Appellate Court dated 22.09.2017. No costs.

Sd/--

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

arr
To

1. The Additional Subordinate Judge, Chengleput
2. The Subordinate Judge, Chengleput.

+2cc to Mr.S.Rajasekar, Advocate SR.No. 49621,49620

S.A.Nos.407 and 408 of 2018

ASK(19/09/2018)

WEB COPY