

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1241 of 1995

Kumaraswamy Reddiar

... Appellant/Respondent/Defendant

Vs.

1.Raju Reddiar (deceased)

2.Narayanaswamy

3.Mallika

4.Minor Muthulakshmi

5.Minor Radha

(RR4 & 5 are Rep. by mother and
guardian Mallika, 3rd respondent)

6.Nagalakshmi

7.L.R.Chitra

8.Minor Muthulakshmi

(Rep. by mother & natural
guardian L.R.Chitra)

9.Ranganayaki

10.Indira Gandhi

11.Unnamalai

(RR 7 to 11 brought on record as LRs
of the deceased R1 vide order of Court
dated 03.01.2018 made in C.M.P.No.1221
to 1223/2009 in S.A.No.1241/1995)

...Respondents

Prayer: The Second Appeal has been filed under Section 100 of C.P.C. against the judgment and decree passed by the Court on the District Judge, Villupuram District made in A.S.No.63 of 1995, dated 30.06.1995 preferred against the judgment and decree passed by the Court of the District Munsif, Kallakurichi, made in O.S.No.224 of 1985 dated 15.11.1990.

For Appellant : Mr.S.Saravanan
for M/s.R.Mohan

For Respondents : No appearance

J U D G M E N T

The unsuccessful defendant who has lost the case before the First Appellate Court has filed this second appeal.

2.The sum and substance of the plaint averments are as follows:

The suit schedule property originally belonged to the Government. Item-1 of the suit schedule property was assigned by the Special Deputy Tahsildar, Assignment, Kallakurichi to Balu Reddiar, father of plaintiffs 2 and 3 under D.K.T.No.4372/78. Item-2 of the suit schedule property was assigned by the Special Deputy Tahsildar, Assignment, Kallakurichi, to Raju Reddiar the first plaintiff under D.K.T.No.4372/78. Balu Reddiar and Raju Reddiar are the sons of Abboy Reddiar, who have been in possession and enjoyment of the suit properties and paying kist for the same, ever since the date of assignment in their favour. Balu Reddiar died intestate about ten years ago leaving his sons Sadayan and Narayanaswamy viz. plaintiffs 2 and 3 as his legal heirs.

3.After the death of Balu Reddiar, Raju Reddiar, the first plaintiff was acting as the Manager of the Hindu Joint family. The plaintiffs filed the suit on behalf of the Hindu Joint Family also. The plaintiffs have been in possession and enjoyment of the suit properties and were paying kist for the same. Revenue Assignment D.K.T's originals (conditional patta herein after referred as DKT's) were lost. The plaintiffs produced certified copies of the Revenue Assignment D.K.T's (conditional patta).

4.The second plaintiff Sadayan died on 05.04.1989 after the suit. The plaintiffs 4 to 7 are his legal heirs and entitled to pursue the suit property.

5.The defendant had no manner of right or title to the suit properties. The defendant was attempting to trespass into the suit properties in July 1984. The plaintiffs issued a notice to the defendant on 16.07.1984. The defendant has given a reply notice dated 21.07.1984 with false allegations that Raju Reddiar and Balu Reddiar received a sum of Rs.9,000/- from the defendant and conveyed the suit properties to him and executed an agreement of sale on 11.02.1972 in favour of the defendant in respect of the suit properties and delivered the original Revenue Assignments D.K.T's and patta pass books to the defendant and the defendant had been in possession and enjoyment of the suit properties for more than the statutory period and

was paying kist for the same. The defendant acquired title by prescription of adverse possession.

6.The defendant trespassed into the suit properties in July 1984 when the plaintiffs were away from the suit properties and continues to be in unlawful possession of the same. Hence the plaintiffs have filed the suit for declaration of their title to the suit properties and for possession.

7.The sum and substance of written statement filed by the defendant are as follows:

The defendant denied the plaintiffs title in respect of the suit schedule properties. In fact, the first plaintiff Raju Reddiar and the father of the second and third plaintiffs viz., Balu Reddiar received a sum of Rs.9,000/- towards the sale consideration from the defendant and executed a sale deed agreement dated 11.02.1972 and handed over the entire documents to the defendant.

8.Thereafter, the defendant accepted the suit schedule properties and was in possession and enjoyment of the same for more than 13½ years without any disturbance and owned the prescribed title through adverse possession.

9.As per the sale agreement, the first plaintiff and the father of the second and third plaintiffs handed over the entire records to the defendant, including the patta passbook and other revenue receipts. After the sale agreement, the defendant was digging a well in item-2 of the suit schedule property and cultivating the land by spending more than Rs.10,000/- for the past thirteen years.

10.The plaintiff and the legal heirs of the plaintiff did not object when the defendant was digging a well in item-2 of the suit schedule property, thereby, the defendant prescribed the title by way of adverse possession. Hence the suit filed against the defendant is unsustainable.

11.At the time of admission of the second appeal, the following substantial questions of law were framed:

- 1) Whether Exhibit B1 is valid?
- 2) Whether the Lower Appellate Court was right in holding that the defendant cannot invoke the provisions

of Section 53-A of the Transfer of Property Act and resist the suit?

12.The learned counsel appearing for the appellant/defendant would submit that admittedly the plaintiffs are the owners of the property assigned under D.K.T.No.4372/78, which stands in their name. However, in the year 1972, the first plaintiff and one Balu Reddiar executed unregistered sale deed in favour of the defendant and handed over the entire documents to the defendant. Thereby, the defendant had taken possession of the property and enjoyed the same.

13.Thereafter, the defendant was digging a well in item-2 of the suit schedule property and enjoyed the same for more than thirteen years. The plaintiffs did not object to the defendant's enjoyment of the suit schedule property. Accordingly, the defendant prescribed the title of adverse possession. The first plaintiff and other legal heirs of Balu Reddiar instituted a suit against the defendant which is not maintainable under the eye of law.

14.Though, the registered sale agreement was executed in the year 1972, the D.K.T.No.4372/78 and other patta was granted to the plaintiffs by the Government in the year 1978. The suit schedule properties were conveyed by the plaintiffs in favour of the defendant by way of unregistered sale agreement dated 11.02.1972.

15.The learned counsel further submitted that as per Section 53-A of the Transfer of Properties Act, if a person convey properties in favour of someone that has to be registered, otherwise, the same shall be considered as part performance. Accordingly, once the immovable property is conveyed in favour of the defendant, the defendant is entitled to prescribe a title by way of adverse possession and Section 53-A of the Transfer of Property Act, protects the possession of the defendant and there is no necessity for the defendant to file a suit for specific performance.

16.Ex.B1 clearly states that the plaintiffs have received a consideration of Rs.9,000/- from the defendant and executed unregistered sale agreement in favour of the defendant. Without considering the material evidence and the findings of the Trial Court, the First Appellate Court has decreed the suit, which is not sustainable.

17.No one appeared on behalf of the respondents/plaintiffs. However, this court decides to proceed with the second appeal based on the available materials and records.

18. On a perusal of material records, admittedly, the suit schedule properties belong to the Government. The Government assigned the land in favour of the first plaintiff and the father of the second and third plaintiffs. Before assigning the same, the first plaintiff and one Balu Reddiar executed an unregistered sale agreement in favour of the defendant.

19. Though Ex.B1 is claimed as a sale deed, on a perusal of the contents of the documents, it is clear that the plaintiffs have received a sum of Rs.9,000/- from the defendant and granted the rights in favour of the defendant only for nine years. After the said period, the plaintiffs are entitled to get back the suit schedule properties after paying Rs.9,000/- to the defendant. When there is no absolute sale in favour of the defendant, the said document cannot be construed as sale deed document. It is only a contract.

20. Even as per Section 13 and Section 17 of the Indian Stamps Act, for vesting of rights of immovable property having of more than Rs.100/-, the same has to be registered. If the instrument is not duly registered, it is inadmissible in the evidence.

21. Though, Ex.B1 says it is a sale deed, in the written statement and other documents, it is mentioned as sale agreement. If it is a sale deed, it has to be registered in the manner known to law. Since, Ex.B1 is only a limited right to enjoyment, hence, the defendant is not entitled to claim adverse possession. The claim of adverse possession by the defendant against the assigned land the defendant has to prove the enjoyment and independent possession for more than the statutory period.

22. In the present case, it is only a sale agreement for nine years, which is a contract between the plaintiffs and the defendant. After the expiry of the period mentioned in the agreement, the plaintiffs are entitled to get back the suit properties after paying Rs.9,000/-. Hence, the defendant is not entitled to claim any rights under Section 53-A of the Transfer of Properties Act. It is not a complete transfer in favour of the defendant and it is only a limited right. After expiry of the period mentioned in the sale agreement, the plaintiffs are entitled to get back the property.

23.In view of the above, I do not find any error or infirmity in the order passed by the First Appellate Court. Accordingly, the substantial questions of law are answered against the appellant/defendant.

24.In the result, the second appeal is dismissed. The judgment and decree passed by the learned District Judge, Villupuram, Ramaswamy Padayachi District at Villupuram, made in A.S.No.63 of 1995, dated 30.06.1995 is confirmed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To.

1.The District Judge
Villupuram

2.The District Munsif
Kallakurichi

+lcc to Mr.R.Subramanian, Advocate sr.no.12121

S.A.No.1241 of 1995

GJ(CO)
NR 18/04/2018

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