

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.10.2018

DELIVERED ON: 31.10.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.914 of 2002

Mariammal ... Appellant/Plaintiff

Vs.

1. Kamalammal
2. Kullammal
3. Subramaniam
4. Palanivel
5. Vimala
6. Kaliya Padayatchi
7. Kalyani

.... Respondents/Defendants 2-8

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 10.09.2001 passed by the Principal District Judge, Villupuram in A.S.No.53 of 2000 upholding the decree and judgment dated 26.11.1999 passed by the Subordinate Judge, Villupuram in O.S.No.244 of 1992.

For Appellant : M/s V. Raghavachari and
Ms.V.Srimathi

Respondents 2 and 4 : Ms.Chitra Sampath,
Senior Counsel
for M/s T.S.Baskaran

First respondent : Died

Respondents 5 to 7 : Set exparte vide court
dated 21.8.18.

JUDGMENT

The plaintiff in O.S.No.244 of 1992 on the file of the Subordinate Judge, Villupuram who is also the appellant in A.S.No.53 of 2000 on the file of the Principal District Judge, Villupuram has filed the present second appeal.

2. The appellant/plaintiff has filed a suit in O.S.No.244 of 1992 before the Subordinate Judge, Villupuram i] for a declaration that the plaintiff is entitled to the suit A and B schedule properties described in the plaint ii] directing the defendants 1 and 2 to pay a sum of 10,000/- towards compensation and damages iii] directing the defendants to pay a sum of Rs.18,000/- as past mesne profits and also to pay the costs of the suit.

3. For the sake of convenience, the parties are called as described in the original suit in O.S.No.244 of 1992.

4. The brief facts of the case of the plaintiff are as follows. The defendants 1 and 2 represented that the suit A and B schedule properties belonged to them and sold the A and B schedule properties to the plaintiff on 29.03.1984 through a registered sale deed Ex.A1 for a sale consideration of Rs.20,000/-. Out of the sale consideration of Rs.20,000/-, a sum of Rs.4,000/- was retained by the plaintiff on a condition that the same would be paid after the defendants 1 and 2 vacated the suit properties. However, the defendants did not deliver possession, though the plaintiff was ready and willing to pay the balance sale consideration of Rs.4,000/-. Subsequently, the 2nd defendant filed a suit in O.S.No.244 of 1987 before the District Munsif, Thirukkuvilur for recovery of a sum of Rs.4,000/- with interest, on the basis of the hand letter issued by the plaintiff. The plaintiff submitted to the decree in O.S.No.244 of 1987 and therefore the suit came to be decreed and the plaintiff was given three months time to pay the said sum of Rs.4,000/-. The properties conveyed by the defendants 1 and 2 are not only the A schedule property but also a promboke land (Grama Natham property) lying between the A schedule property and a channel situated on the eastern side. The A schedule property measures 11 x 90 feet with a thatched shed and the Government land measures 11 x 90 feet with a superstructure. The defendants 1 and 2 leased out the remaining portion of Government land to various persons, who are running business, after constructing shops. The superstructure in A schedule property which the defendants are still occupying would fetch a monthly rent of Rs.1,000/-. Since the defendants 1 and 2 represented that the sale deed could not be registered, if the Government land is also mentioned in the sale deed, the B Schedule property was not included in the sale deed. The plaintiff had infact issued a notice to the defendants 1 and 2 on 04.03.1988, a copy of which is marked as Ex.A2, calling upon them to vacate the properties and deliver possession to the plaintiff. The defendants 1 and 2 received the said notice and sent a reply notice dated 11.03.1987 (a copy of which is marked as Ex.A3) with false allegations. Taking advantage of the fact that the survey number has been wrongly mentioned in the sale

deed dated 29.03.1984 (Ex.A1), the defendants 1 and 2 are denying the conveyance of the B schedule property under the same sale deed Ex.A1. The sale in favour of the plaintiff includes the B schedule property extending upto the channel on the east. In fact, the eastern boundary is clearly shown as the channel. The 3rd defendant is the daughter of the first defendant and she is in occupation of a portion of the B schedule property.

5. The defendants 1 and 2 filed a written statement contending that they did not convey the B schedule property in favour of the plaintiff and that the same was leased out to some other persons on a monthly rent of Rs.400/-. According to them, the first defendant sold 11 x 90 feet (990 sq.ft.) to the plaintiff and also delivered possession of the same to her and that the plaintiff taking advantage of the wrong description of boundary on the eastern side, has filed the present suit with false allegations. It is also contended by them that they never sold the promboke land (Government land) in favour of the plaintiff.

6. The defendants 3 to 6 in their written statement have denied the execution of sale deed by the defendants 1 and 2 in favour of the plaintiff. They further contended that the defendants 1 and 2 had no right to convey the B schedule property in favour of the plaintiff. According to them, the third defendant's brother Palanivelu is running a tea stall in a portion of the B schedule property and that the third defendant is not at all in enjoyment of any portion of the B schedule property. It is further contended that since the defendants 3 to 6 are in permissive possession of the property, they are not liable to pay any amount to the plaintiff by way of damages.

7. The trial court, after framing necessary issues, decreed the suit as far as the A schedule property is concerned and dismissed the suit with regard to the suit B schedule property.

8. Aggrieved over the decree and judgment passed by the trial court, the plaintiff filed an appeal in A.S.No.53 of 2000 before the Principal District Judge, Villupuram. After analysing the evidence on record, the first appellate court dismissed the appeal in A.S.No.53 of 2000 on 10.09.2001.

9. Now, the second appeal has been filed by the appellant/ plaintiff on the following substantial questions of law.

1. Whether the courts below are right in overlooking the boundry recitals?
2. Whether the courts below are right in relying upon revenue records in preference to title

deeds?

3. Whether the courts below have not overlooked the evidence of Dw2 and her inability to establish her title to the suit property?

4. Whether the courts below are right in not appreciating the collusion and fraud played by the defendants 2 and 3 on the plaintiff?

10. Ms.V.Srimathi, learned counsel appearing for the appellant contended that the A and B schedule properties were sold to the appellant/plaintiff on 28.03.1984 (Ex.A1) for a sale consideration of Rs.20,000/-, out of which, a sum of Rs.4,000/- was withheld by the plaintiff on a condition that the same would be paid, after delivering the B schedule property by the defendants 1 and 2 to the plaintiff. It is an admitted fact that the plaintiff issued a hand letter promising to pay the balance sale consideration of Rs.4,000/- to the defendants 1 and 2 and the 2nd defendant filed a suit in O.S. No.244 of 1987 on the file of the District Munsif, Thirukkuvilur, which was decreed in favour of the second defendant. The copy of the plaint in O.S.No.244 of 1987 is marked as Ex.A4.

11. Ms.V.Srimathi, learned counsel appearing for the appellant relied on the boundary description found in Ex.A1 sale deed and contended that what was conveyed through Ex.A1 is A and B schedule property. She also drew the attention of this court to the boundary description found in Ex.A1, in which, eastern boundary is shown as Kalvai (channel). According to her, since the B schedule property is a government land, the same was not included in the sale deed Ex.A1 and however, the entire sale consideration of Rs.20,000/- was paid only for the purchase of A and B schedule properties. She would further contend that the evidence of PW2 would also prove the case of the plaintiffs.

12. The third defendant's contention is that she constructed two houses in B schedule property and has been in possession and enjoyment of the same, as evidenced by Ex.B2 to Ex.B64.

13. From the evidence adduced on both sides, it is seen that the defendants 1 and 2 had never enjoyed the B schedule property. Even if it is presumed that the defendants 1 and 2 had been in possession of the B schedule property, they cannot convey the same to others, as it is a Government land. However, in the instant case, the documents adduced by the third defendant clearly show that she has been in possession of the government land. Therefore, the plaintiff cannot claim right in respect of the B schedule property. The defendants 1 and 2 can

only convey A schedule property and the claim made by the plaintiff in respect of the B schedule property is not sustainable. In fact, both the courts below have analysed the entire evidence on record and had concurrently held that the appellant/ plaintiff cannot claim any right in respect of the B schedule property. All the observations made by both the courts below are well founded and therefore, I do not see any reason to interfere with the findings recorded by them. In view of all the reasons stated by me, the second appeal fails and is therefore dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

1. The Principal District Judge, Villupuram
2. The Subordinate Judge, Villupuram
3. The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 74675
+1cc to Mr.T.S.Baskarn, Advocate, S.R.No. 74664

S.A.No.914 of 2002

SKV(CO)
GN(19/12/2018)

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