

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

S.A.Nos.329 and 330 of 1997

1. Panchali Ammal
2. V.Gajendran
3. V.Jayachandran
4. V.Palani
5. V.Raghunathan
6. Saraswathi
7. Dharani
- 8.Usha

... Appellants/Appellants/ in Plaintiff
2 to 9 in SA.330/97

Versus.

1. Elumalai Naicker

... Respondent/Respondent/Plaintiff
SA.329/17

2. Padmasini Ammal
3. G.Jagannathan
4. G.Sampath

... Respondents/Respondents /Defendants
in S.A.No.330 of 1997

Common Prayer: Second Appeals filed under Section 100 of C.P.C. against the judgment and decree of the learned Subordinate Judge, Thiruvellore, dated 28.02.1996 made in A.S.Nos.6 of 1990 and 7 of 1990 respectively confirming the judgment and decree of the learned District Munsif, Tiruvellore, dated 30.03.1988 made in O.S.No.575 of 1981 and 457 of 1983, respectively.

For Appellants : Mr.T.M. Hariharan
(in both the Second Appeal)

For Respondents : No Appearance
(in both the Second Appeal)

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

The appellants are the plaintiffs in O.S.No.457 of 1983 and defendants in O.S.No.575 of 1981 who lost the case before the lower court and they filed a first appeal before the lower Appellate Court. The lower Appellate Court also confirmed the

Judgment and decree passed in O.S.No.457 of 1983 and O.S.No.575 of 1981. As against the concurrent judgment of the Courts below, the present second appeals are filed.

2. The case of the plaintiffs in O.S.No.457 of 1983 is as follows:

The plaintiffs filed a suit for declaration and injunction. The plaintiffs/appellants already filed a suit with regard to the 'A' Schedule property as against the first defendant in O.S.No.537 of 1981. With regard to the 'B' Schedule property, the present suit is filed for declaration. 'B' Schedule property is adjacent to the 'A' schedule property and is also in possession and enjoyment of the plaintiffs. The plaintiffs purchased the same from one Gopalsami Iyengar. The said Gopalsami Iyengar received the entire sale consideration. The property was purchased by the appellants/plaintiffs on 17.05.1966 through Ex.A.2, and the property measuring about 30 feet x 100 feet in grama natham in S.A.No.159/1 in Sriperumbudur for a consideration of Rs.100/-. Immediately possession was delivered after the purchase. After the purchase of the property along with 'B' Schedule property, the appellants/plaintiffs purchased the 'B' Schedule property orally from the said Gopalsami Iyengar. After the receipt of sale consideration, the said Gopalsami Iyengar was ready to execute the sale deed, however due to paralytic attack, he was not able to execute the sale deed in favour of the appellants/plaintiffs. Thereby the appellants/plaintiffs filed a suit for declaration and permanent injunction.

3. The defendant filed written statement as follows:-

The defendant denies that the suit Schedule property was purchased by the plaintiffs under unregistered sale deed dated 17.05.1966. The appellants/plaintiffs are in occupation of neither the 'A' Schedule nor 'B' schedule property. Already this defendant filed a suit in O.S.No.575/81 for permanent injunction against the plaintiffs with regard to the 'B' Schedule property. The defendant purchased the 'B' Schedule property from the legal heirs of Gopalsamy Iyengar in the year 1981 for the sale consideration of Rs.6,500/- measuring 33 feet east west and 239 feet north south to the south of Brahmin Street. After the purchase of the property, he is in continuous possession of the property. Moreover, the 'B' Schedule property is adjacent to the defendant's property. In order to defeat the rights of the defendant, the plaintiffs/appellants filed vexatious suit for declaration and permanent injunction.

4. The case of the plaintiff in O.S.No.575 of 1981 is as follows:-

The first respondent/plaintiff filed a suit for permanent injunction. The first respondent/plaintiff in O.S.No.575 of

1981 purchased the plaint 'A' Schedule property as well as 'B' Schedule property from the legal heirs of Gopalsami Iyengar who are arrayed as defendants 2 to 4 in the earlier suit filed by the appellants/plaintiffs on 17.04.1981 for a sale consideration of Rs.6,500/-. The said property was in possession and enjoyment of the said Gopalsami Iyengar and thereafter, his legal heirs and subsequently purchased by the respondent/plaintiff and the respondent/plaintiff was in possession and enjoyment of the same and the said 'A' and 'B' schedule properties are adjacent to the property of the respondent/plaintiff and he denied the sale deed executed by the said Gopalsami Iyengar in favour of the appellants/plaintiffs. The respondent/plaintiff was continuously in possession pursuant to the sale in his favour by storing hayrick. The defendant due to enmity has been making attempts to trespass into the 'B' Schedule property. Thereby the suit in O.S.No.575/1981 has been filed by the first respondent/plaintiff.

5. The appellants/defendants filed the written statement as follows:-

The suit property was not in possession of the plaintiff and was not in possession of the plaintiff's vendor as well as both the 'A' and 'B' Schedule property was in possession of the appellants/ defendants right from 1966 onwards. The appellants/defendants have already purchased a portion of 'A' schedule property along with 'B' Schedule property on 17.05.1966. The 'B' Schedule property was not included in earlier suit since possession of the appellant/defendant was acknowledged and his right was not questioned. The respondent/plaintiff taking advantage of the fraudulent sale deed is attempting to interfere with the possession of the appellant/respondent. Therefore the said purchase was with the knowledge of the respondent/plaintiff. Accordingly, he prayed for dismissal of the suit.

6. While entertaining the second appeals, this Court has not framed any substantial question of law. However on perusal of the grounds of appeals, the following common substantial questions of law are framed for consideration:

"1. Whether the appellants are not in possession and enjoyment of the 'B' Schedule property as well in part performance of the contract of Transfer between the first plaintiff and the husband of the second respondent and whether the appellants are not entitled to resist the claim of the 1st respondent in the 'B' Schedule property?

2. Whether the ready assumption of the Courts below that the 1st respondent is in possession of the 'B' Schedule property even

without any acceptable evidence or proof is legal and proper?"

7. After elaborate trial, the appellants/plaintiffs suit for declaration and permanent injunction was rejected in respect of 'B' Schedule property. However, the lower Court confirmed the purchase of 'A' Schedule property in respect of O.S.No.457 of 1983. As against the declaration, no appeal was filed by the first respondent herein. However the declaration in respect of 'B' Schedule property was rejected by the lower Court in O.S.No.457 of 1983. The suit filed for bare injunction by the first respondent/ plaintiff in O.S.No.575 of 1981 was allowed in favour of the first respondent/plaintiff. As against the lower Court order, the appellants preferred an appeal before the lower Appellate Court. The lower Appellate Court also confirmed the lower Court order and dismissed the appeal. Aggrieved by the same, the present second appeals are filed.

8. Heard learned counsel appearing for the appellants and there is no representation for the respondents.

9. The substantial questions of law involved in this case, Whether the appellants are not in possession and enjoyment of the 'B' Schedule property as well in part performance of the contract of Transfer between the first plaintiff and the husband of the second respondent and whether the appellants are not entitled to resist the claim of the first respondent in the 'B' Schedule property. It is admitted case of the appellants, with regard to the 'A' Schedule property, already the appellants got declaration from the lower Court and the same was confirmed by the lower Appellate Court. With regard to the 'B' Schedule property, the 'B' Schedule property was purchased from the legal representatives of the Gopalsami Iyengar on 17.04.1981 for a sale consideration of Rs.6,500/- and the learned counsel fairly conceded that with regard to the 'B' Schedule property, no sale deed was executed by the said Gopalsami Iyengar. However, the 'A' Schedule property was conveyed by Gopalsami Iyengar himself in favour of the appellants. Considering the same, the lower Court granted decree of declaration of 'A' Schedule property in favour of the appellants. But with regard to the 'B' Schedule property no documents are filed in order to prove the ownership of the property. It is only an oral sale deed. However, after perusal of Ex.A1 in O.S.No.575/1981, both the Courts below held concurrently.

10. In the present case, there is no dispute with regard to the ownership of the property. Initially, Gopalsami Iyengar was the owner of the 'A' Schedule and 'B' Schedule property. The said Gopalsami Iyengar himself executed an un-registered sale deed in respect of 'A' Schedule property in favour of the

appellants, however, with regard to the 'B' Schedule property the said Gopalsami Iyengar has not executed any sale deed in favour of the appellants.

11. After the death of Gopalsami Iyengar, on 17.04.1981, in respect of 'B' Schedule property, sale deed was executed by the legal heirs of Gopalsami Iyengar in favour of the first respondent. On perusal of the entire records, I do not find any error to interfere with the orders of the Courts below. Both the Courts below have concurrently held in favour of the first respondent and re-appreciation of facts is not permissible in second appeal.

12. Accordingly, the substantial questions of law are answered against the appellants and the second appeals are dismissed. The judgment and decree of the learned Subordinate Judge, Thiruvellore, dated 28.02.1996 made in A.S.Nos.6 and 7 of 1990 respectively, confirming the judgment and decree of the learned District Munsif, Tiruvellore, dated 30.03.1988 made in O.S.Nos.575 of 1981 and 457 of 1983, respectively, are confirmed. No costs.

Sd/-

Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

bri/pri

To

- 1.The Subordinate Judge, Thiruvellore.
- 2.The District Munsif, Tiruvellore.

+2cc to Mr.N.R.Anandharamakrishnan, Advocate SR.No.1648

+1cc to Mr.T.M.Hariharan, Advocate SR.No.1415

GJ(CO)
GN(22/03/2018)

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