

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.12.2018

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.706 of 2008

and

M.P.No.1 of 2008

1.Pushpa (Deceased)

2.Thirupathi

3.Dhanalakshmi

4.G.Govindaraj

5.G.Suguna

6.G.Ramamoorthy

7.G.Venkatesan

... Appellants/Plaintiffs 2 to 8

(Appellants 2 to 7 are recorded as legal heirs of the deceased

1st appellant vide order of Court,

dated 29.11.2018 made in

S.A.No.706/2008)

versus

Duraisamy

... Respondent/Defendant

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 30.03.2005 made in A.S.No.51 of 2004 on the file of the Subordinate Judge, Tirupathur, Vellore District, reversing the judgment and decree dated 30.09.2004 made in O.S.No.156 of 2001 on the file of the Additional District Munsif-cum-Judicial Magistrate, Ambur, Vellore District and prays to set aside the same.

For Appellants :Mr.K.Venkateswaran

For Respondent :Mr.V.Jeevagiridharan

JUDGMENT

The appellants 2 to 7 are the legal representatives of the deceased 1st plaintiff in O.S.No.156 of 2001 on the file of the District Munsif Court, Tirupattur. The suit is laid for declaration of plaintiff's title over the suit property and for

permanent injunction restraining the defendants from interfering with plaintiff's peaceful possession of the same. Parties would be referred to by their rank before the trial court.

2. The suit property is described as a piece of agricultural land measuring 37 cents in S.No.55/3A/4 of Labbai Manguppam Village and for other reliefs associated there with. The case of the plaintiff is that the suit property originally belonged to a certain Shanmugam, to whom the property was allotted in a family partition. On 02.09.1974, he had sold the suit property to the plaintiff. Subsequently, on 10.12.1990, the plaintiff purchased the 3rd item of suit property from one Murugesan under Ext.A-2. Ever since the purchase from Shanmugam, the plaintiff has been in continuous possession and enjoyment of the property, and that he has been personally cultivating the same. It appears that the defendant had purchased the remaining portion of the land in S.No.55/3A from the said Shanmugam and based on a false recital in the sale deed, the defendant tries to obstruct the plaintiff from taking water from the common well and pump-set, and also is keen to destroy a cart track.

3. The suit was resisted by the defendant, and in his written statement, he had contended that the suit property and others originally belonged to one Munusamy Gounder, that some time in 1964 there was a partition among his heirs of whom, Shanmugam is one, and in that partition the suit property in S.No.55/3A along with a well and pump-set came to be allotted to the share of Shanmugam. While so, on 15.09.1997, Shanmugam had sold 50 cents in the remaining extent in S.No.55/3A along with fractional right of the enjoyment of the irrigation facilities available to the defendant. The plaintiff is not entitled to any right over the well or the pump-set, nor is he entitled to any exclusive right over the cart-track.

4. The suit went for trial and before the trial court, the plaintiff has examined himself as PW1 and besides him, he examined two other witnesses as P.W.2 and P.W.3. He has produced as many as 20 documents which are marked as Exts.A1 to A20 out of which, Ext.A1 is the sale deed, dated 02.09.1974 pertaining to item No.1 of the suit property. The defendant examined himself as D.W.1 and he too examined two other independent witnesses D.Ws.2 and 3. He has produced Exts.B-1 to B-3. Of these, Exts.B1 and B2 are the sale deeds, which have a critical role to play in the suit.

5. Ext.B1 is the sale deed, dated 04.07.1990, executed by the Court on behalf of the plaintiff in favour of Shanmugam. The recital to this document would indicate that the plaintiff had entered into an agreement of re-conveyance of the property that he had purchased on 05.09.1974. That on his failure to perform

his part of the contract, Shanmugam, the agreement holder, had instituted the suit for specific performance, that the same has been decreed, and pursuant to the decree passed, reconveyance deed has been executed by the Execution Court in R.E.P.No.196 of 1987 in O.S.No.17 of 1978. A comparison of Ext.B-1 document with Ext.A1 sale deed would indicate that the property conveyed to Shanmugam under Ext.B1 is the same property that the plaintiff had purchased from Shanmugam under Ext.A1. Thereafter, on 15.09.1997, Shanmugam had purchased 18 cents from the plaintiff under Ext.B-2. The boundary description of property in Ext.B-2 however, does not reconcile with the boundary description of the property involved in Ext.A-1 which might indicate that the property covered under Ext.B-2 could be some other plot of 18 cents and not within the one dealt under Ext.A-1 or Ext.B-1. It is in this background, the trial court, on appreciation of evidence has held that Ext.B-1 sale deed, which the Execution court had executed on behalf of the judgment debtor (plaintiff herein) in R.E.P.No.196 of 1987 in O.S.No.17 of 1978 is an invalid document, since under the sale deed, the possession too was handed over to Shanmugam. The defendant, thereafter, approached the first Appellate Court, in A.S.No.51 of 2004 and the First Appellate Court has reversed the decree passed by the trial court and dismissed the suit. Aggrieved by the same, the plaintiff has now approached this Court with this second appeal.

6. At the time of admission, the following substantial questions of law were raised:

'a) Whether the first appellate Court is right in holding that the possession of suit land was delivered to the defendant by Court, while the trial Court has categorically found that no steps were taken as contemplated in law by the decree holder/defendant, to take delivery of possession on the decree, dated 1.3.1978 in O.S.No.17/77?

b) Whether the first appellate Court is right in holding that the properties purchased by the defendant in Exhibit B.3 is the property covered under Exhibit B.1 sale deed executed by the Court without assigning any reason, while the trial Court has categorically found that the properties mentioned in Exhibit B.1 and Exhibit B.3 are different properties?

c) Whether the first appellate Court is right in holding that the plaintiffs/appellants have not prescribed the title by adverse possession, while the trial Court has hold that the public documents namely Exhibit A.3 to Exhibit A.7 clearly prove the

continuous possession of the property is with the plaintiffs/appellants?''

7. Thrusting his argument more on the validity of Ext.B-1 sale deed, the learned counsel for the appellants argued that all along the plaintiff has been in possession of the property and when his possession is not taken away from him, the sale deed executed by the Court in E.P.No.196 of 1987 in O.S.No.17 of 1978 is bad in law and that the trial court has rightly decreed the suit.

8. Refuting the said submission strongly, the learned counsel for the respondent would argue that the trial court has travelled far beyond its jurisdiction to hold on that Ext.B-1 sale deed is invalid, when the same was not even disclosed by the plaintiff in the plaint. Further, the plaintiff has deliberately suppressed the material facts of entering into an agreement of reconveyance on 05.09.1974, that Shanmugam instituted the suit in O.S.No.17 of 1978 for specific performance and the factum of Court executing the sale deed on his behalf in favour of Shanmugam. It is here Ext.B-2, sale deed has become relevant and the same is obtained by the plaintiff after Ext.B-1, sale deed from Shanmugam, to whom he had lost the property he had purchased under Ext.A-1 by virtue of the decree passed in O.S.No.17 of 1978, and the plaintiff has now come forward with the suit for declaration of title passed after losing the suit property.

9.1 On a careful perusal of rival submissions, this Court finds that there are more points than one to hold that the suit is ill conceived and there is no case for the plaintiff that he has not lost title to the plaint schedule items 1 and 2 properties under Ext.B-1 sale deed, and he has no explanation for this. It is an undeniable fact that the plaintiff has purchased a plot of 18 cents under Ext.B-2 from Shanmugam. As rightly submitted by the counsel for the respondent, plaintiff has made a conscious effort to suppress the decree passed in O.S.No.17 of 1978 in the suit, and also about Ext.B-1 and Ext.B-2 sale deeds in the suit. While this would amount to gross abuse of judicial process, as it involves massive suppression of material facts affecting his very title to plaint-A schedule property.

9.2 So far as the trial court's finding goes first, the trial court has no material before it to hold that Ext.B-1 sale deed is invalid. If at all there can be challenge, it can be only at the instance of the present plaintiff, who is the defendant in O.S.No.17 of 1978. It is found that the trial court has chosen to invalidate Ext.B1, sale deed, which was not even disclosed by the plaintiff, and more so when no relief was sought pertaining to it the present suit.

10. In conclusion, this Court finds that there is no substantial questions of law to be decided in this case and accordingly, the Court cannot declare title to the suit property. If all there is any dispute as to demarcation of the boundaries between the properties covered under Exts.B-2 and B-3, the plaintiff may institute separate proceedings to resolve the dispute, if he is so desirous.

11. In the result, this second appeal is dismissed and confirming the judgment and decree dated 30.03.2005 made in A.S.No.51 of 2004 on the file of the Subordinate Judge, Tirupathur, Vellore District. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Tirupathur,
Vellore District.
2. The Additional District Munsif-cum-Judicial Magistrate,
Ambur, Vellore District.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.K.Venkateswaran, Advocate Sr.84089

+1cc to Mr.V.Jeeva Giridharan, Advocate Sr.83416

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