

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.03.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.234 of 1999
&
CMP.No.6016 of 2003

1.Chinnasamy
2.Vijayalakshmi ... Appellants/Defendants

Vs.

1.Valliyammal (Deceased)
2.Veerasley
3.Verammal
4.Jeyam
5.Samboornam

(Respondents 3 to 5 brought on record
as LRs of the deceased first respondent
vide order of Court dated 08.03.2018
made in CMP 2084 to 2086 of 2018
in SA 234 of 1999) ... Respondents/Plaintiffs

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the
judgment and decree made in A.S.No.24/98 dated 18.01.1999 on the
file of Sub Court, Attur, Salem District confirming the judgment
and decree made in O.S.No.252/92 dated 12.07.96 on the file of
the District Munsif Court, Attur, Salem District.

For Appellant : Mr.V.Jeevagiridharan
For Respondents: Mr.C.Vediappan
for Mr.S.Mani

J U D G M E N T

The plaintiffs filed a suit against the defendants in
O.S.No.252 of 1992 seeking permanent injunction. The suit was
decreed by the lower Court. Aggrieved by the same, the
defendants filed appeal before the lower Appellate Court. The
lower Appellate Court dismissed the appeal and confirmed the
judgment and decree of the lower Court. Hence, the defendants
who have lost their case before the Courts below have filed this
second appeal.

2.The appellants herein are the defendants and the respondents 1 and 2 herein are the plaintiffs in the suit. The first respondent had died and hence, respondents 3 to 5 being the legal heirs of the deceased first respondent are impleaded in the second appeal. For the sake of convenience, the parties will be hereinafter referred to as per their rank in the suit.

3.The sum and substance of the plaint averments are as follows: The first plaintiff is the absolute owner of the suit property by virtue of the registered sale deed dated 10.09.1970 executed by one Raji Ayyar son of Muthusamy Ayyar and one Raji Ayyar son of Veeranna Ayyar. The second plaintiff is the son of the first plaintiff. The plaintiffs are in actual possession and continuous enjoyment of the suit properties. The vendors of the first plaintiff purchased the suit properties under a registered sale deed dated 22.11.1968 from one Elayappa Gounder and the said Elayappa Gounder purchased the suit properties from one Arumugam under registered sale deed dated 26.03.1968.

4.The plaintiffs further aver that after purchasing the property, the first plaintiff is paying kist to the Government regularly and all the revenue records like patta, U.D.R.Patta, Chitta, Adangal and other receipts are mutated in favour of the first plaintiff. The defendants are having lands on the Northern side of the Panchayat road and the first plaintiff is having lands on the Southern side of the Panchayat road. There are so many disputes between the defendants family and their uncle one Kandasamy family. The defendants wrongly believing that the plaintiffs' are supporting their uncle Kandasamy, are giving trouble to the plaintiffs' peaceful possession and enjoyment of the suit properties.

5.The plaintiffs further aver that the first defendant is a Court bird and he is involved in so many cases and also he has the habit of filing false cases. In view of the past experience with the Court, the

defendants interfered with the plaintiffs' peaceful possession and enjoyment of the suit properties. On 14.07.1992 at about 6.00 a.m., the defendants along with some rowdy elements with deadly weapons came to the suit properties and tried trespass into the suit properties and also tried to damage the standing tapioca crops.

6.Hence, the plaintiffs filed the suit for permanent injunction restraining the defendants and their men from trespassing into the suit property and from in any way interfering with the plaintiffs peaceful possession and enjoyment of the suit properties.

7.The sum and substance of the written statement filed by the defendant are as follows: The defendants denied the averments contained in the plaint. According to the defendants, the plaintiffs are not the owners of the suit properties and they are not in possession and enjoyment of the same. The revenue records also does not stand in the name of the plaintiffs. Infact the vendor of the plaintiffs was not in possession and enjoyment of the suit properties at any point of time.

8.The defendants further aver that the suit properties are the ancestral joint family properties of one Arumugam son of one Velappa Goundar and by way of partition held on 24.09.1965, the said Arumugam mortgaged the suit properties to one Elayappa Gounder son of Athiappa Gounder in the year 1968. Thereafter, a document styled as a sale deed was executed with a clear understanding that whenever the amount is repaid, a reconveyance deed is to be executed by the said Elayappa Gounder in favour of Arumugam. At no point of time possession was handed over to Elayappa Gounder as mentioned in the document. As such, the sale deed dated 26.03.1968 executed by Arumugam in favour of Elayappa Gounder was a sham and nominal document which was not acted upon.

9.The defendants further aver that the sale deed dated 22.11.1968 executed by Elayappa Gounder in favour of Raji Ayyar son of Muthusamy Ayyar and one Raji Ayyar son of Veeranna Ayyar as well as the sale deed dated 10.09.1970 executed by Raji Ayyar in favour of the first plaintiff are also sham and nominal documents which are not acted upon. At no point of time possession was handed over to the purchasers as mentioned in the document. All these documents were executed knowing fully well that Arumugam alone was the owner of the property. As such, the so called sale deed in favour of the first plaintiff cannot confer any right, title or interest in favour of the first plaintiff.

10.The defendants further aver that the said Arumugam continued to be in continuous possession and enjoyment of the property as owner to the knowledge of the above said purchasers openly and continuously for more than the statutory period and as such, the said Arumugam had also perfected his title by way of adverse possession.

11.The defendants further aver that the first defendant entered into an agreement for sale with the said Arumugam on 07.01.1985 agreeing to purchase the property for a sum of Rs.33,000/- and paid an advance of Rs.13,000/- on the same day and both the parties entered into a written agreement on the

same day. Once again on 07.08.1985, he paid another sum of Rs.14,000/- towards the balance of sale consideration and on several occasions, the said Arumugam received the amounts and thereafter, he executed the sale deed in favour of the second defendant. The possession of the suit property was also handed over to the defendants as early as on 07.01.1985 and the defendants are in possession and enjoyment of the suit properties as owners without any hindrance from 07.01.1985. Hence, the defendants have perfected their title to the suit property by way of adverse possession.

12.The defendants further aver that they are the absolute owners of the suit properties and they are in possession and enjoyment of the suit property and the plaintiffs have no right, title or interest over the suit property. The revenue records were obtained by the plaintiffs in a fraudulent manner suppressing the material aspects involved in the suit and the said revenue records will not confer any right to the plaintiffs over the property. The alleged occurrence said to have taken place on 14.07.1992 is false and no such occurrence took place at any point of time and the defendants prayed for the dismissal of the suit.

13.During trial, on the side of the plaintiffs, the second plaintiff examined himself as P.W.1 and two other persons were examined as witnesses and exhibits Ex.A1 to Ex.A11 were marked. On the side of the defendants, the first defendant examined himself as D.W.1 and exhibits Ex.B1 to Ex.B30 were marked. As per the order of this Court dated 06.09.2008, Advocate Commissioner was appointed by the Trial Court and report, plan and survey report were filed before Trial Court as Ex.C1 to Ex.C3.

14.After elaborate discussions and after framing issues, the lower Court decreed the suit in favour of the plaintiffs. Aggrieved by the same, the defendants filed appeal before the lower Appellate Court and the lower Appellate Court dismissed the appeal and confirmed the decree passed by the lower Court. As against the concurrent findings of the Courts below, the present second appeal has been filed.

15.At the time of admission of the second appeal, this Court framed the following substantial questions of law:

"1.Whether the courts below are right in granting the injunction only for the survey number without mentioning the boundaries of the suit property.

2.Whether the courts below can pass a decree to the suit property when the schedule is wrongly given and even without an amendment

prayed by the plaintiff."

16.The learned counsel appearing for the appellants would submit that admittedly, the suit property was purchased by the second defendant. Accordingly, the sale deed is marked as Ex.B5. The second defendant purchased the property from the original owner Arumugam. The first plaintiff purchased the property from one Raji Ayyar and the vendor of the first plaintiff purchased the suit properties from one Elayappa Gounder and the said Elayappa Gounder purchased the suit properties from one Arumugam. Infact, the first plaintiff is the third purchaser of the property. However, the defendants purchased the property from the real owner and after purchase, the defendants are in possession and enjoyment of the suit properties.

17.The learned counsel appearing for the appellants would submit that the plaintiffs in the plaint have specifically stated the boundaries. However, the boundaries fell in S.No.47/3. On the contrary, they are claiming title by way of filing suit for permanent injunction in respect of S.No.47/4. There is discrepancy in S.No.47/3 and S.No.47/4. However, without perusing the discrepancy, the Courts below held in favour of the plaintiffs which is un-sustainable and is liable to be interfered with. Accordingly, he prayed for allowing the second appeal.

18.The learned counsel appearing for the respondents would submit that the suit property was originally owned by Arumugam. From the purchaser's purchaser of Arumugam, the first plaintiff purchased the property. Ex.A1 to Ex.A4 were marked to establish the first plaintiff's title. Apart from the above, the revenue records were also marked as Ex.A5 to Ex.A11 and all the revenue records discloses that the plaintiffs are in possession of the property. After perusal of the entire records and on perusal of the deposition of P.W.3 and P.W.2, the Courts below granted decree in favour of the plaintiffs. Hence, the well considered findings of the Courts below need not be interfered with. Accordingly, he prayed for the dismissal of the second appeal.

19.Heard the arguments advanced on either side and perused the materials placed on record.

20.Perusal of entire records discloses that the plaintiffs purchased the suit property vide registered sale deed dated 10.09.1970 executed by one Raji Ayyar son of Muthusamy Ayyar and one Raji Ayyar son of Veeranna Ayyar. The vendors of the first plaintiff purchased the suit properties under a registered sale deed dated 22.11.1968 from one Elayappa Gounder and the said Elayappa Gounder purchased the suit properties from one Arumugam under registered sale deed dated 26.03.1968. The above said

sale deeds are marked as Exhibits Ex.A1 to Ex.A4. Though the exhibit Ex.A4 did not contain any boundaries, the total extent of S.No.47/4 is 60 cents and there is sub-division in S.No.47/4. The adjacent lands in S.No.47/4 are the lands in S.No.47/3, S.No.47/1 and S.No.47/5 which belongs to the plaintiffs. Merely non-mentioning of the boundaries in the sale deed will not affect the plaintiffs' title over the suit property.

21.It is also admitted fact that the defendants purchased the property from Arumugam and that sale deed is marked as Ex.B5. However, the said sale deed is dated 09.02.1987. The said sale deed is executed after 17 years of the execution of Ex.A4/ sale deed executed in favour of the plaintiffs, which is dated 10.09.1970. The vendor of the defendants was examined as P.W.3 and he categorically admitted that he do not have any right over the suit property. When the vendor of the defendants namely, Arumugam himself has no right over the suit property, claiming title through the said Arumugam is un-sustainable one.

22.Apart from the above, P.W.2 who is the employee of P.W.1 also confirmed the possession of the plaintiffs in the suit property and the other revenue records also discloses that the plaintiffs are in possession of the property. However, the defendants did not establish their title as well as possession in the suit property. In view of the above, I do not find any error in the order passed by the Courts below. Accordingly, the substantial questions of law are answered against the appellant and the second appeal is dismissed.

23.In the result, the second appeal is dismissed. The judgment and decree made in A.S.No.24 of 1998 dated 18.01.1999 by the Sub Judge, Attur, Salem District, is confirmed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Judge,
Attur, Salem District.

2.The District Munsif Court,
Attur, Salem District.

3.The Section Officer
VR Section
High Cour,

+1 cc to Mr.V.Jeevagiridharan Advocate sr 21525
+1 cc to M/s.C.S.Associates sr 21081

S.A.No.234 of 1999

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