

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.490 of 2018
and
C.M.P.No.4395 of 2018

1. T.Selvam
2. K.Kannappan .. Appellants/Plaintiffs

Vs

1. S.V.Ravichandran
2. S.Chinni Rajakumari
3. S.Joice
4. S.Pappu .. Respondents/Defendants

Prayer :

Civil Miscellaneous Appeal is filed under Order 43 Rule 1 C.P.C., against the fair and decreetal order passed in I.A.No.582 of 2017 in O.S.No.101 of 2017 dated 21.11.2017 on the file of the District Judge, District Court No.II, Kancheepuram.

For Appellants : Mr.M.Muthusamy

For Respondents : Mr.T.Gowthaman

JUDGMENT

The appellants before this Court are the plaintiffs in O.S.No.101 of 2017 on the file of the learned District Judge, Kanchipuram. The suit is laid for declaration of plaintiffs' title and for consequential decree of permanent injunction.

2. The suit property described in the plaint is a plot measuring 34 cents out of a total extent of 2.0 acres in Old S.No.35/1 and correlated to New S.No.35/18 of Serappanancheri Village within a specific boundaries.

3. Along with the suit, the plaintiffs have taken out an application in I.A.No.582 of 2017, seeking an order of interim prohibitory injunction to protect their peaceful possession over the suit property. Vide order dated 21.11.2017, this was dismissed. This appeal is directed against the said order.

4. According to the plaintiffs, the suit property originally belonged to a certain Baby Ammal, who Vide a registered sale deed dated 25.06.1960, sold the same to Krishnaveni Ammal, who in turn had sold the property to another Padmini Ammal under a sale deed dated 30.04.1990. Thereafter, Padmini Ammal settled the property to her daughter Ranjani and her son Raja under a settlement deed dated 11.9.2007. On 23.08.2012, both Ranjani and Raja had sold the property to the appellants/plaintiffs. Plaintiffs had also effected mutation of revenue records and were issued patta for the property purchased. The plaintiffs fenced the property and were enjoying the same. While so, as per an Order dated 29.07.2015, the Revenue Divisional Officer had cancelled the patta issued to the plaintiffs without any notice to them. On the basis of this order, the defendants claimed right over the property. Hence, the suit is laid. On the same set of facts that the plaintiffs seek an order of interim injunction.

5. Denying the source of the title that the appellants have provided in the plaint, the respondents/defendants in their counter had contended that the sale dated 25.06.1960 which the appellants relied on is a fabricated one since the xerox copy of the sale deed which they have now produced does not reconcile with the certified copy of the same document, on certain particulars pertaining to survey number of the suit property. It is further submitted that in Survey No.35/1 measures 1.0 acre, out of which, one Dhanapal Mudaliar had purchased 70 cents Vide two separate sale deeds, both dated 03.03.1966, respectively executed by a certain Madhava Raja and his brother Gopal Raja. After sale to Dhanapal Mudaliar, the vendors retained the balance 30 cents with them. The respondents had purchased 70 cents from Dhanapal Mudaliar. In the meantime as regards remaining 30 cents, the title holder Babu Raja executed a General Power of Attorney in favour of one Meera who in turn developed the properties in the name of Amman Nagar. These properties were subsequently sold. As a result, there is no property of the description which the appellants have given in their plaint ever exist on lie.

6. Before the trial court, both sides produced their respective documentary evidence. The trial court however, dismissed the appellants' application for an order of interim injunction, and one of the grounds on which guided it to the conclusion it arrived was that, when the xerox copy of the sale deed dated 25.06.1960, (which the plaintiffs have produced as document No.1, and marked on the side of the defendants as Ext.R2), is compared with the certified copy of the said document, which is marked as Ext.R-1, there are some variance as regards the survey number of the property. The trial court enters a finding that inasmuch as Ext.R2 shows variance to the

certified copy of the same document, the former is a fraudulent document. Secondly, the court below has held that under Ext.R-23 under which the Revenue Divisional Officer has cancelled the patta, a finding was entered by him that the total extent available in S.No.35/1 is only 81 ares, that the patta order was passed only with regard to 56 ares and ultimately came to the conclusion, if at all any there only 3.6 ares available for grant of patta.

7. Heard Mr.M.Muthusamy, learned counsel for the appellants and Mr.T.Gowthaman, learned counsel for the respondents.

8. There are only two aspects that the learned counsel for the appellants raised pointedly:

a) That the trial court ought to have refrained from entering a finding in an absolute term that Ext.R-2 (xerox copy of the sale deed) produced as Doc.No.1 in the plaint is a fraudulent document. In fitness of things, the trial court ought to have waited to enter a finding on it till after the trial.

b) The reliance on the part of the trial court to Ext.R-23 proceedings of the Revenue Divisional Officer is wrong inasmuch as the same was prepared without a proper enquiry or hearing of the appellants and that they were not even parties to the proceedings before the Revenue Divisional Officer.

9. A block of land ad measuring 0.34 acre in Old S.No.35/1 and New S.No.35/18 of Serappanancheri Village originally belonged to a certain Baburaja. In 1966, some 70 cents of land was sold to a certain Dhanapal who in turn had sold the property to the 1st defendant in the year 2005. What remains on lie is 30 cents and the plaintiffs claimed that there existed a piece of land between 70 cents sold to Dhanapal and the remaining 30 cents hold by Baburaja and others. This property, according to the plaintiffs was purchased in the year 1990. This property is said to have been purchased by the plaintiffs/appellants. The Revenue Divisional Officer made an inspection and his field study had revealed no property such as one that the plaintiffs claim exists on lie and accordingly, the Revenue Divisional Officer cancelled the patta that stood in the name of the plaintiffs' predecessor. This was challenged by the plaintiffs' predecessor in W.P.No.30419 of 2014 and the same was allowed with a direction to the authorities to give notice to the plaintiffs' predecessor. This direction was complied with by the Revenue Officials wherein after they came to the same conclusion that they had originally arrived at, that there existed no property of the description on lie. It is after this proceeding

the plaintiffs' predecessor had sold the property to the plaintiffs in the year 2012. The plaintiffs would now claim declaration of title to this portion of the property, and seeks an interim prohibitory injunction to protect his possession.

10. The contention of the respondents in essence is that on lie there is no such property that fits in with the description of the suit property, and this is highlighted in Ext.R-23. Unless the plaintiffs are able to establish the very existence of the property of the description they provide, no Court may not able to enter finding that prima-facie title is in favour of the plaintiffs.

11. In fine, this Court finds that :

(a) the trial court ought not to have entered a finding that Ext.R-2 is a fraudulent document and should have waited for other relevant evidence till after trial.

(b) Ext.R23, prima-facie indicate that the suit property of the description provided may not be available on lie. Without passing any opinion as to the evidentiary value of Ext.R23 it is necessary for the plaintiffs to take out a Commission to locate the suit property on lie.

12. This Court therefore, remands the matter back to the trial court. If the appellants are desirous of taking out a Commission for the purpose indicated, the same shall be done before the trial court within a period of two weeks from the date of receipt of a copy of this order. Once the Commissioner's report is received after following the procedures, the trial court is free to decide whether it intends to take up the suit for trial and final disposal, or this Interlocutory Application.

13. This appeal is allowed in the manner indicated above. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssn

To:

1. The District Judge,
District Court No.II,
Kancheepuram.
2. The Section Officer,
VR Section, High Court,
Madras.(2 Copies)

+1cc to Mr.M.Muthusamy, Advocate, S.R.No.44726

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