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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :16.08.2018

PRONOUNCED ON:20.09.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.112 of 2015

Palani ... Appellant/Plaintiffs

Vs.

1.Rajavel

2.Sakthivel ... Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 25.08.2011 made in A.S.No.10 of 2011 on the file of the court of the Subordinate Judge, Chidambaram, reversing the judgment and decree dated 20.04.2010 made in O.S.No.172 of 2008 on the file of the Court of the Additional District Munsif, Chidambaram.

For Appellant : Ms.M.Meenakshi
for M/s.P.Anbarasan

For Respondents : Mr.R.Gururaj

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 25.08.2011 passed in A.S.No.10 of 2011 on the file of the Subordinate Court, Chidambaram reversing the judgment and decree dated 20.04.2010 passed in O.S.No.172 of 2008 on the file of the the Additional District Munsif Court, Chidambaram.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for permanent injunction.

4.The case of the plaintiff in brief is that the suit property originally belong to Pakkirisamy, S/o Subburayan and



the plaintiff had purchased the suit property from the abovesaid Pakkirisamy by way of a sale deed dated 28.04.1986 for a valid consideration and put up a thatched hut therein and living there by paying house tax and accordingly, the suit property is in the possession and enjoyment of the plaintiff. While so, the defendants being the adjacent owners, requested the plaintiff to sell the suit property to them and when the plaintiff refused to accede to their request, according to the plaintiff, the defendants attempted to trespass into the suit property and encroach the same and accordingly left with no other alternative, he has been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendants in brief is that the after denying the plaintiff's case, according to them, their mother Kanagammal married one Ayyakannu and out of their wedlock, the defendants 1 and 2 were born to them and it is stated that when the defendants were of young age, their father had died and at that point of time, the plaintiff had developed intimacy with the defendants' mother and enticing her, started living with her as one family as husband and wife and while so, Pakkirisamy offered to sell the suit property and accordingly, the defendants' mother entrusted 3 sovereign of gold to the plaintiff for purchasing the same in the name of the defendants' mother. However, the plaintiff contrary to the assurance given by him, alienated the jewels entrusted to him by their mother and with the money derived therefrom, purchased the suit property in his own name and one year thereafter, the defendants' mother had come to know about the same, however, the plaintiff having been giving out the property would only go to the defendants subsequently and believing the same, the defendants' mother did not take any action and after the marriage of the first defendant, he had, of his own accord and income, put up a thatched hut in the suit property on obtaining the consent of the mother and the plaintiff and living there and despite the request of the first defendant, the plaintiff had been refusing to alienate the suit property in his favour, however, it is only the first defendant, who has been paying the tax in respect of the thatched shed put up by him in the suit property and accordingly it is the case of the defendants that the plaintiff developed enmity and thereby had instituted the false suit against them and hence the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A10 were marked. On the side of the defendants, D.Ws.1 to 4 examined. Exs.B1 to B10 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the



trial court was pleased to decree the suit as prayed for. On appeal, the first appellate court, on an appreciation of the materials placed on record, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been laid.

8. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

(a) Whether the lower appellate court was right in reversing the decree and judgment of the trial court ignoring the provisions of the Benami Transactions (Prohibition) Act, 1988? and

(b) Whether the lower appellate court was right in holding that the plaintiff has not proved the possession, whereas the principle, possession follows title is applicable, since the suit property was a vacant site as on the date of filing the suit?

9. From the pleadings set out by the parties and as above noted, it is found that the suit property originally belonged to Pakkirisamy, S/o, Subbarayan and now according to the plaintiff, he has purchased the suit property from the abovesaid Pakkirisamy by way of a sale deed dated 28.04.1986 for a valid consideration and the certified copy of the said document has come to be marked as Ex.A1. The defendants have pleaded that for the purpose of acquiring the suit property from Pakkirisamy, their mother had entrusted 3 sovereign of jewels to the plaintiff and directed him to purchase the suit property in her name and however according to them, the plaintiff, after alienating the jewels and with the money derived therefrom, had purchased the suit property from Pakkirisamy in his own name, however on the assurance given by him that the property would only come to the defendants subsequently, their mother had not initiated any action against the plaintiff. It is also pleaded by the defendants that the plaintiff and their mother had developed intimacy and been living as husband and wife for several years, thus, it is found that the defendants have also admitted that the sale deed had been taken in respect of the suit property only in the name of the plaintiff. However, according to them, the consideration for the same is by way of the sale of the jewels entrusted to the plaintiff by their mother. However, as rightly found by the trial court, there is no material placed worth acceptance by the defendants that their mother was owning any jewel and the same had been entrusted by her to the plaintiff and out of the money derived thereof, the



plaintiff had purchased the suit property from Pakkirisamy under Ex.A1. With reference to the same, when there is no material forthcoming on the part of the defendants and on the other hand, the recitals of the sale deed marked as Ex.A1, go to show that the consideration had been passed only by the plaintiff and merely because, the plaintiff and the defendants' mother had been living together, as husband and wife for years together on that premise, we cannot conclude that the consideration for Ex.A1 would have originated only from defendants' mother as projected by them. However, when with reference to the same, there is absolutely no proof whatsoever on the part of the defendants, as rightly contended, the only conclusion that could be arrived, based on Ex.A1 is that the suit property had been purchased by the plaintiff out of his own funds from Pakkirisamy. As rightly further contended by the plaintiff, the defendants by way of the defence, has only projected the plea of Benami for deriving title to the suit property and when the defendants are precluded from raising such a defence under the Benami Transaction Prohibition Act, 1988, it is found that the claim of the defendants that the suit property belonged to their mother as such cannot be countenanced in any manner.

10. Now, according to the plaintiff, it is he who had put up the thatched hut in the suit property and living there by paying tax etc., In this connection, the plaintiff has also produced some house tax receipts marked as Exs.A2 to A10. The defendants have taken the plea that after the marriage of the first defendant, it is the first defendant who had put up the thatched hut in the suit property and living there and accordingly, they had also produced certain tax receipts marked as Exs.B1 to B7. However, the case of the defendants that they had been permitted to put up the thatched hut in the suit property by the plaintiff and their mother is not borne out by acceptable materials and when the same had been repudiated by the plaintiff, who is the owner of the suit property, it is seen that the defence projected that the first defendant had put up the thatched hut in the suit property and paying tax in respect of the same, cannot be accepted particularly, when the defendants have themselves admitted that they had been allowed to reside in the suit property based on the consent of the plaintiff. However, no such consent is shown to have been obtained from the plaintiff and on the other hand, the plaintiff has asserted that it is only he, who is in the possession and enjoyment of the suit property and also evidencing the same, he had also produced certain house tax receipts.

11. The first appellate court seems to have non suited the plaintiff's case, on the footing that the plaintiff during the course of cross examination has admitted about the encroachment of the suit property by the defendants subsequent to the



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institution of the suit. However, when it is seen that it is the specific version of the plaintiff that on the date of the suit, it was he, who has been in the possession and enjoyment of the suit property and when according to the defendants themselves, they had been allowed to remain in the suit property on the consent of the plaintiff, however, the same having not been established by the defendants, the abovesaid admission said to have been made by the plaintiff during the cross examination, in my considered opinion, would not in any manner, disentitle the plaintiff from claiming the relief sought for particularly, when the plaintiff has asserted that on the date of the filing suit, it was he, who has been in the possession and enjoyment of the suit property. The same is also buttressed by the house tax receipts projected by the plaintiff. Per contra, when it has been admitted by the first defendant examined as D.W.1 that his mother Kanagammal and the second defendant Sakthivel and he also owns other houses in the locality and when the house tax receipts projected by him are not shown to be relating to the thatched hut said to have been put up by him in the suit property, it is seen that the first appellate court had erred in placing reliance upon the house tax receipts projected by the defendants for coming to the conclusion that they are in the lawful possession and enjoyment of the suit property.

12. When it is found from the materials placed on record that it is only the plaintiff, who has title to the suit property and it is only the plaintiff, who was in possession and enjoyment of the suit property on the date of filing of the suit and the plea of Benami projected by the defendants is found to be untenable in the eyes of law, the house tax receipts projected by the defendants are not shown to be pertaining to the suit property and the defendants have pleaded that they are enjoying the suit property only on the consent of the plaintiff, which fact has been disputed by the plaintiff and when it is further seen that the plaintiff has disputed the house tax receipts projected by the defendants, in all, it is seen that as rightly put forth by the plaintiff's counsel, inasmuch as the defendants without any authority attempted to dispossess the plaintiff from his property ie., the suit property, it is seen that plaintiff has been necessitated to lay the suit for appropriate reliefs.

13. When the plaintiff's title to the suit property is found to be valid and the plea of Benami set out by the defendants is found to be unacceptable in the eyes of law and even the defendants have pleaded that they had been requesting the plaintiff to alienate the suit property in their favour, but had been delayed by the plaintiff one way or the other, accordingly, it is seen that the defendants have themselves

[illegible]

(iii) 1972 AIR 608, Supreme Court of India
[P.C.Purushothama Reddiar Vs. S.Perumal]



(iv) 1996 (2) CTC 700 Madras High Court [K.Ramanathan (Died) others Vs. B.K.Nalini Jayanthi]
Similarly, the defendants' counsel in support of his contentions placed reliance upon the decision reported in 2008 (5) ALL MR 451 Supreme court of India [Anathula Sudhakar Vs. P.Buchi Reddy (Dead) By Lrs & Others] The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

16.Resultantly, the judgment and decree dated 25.08.2011 passed in A.S.No.10 of 2011 on the file of the Subordinate Court, Chidambaram are set aside and the judgment and decree dated 20.04.2010 passed in O.S.No.172 of 2008 on the file of the the Additional District Munsif Court, Chidambaram are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Chidambaram.
- 2.The Additional District Munsif,
Chidambaram.

Copy to

The Section Officer,
VR Section, High Court.

+1cc to Mr.P.Anbarasan, Advocate, S.R.No. 65385

S.A.No.112 of 2015

SAI (CO)
GN(13/11/2018)