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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :30.08.2018

PRONOUNCED ON:28.09.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.25 of 2015
and
M.P.No.1 of 2015
&
C.M.P.No.14748 of 2018

Kullammal (Died)

- 1.Jagadeesan
- 2.Loganathan
- 3.Sivaperumal
- 4.Jayagandhi

[Cause title accepted vide order
of Court dated 10.07.2013 made
in M.P.1 of 2012 in SA.SR.No.75788
of 2011] ... Appellants/Appellants/Plaintiffs

Vs.

- 1.Munusamy
- 2.Irusammal
- 3.Subramani ... Respondents/Respondents/Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree passed in A.S.No.87 of 2005
on the file of the Subordinate Judge, Gingee by confirming the
judgment and decree dated 29.10.2004 passed in O.S.No.179 of
1997 on the file of the Principal District Munsif Court, Gingee.



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For Appellants : Mrs.T.Jayalakshmi
for M/s. Paul and Paul Associates

For Respondents : Mr.V.Manisekar
for M/s.N.Naganathan

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 20.09.2006 passed in A.S.No.87 of 2005 on the file of the Subordinate Court, Gingee, confirming the judgment and decree dated 29.10.2004 passed in O.S.No.179 of 1997 on the file of the Principal District Munsif Court, Gingee.

2.The Second Appeal has been admitted on the following substantial question of law:

" Whether the courts below were right in dismissing the suit when the plaintiff has filed Ex.A8 to show that her vendor had title for the suit property whereas the defendants have not filed any public document to show that their vendors had title for the suit property."

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The plaintiff claims title to the suit property based on the sale deed executed in her favour dated 01.07.1992 by Murugesan and others and according to the plaintiff, pursuant to the abovesaid sale deed, it is only she, who has been in the possession and enjoyment of the suit property by obtaining patta, paying Kists etc., and inasmuch as without any legal authority, the defendants interfered with her possession and enjoyment, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5.The suit property is stated to be lying in suit survey No.150/5 measuring an extent of 0.07 cents out of 0.16 cents within specific boundaries and relating to new survey No.150/5F



including a well.

6. The defendants in their written statement had totally disputed the claim of title of the plaintiff to the suit property as projected in the plaint and in addition to that the defendants had also thrown a serious challenge as regards the claim of title of the plaintiff's vendors in respect of the suit property as sought to be made out. In brief, according to the defendants, in survey No.150/5 of the suit village, a total extent of 3 acres 26 cents with well therein originally belonged to one Krishnan and thereafter, his 5 sons and daughter had been enjoying the abovesaid property and in the oral partition effected amongst them, it is stated, an extent of one acre and 19 cents came to be allotted to Annamalai, Arumugam, Kasi, Arjunan, the sons of Krishnan and thereafter, they had been enjoying the abovesaid extent and sold the same in favour of the plaintiff's husband by way of a sale deed dated 28.05.1985 and further according to the defendants, the plaintiff's husband, thereafter alienated an extent of 0.04 cents in favour of the first defendant by way of a sale deed dated 15.07.1985 and since then, it is only the first defendant, who has been in the possession and enjoyment of the abovesaid extent of 0.04 cents by digging a well etc., and furthermore, it is also stated that Arjunan had sold his 1/5 share in the well on the southern side and other properties to the second defendant by way of a sale deed dated 25.07.1980 and since then, it is only the second defendant, who has been in the possession and enjoyment of the abovesaid properties and in such view of the matter when the plaintiff's vendors had no right to any extent in the survey number 150/5 after several alienations effected in respect of the abovesaid property by the sons of Krishnan, it is stated that the plaintiff has no cause of action to institute the suit and hence according to the defendants, the plaintiff in the guise of obtaining false revenue records without their knowledge, had come forward with the case, without any cause of action and hence the suit is liable to be dismissed.

7. On a consideration of the materials placed on record, both oral and documentary, it is found that the total extent of 3 acres and 28 cents in survey No.150/5 originally belonged to one Krishnan and it is also not in dispute that Krishnan had 5 sons and one daughter. Furthermore, it is also seen that after Krishnan, the 5 sons and daughter enjoyed the abovesaid extent of 3 acres and 28 cents jointly and effected oral partition in respect of the same amongst themselves. Accordingly, it is found and also not in dispute that the plaintiff's husband Subramani had in toto acquired an extent of one acre and 51 cents in the suit survey number by way of the sale deeds dated 29.05.1985 and 11.02.1988 marked as Exs.B7 and



B10 and thereafter, it is also not in dispute, as also admitted by the plaintiff's husband examined as P.W.2, he had alienated an extent of 0.04 cents in favour of the first defendant by way of a sale deed dated 15.07.1985 marked as Ex.B8. Thus, it is noted that after Ex.B8 sale deed, the plaintiff's husband owned only one acre and 47 cents in the suit survey number. It is also not in dispute that the remaining extent of one acre and 79 cents had been acquired by the defendants 1 and 2 by way of the various sale deeds marked in the case as Exs.B1 to B6 and B9.

8. Accordingly, when it is found that the parties had effected various alienations in respect of the total extent of 3 acres and 28 cents comprised in the suit survey number by way of the abovesaid sale deeds and thereafter, there is nothing placed on record to evidence that the plaintiff's vendors had still retained the suit property measuring an extent of 7 cents in the suit survey number, it is found that the claim of the plaintiff that she had acquired title to an extent of 7 cents from her vendors by way of a sale deed dated 01.07.1992 as such cannot be accepted in any manner. On the whole, it is found that the plaintiff appears to have institute the suit based on the patta said to have been issued in her favour marked as Exs.A2 and A3. However, when there is no material placed on record to evidence that before the issuance of the patta proceeding in favour of the plaintiff under Exs.A2 and A3, due notice has been sent to the other land owners of the suit survey number, in such view of the matter, on the basis of Exs.A2 and A3, we cannot safely conclude that the plaintiff has a valid title to the suit property as claimed by her. When the plaintiff has failed to establish that her vendors had retained the suit property after the various alienations effected in respect of the property comprised in suit survey number as abovenoted, it is seen that, accordingly, and as rightly put forth by the defendants, on the basis of the patta projected by the plaintiff and marked as Exs.A2 and A3, we cannot safely conclude that the plaintiff has a valid title to the suit property. The patta cannot be considered as a document of title. Furthermore, on a reading of Exs.A2 and A3, it is seen that the same had come to be effected in favour of the plaintiff based on Ex.A1 sale deed dated 01.07.1992. However, when the plaintiff has failed to establish that her vendors had a valid title to the suit property as described in the plaint and when the plaintiff's vendor Murugesan examined as P.W.3 is unable to substantiate his claim of title to the suit property by placing acceptable and reliable records, particularly, unable to establish that he has been in the possession and enjoyment of the suit property after various alienations effected in respect of the properties comprised in the suit survey number as above discussed, accordingly, it is found that based on Ex.A1 sale



deed. Ipso facto, we cannot conclude that P.W.3 and others had a valid title to the suit property as projected by the plaintiff.

9. On a perusal of the various sale transactions effected in respect of the property comprised in the suit survey number, it is found that Exs.B9 and B.10 are found to be the last transactions effected by the original owners of the property comprised in the suit survey No.150/5 and when thereunder the executant of the abovesaid sale transactions had not been shown to have retained any extent in common in the suit survey number, in such view of the matter, it is found that the claim of PW.3 that his father still retained ownership of the suit property as such cannot be countenanced in any manner.

10. In this connection, it is found that the plaintiff has projected additional document in support of her case before the first appellate court marked as Ex.A14 and by way of the same, contended that by way of Ex.B9 sale transaction dated 09.02.1988, what is conveyed to the first defendant would only be 50 cents and not 62 cents and therefore put forth the contention that the claim of the first defendant that he had acquired an extent of 62 cents by way of Ex.B9 sale deed is untenable. However, as rightly put forth by the defendants, when the sub divisions sought to be made in the suit survey number with the extent comprised therein by placing certain revenue records by the plaintiff are not shown to have been validly effected after giving due notice to all concerned, in such view of the matter, merely from the Ex.A14 or for the matter on the basis of the patta documents projected by the plaintiff marked as Exs.A2 and A3, we cannot conclude that the plaintiff's vendor had a valid title to the suit property.

11.As rightly determined by the Courts below, when by way of the documents marked as Exs.B1 to B10 and B13 in toto, the legal heirs of Krishnan had alienated the total extent of 3 acres and 28 cents in the suit survey number to the defendants 1 and 2 and the plaintiff's husband and accordingly, when after Ex.B9 sale transaction, the legal representatives of Krishnan had not retained any extent in the suit survey number as such, in such view of the matter, it is found that the claim of the plaintiff that his vendors had title to the suit property despite the various alienations effected in respect of the property comprised in suit survey number as such cannot be accepted. Particularly, when there is no material worth acceptance placed by the plaintiff pointing to the same other than the patta documents, when the patta document projected by the plaintiff's is not shown to have been effected or made after giving due notice to all concerned, particularly, the defendants who owned the other extent in the suit survey number, in such view of the



matter, no interference is called for in the judgement and decree of the Courts below in negating the claim of the plaintiff to the suit property based on Ex.A1 sale deed.

12. Though the plaintiff's counsel would contend that the defendants had failed to place any revenue document in support of their claim of title to the various properties acquired by them by way of the sale deeds projected by them like the plaintiff, however, when by way of the sale deeds projected by the defendants, it is made clear that the entire extent of the suit survey number had come to be alienated by the legal representatives of Krishnan and thereafter they had not retained any property in the suit survey number and furthermore, when the plaintiff has failed to establish that on the date of Ex.A1 sale deed, her vendors had a valid title to the suit property and enjoying the same, in such view of the matter, it is seen that the plaintiff unable to establish her claim of title to the suit property based on Ex.A1, accordingly, is found to have projected a false case based on the patta documents marked as Exs.A2 and A3. However, when the patta documents Exs.A2 and A3 cannot be construed as valid documents of title, particularly, when their validity has not been established by the plaintiff in the manner known to law and when it is seen that the same had come to be issued in favour of the plaintiff following Ex.A1 sale transaction without due notice to the defendants and when the plaintiff has failed to establish the validity of Ex.A1 sale transaction, in such view of the matter, the patta documents Exs.A2 and A3 and the other documents projected by the plaintiff would not in any manner be useful to uphold the plaintiff's claim of title to the suit property.

13. C.M.P.No.14748 of 2018

The petition has been laid by the plaintiff for producing the "A" Register extract of the suit village as an additional document in support of her case. According to the plaintiff, the abovesaid document would go to show that the extent of land owned by the legal heirs of Krishnan in the suit survey number and therefore the said document would be essential to adjudicate the issues involved in the matter and therefore, should be received as additional evidence in support of the plaintiff's case in the Second Appeal. The defendants' counsel contended that the plaintiff has not placed any acceptable and valid reason for receiving the projected document as additional evidence in the Second Appeal and when the plaintiff has not placed any reason as to why she had not endeavored to produce the abovesaid document in the Courts below during the course of trial, according to him, the present application has been filed by the plaintiff only to fill up the lacunae without any basis and accordingly prayed for the



dismissal of the petition.

14. As rightly put forth by the defendant's counsel, the plaintiff has not placed any cause as to why she had not endeavored to produce the projected additional evidence during the course of trial. It is not the case of the plaintiff that she is not aware of the abovesaid document during the course of the trial. In such view of the matter, the plaintiff should have endeavored to produce the same before the trial court. However, no reason has been placed by the plaintiff as to her not placing the said document during the course of trial. In such view of the matter, when the application laid by the plaintiff for the reception of additional evidence, does not satisfy the requirements of Order 41 Rule 27 CPC, it is found that the petition is not entitled for acceptance. When the defendant's have placed all the sale transactions effected by the legal representatives of Krishnan in respect of the property comprised in suit survey number and thereafter, the abovesaid legal representatives are not shown to be holding any further extent in the suit survey number, in such view of the matter, it is seen that the projected additional evidence, being a revenue document, which had come to be issued after the institution of the suit, it is found that, on the basis of the said document, the issues involved in the matter could not be adjudicated in the manner known to law. Furthermore, the projected additional evidence is not shown to be necessary for the adjudication of the issues involved in the matter when in particular, the original sale deeds pertaining to the various transactions effected in respect of the property comprised in survey number had already been exhibited and when they are found to be adequate for determining the issues involved in the matter, it is found that no purpose could be achieved in entertaining the projected additional evidence. For the reasons aforesaid, I do not find sufficient cause for accepting the additional evidence. Accordingly, the Civil Miscellaneous petition is dismissed.

15. In the light of the abovesaid reasons, the substantial question of law formulated in the Second Appeal is accordingly answered against the plaintiff and in favour of the defendants. In conclusion, the Second Appeal fails and is accordingly dismissed with costs. C.M.P.No.14748 of 2018 is dismissed. Consequently connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar



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To

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1. The Subordinate Judge, Gingee.

2. The Principal District Munsif Court, Gingee.

Copy To

The Section Officer,
VR Section, High Court.

+1cc to M/s.Paul & Paul, Advocate SR.No.68291

+1cc to Mr.N.Naganathan, Advocate SR.No.67647

S.A.No.25 of 2015
and

M.P.No.1 of 2015

&

C.M.P.No.14748 of 2018

PVS (CO)

GMV (20/12/2018)