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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :19.06.2018

Pronounced on : .08.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.1975 of 2000

1.Kaliyaperumal (deceased)  
2.Sundari  
3.Arulselvi  
4.Arulselvan  
5.Arulkumar  
6.Arulmozhi

(Appellants 2 to 6 brought on record as LR's of the  
deceased sole appellant vide order of the  
Court dated 25.04.2016 in CMP.Nos.362 to 364/2015)  
... Appellants in SA.1975/2000

Vs.

1.Vadivel Padayachi  
2.Velayutha Padayachi  
3.Govinda Padayachi

(3<sup>rd</sup> Respondent is given up as he was set exparte in the  
Appeal)

... Respondents/Defendants

Prayer:- Second Appeal filed under Section 100 of C.P.C.,  
to set aside the Judgment and decree dated 27.10.1999  
passed in A.S.No.115 of 1996 on the file of the Sub-Court,  
Panruti reversing the judgment and decree dated 31.01.1996  
passed in O.S.No.319 of 1992 before the District Munsif's  
Court Panruti.

For Appellants : Ms.A. Nilaphar for  
M/s. R.Meenal

For Respondents: Mr.T.P.Manoharan for R1 & R2  
1&2 Senior Counsel

for Ms. D.Kamatchi  
R3 Given up

J U D G M E N T

This second appeal has been filed by the legal  
representatives of the original plaintiff viz., Kasiammal  
against the judgment and decree passed by the Sub-Judge,  
Panruti in A.S.No.115 of 1996 dated 27.10.1999 reversing



the judgment and decree passed by the District Munsif, Panruti in O.S.No.319 of 1992 dated 31.01.1996.

2. The original plaintiff viz., Kasiammal had filed a suit in O.S.No.319 of 1992 on the file of the District Munsif, Panruti, to declare her title over the suit property and for permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit property. The learned District Munsif by the judgment dated 31.01.1996 has decreed the suit as prayed for without costs. Aggrieved by the same, the defendants 1 and 2 have filed an appeal in A.S.No.115 of 1996 on the file of the Sub-Judge, Panruti. During pendency of the said appeal, the original plaintiff Kasiammal died and her legal representative has been impleaded as third respondent. The learned Sub-Judge, Panruti by the judgment dated 27.10.1999 has allowed the said appeal with costs and set aside the judgment and decree passed by the trial court and dismissed the suit with costs. Feeling aggrieved, the legal representative of the original plaintiff, Kasiammal has filed the present second appeal.

3. During pendency of this second appeal, the sole appellant died and his legal representatives have been impleaded as appellants 2 to 6. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are, in brief, as follows:

The plaintiff is the absolute owner of the suit property by way of her purchase dated 29.06.1976 from one Visalakshi Ammal. From the date of sale, the plaintiff alone has been in possession and enjoyment of the suit property as absolute owner. The defendants are utter strangers to the suit property. Taking advantage of the old age of the plaintiff, the defendants tried to trespass into the suit property. Hence, the plaintiff was constrained to file the above suit for the aforesaid reliefs.

5. The averments made in the written statement filed by the second defendant and adopted by the first defendant are, in brief, as follows:

a) It is false to state that the plaintiff is the absolute owner of the suit property by way of purchase from one Visalakshi Ammal on 29.06.1976. The plaintiff's daughter got married with the son of Visalakshi Ammal. On the strength of their close relationship alone, the sale deed dated 29.06.1996 was created without any consideration and the plaintiff has never been in



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possession of the suit property. On the date of sale deed dated 29.06.1976, the said Visalakshi Ammal did not have title at all over the suit property. The suit property originally belonged to one Muthukumarsamy Pather S/o. Arumuga Pather by virtue of court auction purchased in S.C.No.750 of 1926 on the file of the District Munsif, Cuddalore, held on 08.09.1938. The said Muthukumarasamy Pather, who was residing at Chidambaram, was not able to enjoy the property purchased in Court auction.

b) Taking advantage of the same, Visalakshi Ammal trespassed into the suit property in denial of his title. Hence, the said Muthukumarasamy Pather filed a suit for declaration and for possession against Visalakshi Ammal in O.S.No.1540 of 1974 and the said suit was decreed on 30.01.1975. In pursuance of the said decree, the said Muthukumarasamy Pather had taken delivery of the suit property through court Amin on 11.11.1976 in E.P.No.260 of 1976 in O.S.No.1540 of 1976. Even though the said Muthukumarasamy Pather had taken possession through court on 11.11.1976, he was unable to enjoy the suit property and sometimes later he died. Taking advantage of the same, the said Visalakshi Ammal and her sons have trespassed and continued to be in possession and enjoyment of the suit property.

c) Without knowing about the actual title, bonafidely believing that the suit property belongs to Visalakshi Ammal, the first defendant had purchased 66 cents out of 2.11 acres in S.R.No.170/10 under a registered sale deed dated 15.11.1984 from the said Visalakshi Ammal and others and taken possession and patta also has been changed in the name of the first defendant. Since the son of Muthukumarasamy Pather by name Natarajan raised objection for the sale and claimed right over the suit property, the first defendant had obtained release deed from the said Natarajan on 17.11.1986. Thus the first defendant has become absolute owner of the aforesaid portion of the suit property and he is in possession and enjoyment of the same. Likewise, the second defendant had purchased 1.12 acres in the suit property from the sons of Visalakshi Ammal after her death through a registered sale deed dated 09.11.1987 and subsequently, patta also has been changed in the name of the second defendant. The son of Muthukumarasamy Pather viz., Natarajan raised an objection with regard to the said sale also and hence, the second defendant got release deed from the said Natarajan on 21.01.1988. The second defendant has become an absolute owner of 1.12 acres in the suit property and he is in possession and enjoyment of the same from the date of sale. The defendants' vendors continued to be in possession for more than the statutory period and



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after the purchase, the defendants 1 and 2, acquired title by adverse possession. The plaintiff has never been in possession and enjoyment of the suit property and therefore, the defendants 1 and 2 prayed to dismiss the above suit.

6. Based on the aforesaid pleadings, the learned District Munsif has framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff's son viz., Kaliaperumal was examined as PW1. Exs.A1 to A3 were marked as exhibits on the side of the plaintiff. On the side of the defendants 1 and 2, the defendants 1 and 2 examined themselves as D.Ws 1 and 2. They also examined one Natarajan as DW3. They have marked Exs.B1 to B17 as exhibits.

7. The learned District Munsif after considering the materials placed before him found that the plaintiff has purchased the property under a registered sale deed dated 29.06.1976 (Ex.A1) from one Visalakshi Ammal and only thereafter, the defendants have purchased the property from the said Visalakshi Ammal and her legal representatives. Since the said Visalakshi Ammal had already sold the suit property in favour of the plaintiff vide Ex.A1, either the said Visalakshi Ammal or her legal representatives had no right to sell the property to the defendants 1 and 2. Accordingly, he decreed the suit as prayed for without costs. Aggrieved by the same, the defendants 1 and 2 have filed an appeal in A.S.No.115 of 1996 on the file of the Sub-Judge, Panruti. The learned Sub-Judge has allowed the said appeal with costs and set aside the judgment and decree passed by the trial court and dismissed the suit with costs. Feeling aggrieved, the legal representative of the original plaintiff Kasiammal viz, Kaliaperumal has filed the present second appeal. During pendency of the second appeal, the said Kaliaperumal also died and hence, his legal representatives have been impleaded as appellants 2 to 6.

8. At the time of admitting the second appeal, this court has formulated the following substantial questions of law:

"1.Whether in law the lower appellate court was right in overlooking that Ex.A1 sale deed would prevail over the later Ex.B1 and that on the date of Ex.B1 Visalakshi had no title to convey?

2. Whether in law the lower appellate court was not wrong in believing the case of release by Natarajan; especially since the



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release deeds were not produced and also as admittedly the alleged deeds were unregistered?

3. Whether in law the lower appellate court was not wrong in omitting to see that under Section 54 of the Transfer of Property Act title passed on the date of Ex.A1?"

9. Heard Ms.A.Nilaphar for Ms.R.Meenal, learned counsel for the appellants and Mr.T.P.Manoharan, learned Senior Counsel for Ms.D. Kamatchi, for the respondents 1 and 2.

10. Question Nos.1 to 3:

The learned counsel for the appellant has submitted that the first appellate court has erred in reversing the well considered judgment of the trial court. She further submitted that admittedly both the plaintiff and the defendants 1 and 2 have purchased the suit property from one Visalakshi Ammal. She further submitted that since the earlier sale was in favour of the plaintiff, the same vendor viz., Visalakshi Ammal subsequently cannot convey any title to the defendants 1 and 2. She further submitted that since the defendants 1 and 2 have purchased the property from the said Visalakshi Ammal, it is not open to them to deny the title of the said Visalakshi Ammal. She further submitted that the first appellate court failed to consider that the defendants 1 and 2 have not produced any release deed to show that the son of Muthukumarasamy Pather viz., Natarajan (DW3) has released his right in favour of the defendants 1 and 2. She further submitted that the first appellate court failed to consider that the plaintiff has proved her case by producing the sale deed and kist receipts and therefore, she prayed to allow the second appeal and set aside the judgment and decree passed by the first appellate court and restore the judgment and decree passed by the trial court.

11. The learned senior counsel for the respondents 1 and 2 has submitted that one Muthukumarasamy Pather was the original owner of the suit property by virtue of the court auction purchase in S.C.No.750 of 1926 on the file of the District Munsif, Cuddalore held on 08.09.1938. He further submitted that the said Muthukumarasamy Pather, after purchase, could not enjoy the property because he was residing at Chidamabaram and taking advantage of the same, the said Visalakshi Ammal trespassed into the suit property. He further submitted that the said Muthukumarasamy Pather had filed a suit for declaration and for possession against the said Visalakshi Ammal in O.S.No.1540 of 1974 on the file of the District Munsif,



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Cuddalore and got decree in his favour and in pursuance of the said decree, he filed an execution petition and took possession of the suit property on 11.01.1976 and hence, the said Visalakshi Ammal had no right to sell the suit property in favour of the plaintiff. He further submitted that without knowing about the actual title, bonafidely believing that the suit property belongs to Visalakshi Ammal, the first defendant had purchased 66 cents through a registered sale deed dated 15.11.1984 from the said Visalakshi Ammal and the second defendant had purchased 1.12 acres from the said Visalakshi Ammal under a registered sale deed dated 09.11.1987. He further submitted that after the said purchase, the son of the said Muthukumarasamy Pather viz., Natarajan had raised an objection and hence the defendants 1 and 2 had obtained release deeds from the said Natarajan and thus the defendants 1 and 2 have become absolute owner of the suit property and they have been in possession and enjoyment of the suit property from the date of their purchase. He further submitted that the trial court failed to consider the aforesaid facts and hence, the first appellate court has rightly set aside the judgment and decree passed by the trial court and dismissed the suit.

12. He further submitted that since the plaintiff has filed a suit for declaration, the burden is upon her to prove her title, but in this case, the plaintiff has miserably failed to prove her title and therefore, he prayed to dismiss the second appeal. In support of his contention, he relied upon the decision in Union of India and Others Vs. Vasavi Cooperative Housing Society Limited and Others (2014) 2 SCC 269

13. It is seen from Ex.A1 (registered sale deed) that on 29.06.1976, the plaintiff had purchased the suit property from one Visalakshi Ammal. In the said sale deed itself, it is stated that the possession of the suit property has been handed over to the plaintiff on the date of sale itself. Only thereafter, the first defendant had purchased 66 cents from the same Visalakshi Ammal under a registered sale deed dated 15.11.1984 (Ex.B1) and the second defendant had purchased 1.12 acres from the legal heirs of the said Visalakshi Ammal through a registered sale deed dated 09.11.1987 (Ex.B16). After execution of Ex.A1 sale deed, the plaintiff has become the absolute owner of the suit property and thereafter, the said Visalakshi Ammal had no right to deal with the suit property.

14. At this juncture, it would be relevant to refer to the Explanations-I and II attached to Section 3 of the Transfer of Property Act, 1882 which reads thus:



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"Explanation I: Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that-

- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,
- (2) the instrument of memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and
- (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II : Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof."

15. In view of the aforesaid Explanations attached to Section 3 of the Transfer of Property Act, it has to be presumed that the defendants 1 and 2 had constructive notice with regard to Ex.A1 sale deed. So they cannot claim that they are bonafide purchasers. Further, as already pointed out that in Ex.A1 sale deed itself, it is clearly stated that the possession of the suit property has been handed over to the plaintiff and that being so, the contention of the defendants that they have taken possession from the said Visalakshi Ammal cannot be accepted.



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16. Though the defendants have stated in their written statement that after getting Exs.B2 and B16 sale deeds from the said Visalakshi Ammal and his legal representatives respectively, the son of the said Muthukumarasamy Pather viz., Natarajan had raised an objection and they had obtained release deeds from him, they have not produced the said release deeds before the court. Therefore, the said contention of the defendants also cannot be accepted.

17. It is to be pointed out that the defendants 1 and 2 in their written statement have stated that even though Muthukumarasamy Pather taken possession through court on 11.11.1976, he was unable to enjoy the suit property and sometime later, he died and taking advantage of the same, the said Visalakshi Ammal and her sons have trespassed and continued to be in possession and enjoyment of the suit property. The said averments would show that even though the said Muthukumarasamy Pather had filed a suit in O.S.No.1540 of 1974 on the file of the District Munsif, Cuddalore against the said Visalakshi Ammal for a declaration and delivery of possession and also obtained a decree, actually he did not take physical possession of the suit property. The said Visalakshi Ammal continued to be in possession and enjoyment of the suit property. Further in paragraph No.6 of the written statement, the defendants have stated that the defendants' vendor continued to be in possession for more than the statutory period. Further the defendants have purchased the property only from the said Visalakshi Ammal and his legal heirs. So, it is clear that the defendants 1 and 2 have admitted the title of the said Visalakshi Ammal. As such they cannot deny the title of the said Visalakshi Ammal. They are estopped from taking the plea that the said Visalakshi Ammal had no right to execute Ex.A1 sale deed in favour of the plaintiff.

18. In Union of India and Others Vs. Vasavi Cooperative Housing Society Limited and Others (supra), the Honble Supreme Court has held that in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. In this case, the plaintiff has proved her title by producing Ex.A1 sale deed. Only after execution of Ex.A1 sale deed, the defendants 1 and 2 have obtained sale deed from the same vendor viz., Visalakshi Ammal and her legal representatives and therefore, the defendants cannot claim a title over the suit property. Further as already pointed out that in Ex.A1 sale deed itself, it is clearly stated that the possession



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of the suit property has been handed over to the plaintiff on the date of the execution of the said sale deed itself and that being so, the defendants could not have taken possession of the suit property by virtue of Exs.B1 and B16. In order to prove the possession that even on the date of filing of the suit, the plaintiff has produced two kist receipts and marked as Exs.A1 and A2. The trial court after taking into consideration of all the aforesaid facts, has rightly decreed the suit. But the first appellate court has erred in reversing the well considered judgment of the trial court. Therefore, this court is of the view that the second appeal has to be allowed. Accordingly, the substantial questions of law are answered in favour of the appellants.

19. In the result, the second appeal is allowed. The judgment and decree passed by the first appellate court in A.S.No.115 of 1996 on the file of the Sub-Court, Panruti are set aside. The judgment and decree passed by the trial court are restored. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Subordinate Judge,  
Panruti.

2. The District Munsif,  
Panruti.

Copy to:

The Section Officer,  
V.R.Section,  
High Court, Madras.

+1cc to Mr.R.Sunramanian, Advocate SR.No. 59160

+1cc to Ms. D.Kamatchi , Advocate SR.No. 59653

S.A.No.1975 of 2000

ASK(22/11/2018)