

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :19.09.2018

PRONOUNCED ON:29.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.383 of 2015

and

M.P.No.1 of 2015

Chitra ... Appellant/Plaintiff

Vs.

1.Sekar

2.Janagaraaj

... Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the I Additional District Judge of Tindivanam in A.S.No.11 of 2013 dated 28.10.2014 reversing the judgment and decree of the Additional Subordinate Judge, Tindivanam in O.S.No.150 of 2010 dated 31.01.2013.

For Appellant : Mr.A.K.Kumaraswamy, SC
for M/s.S.Kaithamalai Kumaran

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

J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 28.10.2014 passed in A.S.No.11 of 2013 on the file of the I Additional District Court, Dinidivanam reversing the judgment and decree dated 31.01.2013 passed in O.S.No.150 of 2010 on the file of the Additional Sub Court, Dinidivanam.

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

"When the defendants/respondents do not claim any right or title to suit S.No.78/10 of an extent of 14 cents and whereas the defendants have purchased 7 cents in S.No.88/1 is the lower

appellate court justified in dismissing the suit in entirety?"

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/appellant has laid the suit against the defendants for the reliefs of declaration and permanent injunction and the plaintiff claims title to the suit property based on the sale deed dated 30.12.2008 said to have been executed by her father-in-law in her favour. It is the further case of the plaintiff that her father-in-law Krishna Gounder had acquired the suit property by way of a sale deed dated 23.02.1981. Accordingly, it is the case of the plaintiff that she has been in the possession and enjoyment of the suit property and when she had endeavored to put up the house construction in the suit property by securing loan from the Government, it is her case that the defendants without any authority, claiming half share in the suit property, resisted the same and hence according to the plaintiff, she has been necessitated to lay the suit against the defendants for appropriate reliefs.

5.Per contra, it is the case of the defendants that the plaintiff is not entitled to the property comprised in new survey No.88/1 and according to the defendants, the first defendant had purchased an extent of 0.07 cents in new survey No.88/1 of the suit village from Kumaran @ Sellapan, S/o Perumal and Amsa, W/o Perumal for a valid consideration and enjoying the said property and accordingly his vendors had also entrusted the parent title deeds in respect of the property acquired by him as abovestated and it is also stated that the original owner Krishna Gounder had settled the property acquired by him by way of a sale deed dated 23.02.1981 in favour of his grandsons by way of two settlement deeds dated 14.02.1992 and suppressing the same, the plaintiff's husband in collusion with the plaintiff had created the sale deed dated 30.12.2008 in favour of the plaintiff and therefore it is contended by the defendants that the plaintiff is not entitled to seek and obtain the reliefs as prayed for in the suit.

6. Materials placed on record go to show that the suit property originally belong to Krishna Gounder by virtue of the sale deed dated 23.02.1981 marked as Ex.A2 and as could be seen from the description of the property comprised in Ex.A2, the

same is lying in Survey No.144/15A of an extent of 14 cents. In the plaint schedule the abovesaid 14 cents of land is stated to be located in new survey No.78/10 within the specific boundaries and the old survey number is given as 144/15A. It is not in dispute that the plaintiff is the daughter-in-law of Krishna Gounder.

7. As abovenoted, the plaintiff claims title to the plaint schedule property on the strength of the sale deed dated 30.02.2008 marked as Ex.A1. Materials placed on record go to show that the defence had been raised in the matter that Krishna Gounder had settled the abovesaid extent of 14 cents acquired by him by way Ex.A2 sale deed in favour of his grand children born through his two sons through the settlement deeds dated 14.02.1992 and the copies of the abovesaid documents have been marked as Exs.B2 to B7. It is found that as per Ex.B2 settlement deed, Krishna Gounder had settled the extent of 7 cents in favour of his grandson Kumaran, S/o Perumal and by way of Ex.B7 settlement deed, he had settled 7 cents in favour of his grand children born through his another son Anbazhagan. Thus, Ex.B7 settlement deed is found to be executed in favour of the children of the plaintiff and her husband Anbazhagan, thus, it is noted when Krishna Gounder had settled the property acquired by him by way of Ex.A2 sale deed in favour of his grandchildren vide Exs.B2 & B7 respectively, to say that the plaintiff had acquired the total extent of 14 cents of land from Krishna Gounder by way of Ex.A1 sale transaction dated 30.02.2008, as such, cannot be accepted in any manner.

8. In this matter, the plaintiff examined as P.W.1, even during the chief examination has deposed that the sons of Krishna Gounder namely Anbazhagan and Perumal had created the settlement deeds in favour of their children fraudulently and Krishna Gounder was not cordial with his sons and he had made arrangement to alienate his property in favour of third parties and accordingly, she had endeavored to purchase the property with a view to avoid the property going to the third parties and further she would also state that Krishna Gounder had cancelled the settlement deeds dated 14.02.1992 by way of a cancellation deed dated 29.12.2008 and such being the evidence of the plaintiff, accordingly, it is found that when it is her case that Krishna Gounder had executed the settlement deeds in favour of his grand children on 14.02.1992 thereafter, it does not stand to reason as to how Krishna Gounder would be retaining the ownership of the suit property as sought to be made out by the plaintiff. Now according to the plaintiff, as adduced during the course of evidence, Krishna Gounder had canceled the settlement deed by way of a cancellation deed dated 29.12.2008,

however the abovesaid cancellation deed has not seen the light of the day. The said document has not been produced. Be that as it may, when seen from the materials placed on record, Krishna Gounder had chosen to settle the property in favour of his grand children, thereafter, he would not be entitled to cancel the same and furthermore, when there is no material placed by the plaintiff that Krishna Gounder had retained the ownership of the suit property after 14.02.1992, the case of the plaintiff that she had purchased the suit property from Krishna Gounder on 30.12.2008 by way of a sale deed marked as Ex.A1, as such, cannot be believed and accepted.

9. In this matter, the defendants had not accepted the description of the plaint schedule property, particularly, the new survey number given to the plaint schedule property. As could be seen from the description of the property comprised in Exs.A2, B2 & B7, the properties described therein is shown to be lying in survey No.144/15A and considering the boundaries recitals found in Exs.B2 & B7, it is noted that the settlees' properties had been shown as the southern and northern boundaries in the respective settlement deeds and accordingly, it is found that, as rightly determined by the first appellate court, the extents and survey numbers in the abovesaid documents tally in all aspects.

10. Now, according to the plaintiff, old survey No.144/15A corresponds to new survey NO.78/10. However, with reference to the abovesaid claim of the plaintiff, there is no acceptable material forthcoming. As could be seen from the evidence of V.A.O examined as D.W.4, it is found that old survey No.144/15A had been subdivided into three portions namely 144/15A1, 144/15A2 and 144/15A3. Furthermore, it could be seen that 144/15A1 relates to new survey number 88/1. 144/15A3 relates to Survey No.78/10 and 144/15A2 relates to the road area. Therefore, when the old survey No.144/15A is found to be co-related or identified with the lands in the new survey Nos.78/10 and 88/1, the claim of the plaintiff that the old survey No.144/15A wholly relates to survey No.78/10 in respect of the suit property as such cannot be accepted in any manner. With reference to the abovesaid claim of the plaintiff, there is no acceptable material placed. As rightly determined by the first appellate court, considering the lie of the property in new survey No.78/10, when as per the plaint description, the same is shown to be lying to the east of road, however, as per the evidence of V.A.O, the abovesaid survey No.78/10 lies to the west of road, it is thus seen that there is no proper description of the suit survey number and the boundaries in the plaint schedule as well as in the title deed of the plaintiff

marked as Ex.A1.

11.As rightly put forth by the defendants' counsel, according to the first defendant, he had purchased the extent of 7 cents by way of Ex.B1 sale deed dated 15.12.2008 and when according to the defendants, the parent title deeds of Ex.B1 are Ex.B2 and Ex.A2 and in the abovesaid documents, the survey number is given as 144/15A and accordingly, when in Ex.B1, the corresponding new survey number is given as 88/1 and considering the lie of the property in Ex.B1 as well as in Ex.B2 shown to be lying to the east of road, accordingly, when Ex.A2 sale deed in the name of Krishna Gounder, describes the property as lying to the east of road and the same is also reflected in Ex.B1 sale deed, however, when as per the evidence of D.W.4, the new survey No.78/10 does not lie to the east of the road, but it lies to the west of the road, coupled with revenue documents projected in the matter, it is found that as rightly determined by the first appellate court, the suit survey number and the boundaries described in the plaint schedule are found to be totally misleading and incorrect and accordingly it is seen that the defendants during the course of their evidence as well as in the written statement have pleaded that they do not claim any right in survey No.78/10. On that basis, as rightly determined by the first appellate court, the plaintiff cannot be granted the reliefs as prayed for straightway. At the foremost the plaintiff has to correctly describe the suit property particularly in which survey number it lies as well as identify the suit property by giving the correct boundaries. But, when as above discussed, the plaintiff has failed to establish that the entire old survey No.144/15A corresponds to new survey No.78/10 and furthermore when the plaintiff has miserably failed to establish that her vendor Krishna Gounder had a valid title to convey the same to her by way of Ex.A1 sale deed and on the other hand, when the materials placed on record go to show that on the date of Ex.A1 sale deed, Krishna Gounder had no title to the suit property as he had already settled the same in favour of his grandchildren by way of Ex.B2 & B7, in such view of the matter, it is found that the plaintiff cannot be granted the reliefs as prayed for on the basis of her failure to establish her vendor's title to the suit property as above pointed out and also on her failure to establish that the suit property as described in the plaint schedule is in her possession and enjoyment.

12.In the light of the above discussions, the first appellate court is justified in dismissing the plaintiff's suit in entirety and the substantial question of law formulated in the second appeal is accordingly answered in favour of the

defendants and against the plaintiff.

13.In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The I Additional District Judge of Tindivanam.
2. The Additional Subordinate Judge, Tindivanam.

Copy to

The Section Officer,
VR Section, High Court,
Chennai.(2 Copies)

+1cc to M/s.S.Kaithamalai Kumaran, Advocate, S.R.No.73792
+1cc to M/s.Paul and Paul, Advocate, S.R.No.74016

S.A.No.383 of 2015
and
M.P.No.1 of 2015

PA(CO)
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