

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

Second Appeal No.464 of 2008

1.P.P.Rameshan

2.A.Ravindran

...Appellants/Plaintiffs/Respondents

Vs.

1.M.K.Narayani ...Respondent/1st Defendant/Appellant

2.P.Saraswathy

3.B.Bharani Sundaram ...Respondents/Defendants/Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 05.11.2007 passed in A.S.No.29 of 2006 on the file of the learned Subordinate Judge, Hosur reversing the judgment and decree dated 26.04.2006 passed in O.S.No.323 of 2004 on the file of the learned District Munsif, Hosur.

For Appellants : Mr.J.R.K.Bhavanantham

For Respondents: Mr.K.Balasubramaniam
for M/s.P.Subba Reddy for R1

For R2 & 3 - Notice dispensed with

J U D G M E N T

The above Second Appeal is at the instance of the plaintiffs in O.S.No.323 of 2004 on the file of the District Munsif Court, Hosur.

2. According to the plaintiffs, they had purchased the suit property measuring an extent of 2350 sq.ft. situate in S.No.22/1 under a Sale Deed dated 10.07.1997 from the defendants 2 and 3 who are the legal representatives viz., wife and son of one Major V.Balasundaram. It is the further case of the plaintiffs that the property in S.No.22/1 measuring an extent of about 1 acre and 54 cents belonged to the said Major V.Balasundaram who had acquired the same under the Sale Deed bearing Doc.No.667/1982 registered with the Office of the Sub-Registrar, Hosur.

3. The plaintiffs would further contend that upon purchase they had filed an application for subdivision of revenue records. The subdivision was approved by the order of the Tahsildar, Hosur dated 22.03.2002, consequent upon the same, computer patta was issued in the name of the plaintiffs on 08.03.2004 by the Head Quarters Deputy Tahsildar, Hosur. Relying upon the above documents the plaintiffs sought for declaration of title to the suit property and for injunction restraining the defendants from interfering with their possession.

4. The suit is resisted by the 1st defendant contending that the sale deed in favour of the plaintiffs is not valid for the reason that originally Major V.Balasundaram purchased larger extent of the property under the sale deed dated 29.02.1982 from Mrs.Venkatamma and 9 others. He had plotted out the property even during his life time and sold an extent of 2350 sq.ft bearing Plot No.12 under the sale deed dated 04.12.1987 in favour of the 1st defendant. Pursuant to the said sale deed, the 1st defendant had applied for patta and patta was also issued to him on 31.03.2003. Claiming that the legal representatives of Major V.Balasundaram had no title to convey and as such the sale deed said to have been executed by the legal representatives of Major V.Balasundaram on 10.07.1997 is not valid in the eye of law. On the above pleadings the 1st defendant sought for dismissal of the suit.

5. The learned District Munsiff who tried the suit framed relevant issues and concluded that since subdivision has been effected and patta has been issued to the plaintiffs on 22.03.2002, the claim of the defendant cannot be countenanced. The learned trial Judge concluded that the fact that subdivision was effected would amount to the recognition of title of the plaintiffs by the Revenue Authorities. On such a conclusion, the learned trial Judge decreed the suit holding that the plaintiffs have established their title and possession.

6. Aggrieved the 1st defendant filed an appeal in A.S.No.29 of 2006 on the file of the learned Subordinate Judge, Hosur. The learned Subordinate Judge, Hosur who heard the appeal found that the sale deed in favour of the 1st defendant dated 04.02.1987 being prior in point of time and taking note of the description in both the sale deeds viz., Ex.B1 dated 04.02.1987 in favour of the 1st defendant and Ex.A1 dated 10.07.1997 in favour of the plaintiffs concluded that the property sought to be conveyed under both the sale deeds is the same. Having arrived at the said conclusion, the learned appellate Judge found that the predecessor of the vendor of the plaintiffs viz., Major V.Balasundaram had lost his title to the suit property on

execution of Ex.B1 dated 04.02.1987 and therefore, the vendors of the plaintiffs did not have any title to convey on the date of the sale in favour of the plaintiffs i.e., 10.07.1997. On the said conclusion, the learned Sub-Judge also applied the principles of law in respect of vacant lands that the possession will follow title and concluded that the 1st defendant has established his possession and the plaintiffs have miserably failed to prove their title and possession of the suit property.

7. On the above findings, the learned Sub-Judge allowed the appeal and dismissed the suit. Aggrieved, the plaintiffs have come forward with this Second Appeal. The following substantial questions of law have been framed at the time of the second appeal:

1. Whether the survey number prevails over the extent and boundary recitals in Ex.A1 and Ex.B1 when they are in conflict?
2. Whether the principles of estoppel applies to the facts of the case, when the patta of Ex.A1 and 3 was issued by the Revenue Authorities and the same was presumed to have been issued in accordance with law?

8. I have heard Mr.J.R.K.Bhavanantham, learned counsel appearing for the appellant and Mr.K.Balasubramanian, learned counsel for the 1st respondent. Notice sent to the respondents 2 and 3 have been returned as no such addressee. It is seen from the records that the defendants 2 and 3 remained exparte before the trial Court as well as lower Court. Hence, notice to them is dispensed with in this appeal.

9. Mr.J.R.K.Bhavanantham, learned counsel appearing for the appellant would contend that even though the sale deed is subsequent in point of time the encumbrance certificate obtained by him did not reveal the encumbrance in the form of the sale deed dated 04.02.1987 said to have been executed by Major V.Balasundaram in favour of the 1st defendant therefore, according to him, since the Revenue Authority enquired into the factum of possession and granted patta, it should be deemed that the said patta has been issued after proper enquiry and hence his title should be upheld.

10. Per contra Mr.K.Balasubramanian, learned counsel appearing for the 1st respondent would contend that both the questions of law framed will not arise for consideration. Pointing out the contents of both the sale deeds viz., Ex.B1 dated 04.02.1987 and Ex.A1 dated 10.07.1997, the learned counsel would contend that in both the sale deeds the Survey Numbers as well as the boundaries are one and the same. Hence, having sold the property under Ex.B1 in favour of the 1st defendant, the

legal heirs of Major V.Balasundaram had no title to convey on the date on which the sale deed Ex.A1 dated 10.07.1997 came to be executed.

11. There is no dispute regarding the fact that the property in question forming part of a larger extent of land in S.No.22/1 belonged to Major V.Balasundaram and it is found from Ex.B1 sale deed that an extent of 2350 sq.ft in Plot No.12 was sold in favour of the 1st defendant as early as on 04.12.1987. Consequent upon the said sale, patta has also been issued to the 1st defendant on 31.03.2003. However, the plaintiffs had purchased the same extent of property covered by the same boundaries in the same survey number under the sale deed dated 10.07.1997 from the legal representatives of the said Major V.Balasundaram.

12. On the plea of Mr.J.R.K.Bhavanandam that encumbrance certificate obtained by the plaintiffs did not disclose any encumbrance, it should be pointed out that the encumbrance certificates that have been filed as Exs.A4, A5, A6 and A7 contains the following disclaimer clause:

“அ) ஆனால் குறிப்பிட்ட நேர்வில் விண்ணப்பதாரர் தாமே சரிபார்க்கவில்லை என்பதால் இந்த அலுவலகத்தில் போதிய கவனத்துடன் தேவையான அளவில் சரிபார்க்கப்பட்டது, ஆனால் இந்த சான்றிதழில் உள்ள முடிவ்களில் எதேனும் பிழை இருப்பின் அவற்றுக்கு இத்துறை பொறுப்பேற்காது.”

13. From the above disclaimer made in the encumbrance certificates it is clear that mere absence of entries in the encumbrance certificate cannot operate to invalidate the sale deeds that have been executed by the actual owner. Therefore, the 1st question of law as to whether the survey number prevails over the extent and boundary recitals in Ex.A1 and Ex.B1 when they are in conflict does not really arise. In both the documents, the Survey Number is given as S.No.22/1 and the boundaries are also same. Hence, there is no question of any conflict between the boundary recitals in Ex.A1 and Ex.B1. The Survey Number is given only as 22/1 in both the documents as already pointed out. Hence, the 1st question of law is answered against the defendants.

14. The second question of law is based on principle of estoppel. It is the common knowledge that entries in revenue records can at best be treated as evidence of possession, they cannot confer title on the person on whose name it stands. In the instant case as already adverted to, patta has been issued in the name of the plaintiffs on the basis of order effecting subdivision by the Tahsildar, Hosur in favour of the plaintiffs on 22.03.2002 under Ex.A2 and patta issued to the plaintiffs under Ex.A3 is only on 08.03.2004. In the interregnum, it is seen from Ex.B5 that the order transferring patta in favour of the 1st defendant has been passed on 30.01.2003 and patta has

been issued to the 1st defendant in respect of 2350 sq.ft of land in 22/1B1A. It is also seen from the Ex.B8 that the land sold by Major V.Balasundaram to the 1st defendant has been subdivided and given a new survey No.22/1B1A, whereas, in the patta issued to the plaintiffs under Ex.A3 the New Survey number is 22/1B1B. Therefore, there is difference in survey numbers also. As already pointed out the revenue records could at best be the evidence of possession and not title.

15. Once it is found that the 1st defendant has purchased the property as early as on 14.02.1987 under Ex.B1 the vendor of the plaintiffs did not have title over the property to be conveyed on 10.07.1997, the rule of estoppel cannot also be applied in the case on hand. The second question of law also answered against the appellants.

16. In view of the above, I do not see any reason to interfere with the findings of the lower Appellate Court and the appeal is dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dsa
To

1.The Subordinate Judge,
Hosur.

2.The District Munsif,
Hosur.

+1cc to Mr.J.R.K.Bhavanandham, Advocate Sr.29590
+1cc to Mr.P.Subba Reddy, Advocate Sr.29593

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srg 06/06/2018