

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NOS.741 OF 2008 AND 1271 OF 2010
AND CONNECTED MISCELLANEOUS PETITIONS

S.A.NO.741 / 2008

1.R.Gopal
2.R.Tamilarasan
3.K.Rajendran ..Appellants 1 to 3/Appellants/D1 to D3.
4.R.Sekar ... Appellant No.4/R3/D4

Vs.

1.E.Devan
2.D.Visalakshi ... Respondents/Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree dated 21.06.2007 passed by the VII Additional Judge, City Civil Court, Madras, in A.S.No.284 of 2005 confirming the decree dated 15.04.2004 passed by the IV Assistant Judge, City Civil Court, Madras, in O.S.No.652 of 2001.

For Appellants : Mr.K.S.Gnanasambandan
For Respondents : Mr.R.Karunakaran

S.A.NO.1271 / 2010

1.K.Rajendran
2.K.Sekar
3.R.Gopal ..Appellants 1 to 3/Appellants/Plaintiffs 1 to 3
4.R.Tamilarasan ...Appellant 4/R2/4th Plaintiff

Vs.

D.Visalakshi ...Respondent/Respondent No.1/Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree dated 21.06.2007 passed by the VII Additional Judge, City Civil Court, Madras, in A.S.No.147 of 2006 confirming the decree dated 15.04.2004 passed by the IV Assistant Judge, City Civil Court, Madras, in O.S.No.2550 of 2000.

For Appellants : Mr.K.S.Gnanasambandan
For Respondent : Mr.R.Karunakaran

COMMON JUDGMENT

Against the concurrent findings of the Courts below, the appellants have preferred the above two Second Appeals.

2. The appellants / plaintiffs have filed a suit in O.S.No.2550 of 2000 for permanent injunction restraining the respondents from interfering with their peaceful possession and enjoyment of the suit property namely No.88, Ghouse Mohideen Pettai Main Street, Kasimedu, Chennai- 600 013.

3. The respondents / defendants have filed a suit in O.S.No.652 of 2001 for declaration of title, possession, damages and for permanent injunction.

4. The suit filed by the appellants in O.S.No.2550 of 2000 was dismissed and title was declared in favour of the respondents / defendants in the suit in O.S.No.652 of 2001 filed by them. The plaintiffs claim that they are the legal representatives of one Rajam @ Rajammal. According to them, the suit property originally belong to one Rathinammal and after her death, it devolved upon her son Venkataswamy. The said Venkataswamy died on 06.06.1993 and his sole legal representative, his wife namely Rajam @ Rajammal derived title. She was in continuous possession and enjoyment of the property till her death on 21.02.2000. The said Rajammal died issue-less and the appellants, being the nephews of the said Rajammal, derived title to the suit property.

5. Since the respondents / defendants have attempted to interfere with their peaceful possession and therefore, a police complaint was lodged against the respondents on 28.02.2000 followed by a legal notice dated 23.03.2000, to which, the respondents issued a reply on 30.03.2000, followed by a rejoinder dated 01.04.2000. Taking this as a cause of action, the appellants have filed the suit.

6. Controverting the same, the respondents/defendants filed a written statement stating that they have purchased the suit property on 16.04.1998 by way of a registered sale deed bearing document No.915/1998 at the office of the Sub Registrar, Royapuram. The respondents claim continuous possession and enjoyment ever since their purchase and the mutation of revenue records had also taken place. Since the said Rajammal was issue-less and had no relatives, even after purchase, the respondents/defendants permitted her to stay in the house at

No.14, Pudu Kamarajar Nagar, Kasimedu, Royapuram, Chennai, till her death. According to them, the appellants are strangers and attempted to grab the property, taking advantage of the situation.

7. On the complaint lodged by the appellants, the respondents produced the original title deeds and the connected documents before the Police. The Police directed the appellants to establish their rights through Civil Court. The attempt of the appellants to trespass into the property on 14.03.2000 was thwarted and when they issued a legal notice, it was suitably replied by the respondents immediately. In spite of the same, the appellants unlawfully trespassed into the property on 04.04.2000 and a complaint was lodged by the respondents. Since no action was taken by the Police, a private complaint was filed and it is pending before the Criminal Court.

8. The respondents / defendants have also filed a suit for declaration of title on the basis of the very same set of facts. Subsequent to registration of the sale deed, another document namely, rectification deed was also registered on 28.09.1998 as document No.2509/1998 at the Office of the Sub Registrar, for correction of the typographical error in typing the door number. The respondents have performed the last rites, according to their customs, after the death of the said Rajammal and they are in continuous possession. The appellants were never in possession and they are residing at various other addresses as evidenced by the legal notice and therefore, sought for declaration of title; possession of the suit property; damages and for injunction.

9. The Trial Court has framed two issues in the suit filed by the appellants for permanent injunction and seven issues in the suit filed by the respondent for declaration. Thereafter, 17 additional issues were also framed.

10. The appellants have marked documents Ex.A1 to A12 and examined the third plaintiff as P.W.1. The respondents have marked Exs.B1 to B14 and examined two witnesses. The Trial Court, after considering all the documents, has found that the appellants, even though claim themselves as descendants of the said Rajammal and are in continuous possession of the property, have not filed any document to prove both the points. The further claim of the execution of the sale deed, by undue influence, fraud and the thumb impression is not of the said Rajammal, were not established by proper evidence. Even though the appellants claim that they have documents having the thumb impression of Rajammal, they have not produced any scrap of paper before the Trial Court. Therefore, considering the evidence of the defendants, the Trial Court has come to the conclusion that the appellants are not entitled to permanent

injunction and that they were not in possession of the property. On the other hand, declared title in favour of the respondents herein.

11. Aggrieved over the decision of the Trial Court, the appellants have preferred two appeals before the lower appellate Court. The lower appellate Court has considered the contentions of the appellants and confirmed the findings of the Trial Court. Against the concurrent findings, the appellants are before this Court, by way of two second appeals.

12. The second appeal in S.A.No.1271 of 2010 was admitted on 09.11.2010 on the following substantial questions of law:-

"1.Are not the appellants entitled for a permanent injunction as they are the legal heirs of Rajammal and they are in possession of the suit property till date?

2.Whether the respondent could claim to be the rightful owner of the suit property as the sale deed in her favour is invalid fictitious, forged, sham and nominal?

3.Is not the balance of convenience and equity is in favour of the appellants as they continue to be in possession till date? "

13. The learned counsel appearing for the appellants vehemently contended that the appellants are the legal representatives of Rajammal, being her brother's sons. It is clearly pleaded in the plaint that they are entitled to derive title to the suit property from their aunt. Apart from the pleadings, no documents were marked before the Trial Court. As contended by the learned counsel for the respondents, legal notices vide Exs.A1 and A4 clearly shows the different address of the appellants. Apart from the legal notices and the averments made in the plaint, the appellants have not produced any document to show that they are in possession of the property. The learned counsel for the appellants would further submit that they are in continuous possession, since there is no other document to show that they are the legal representatives of the said Rajammal and they are in possession of the suit property. The findings of the Trial Court that the appellants are not in possession of the suit property is well founded and cannot be interfered with.

14. On the second question of law, as to whether the respondent could claim to be the rightful owner of the suit property as the sale deed in her favour is invalid, fictitious, forgery and sham and nominal, the Trial Court has elaborately

discussed the question of title supported by the documents. The appellants would contend that the sale deed came to be executed by undue influence. The evidence let in by the respondents reveal that they have paid a sum of Rs.90,000/- over a period of ten years and a sum of Rs.1,25,000/- by cash at the time of registration. The burden is on the respondents to prove that they have paid this money and the sale is made for due consideration. On perusal of the documents marked before the Trial Court, it could be inferred that the respondents have at the first instance of issuing reply notice stated that they have purchased the property for valid consideration.

15. In support of the same, the respondents have marked Ex.B2 - registered sale deed dated 16.04.1998, Ex.B3 - rectification deed dated 28.09.1998, Ex.B4 - patta issued by the Tahsildar dated 20.08.1998, Ex.B5 - property tax receipts issued by the Corporation of Chennai and Ex.B11 - death certificate of Rajammal dated 22.02.2000. Apart from this, in order to prove the registration, they have marked Ex.B13 - register of thumb impression for the period between 02.09.1998 and 26.10.1998 and Ex.B14 - thumb impression register for the period between 13.04.1998 and 27.05.1998 from the office of the Sub Registrar, Royapuram. The said certificates viz. Exs.B13 and B14 were duly certified by the Registering Authority.

16. From the perusal of the above said documents, it is not disputed that the sale deed was registered by the said Rajammal in favour of the respondents / defendants. There is also another deed of rectification, followed by the sale deed. This registration of sale has been duly proved by letting in evidence that the said Rajammal had received money and executed sale deed at the Office of the Sub Registrar. The attesting witness had let in evidence as D.W.2, who would also clearly state that the said Rajammal affixed left thumb impression at the Registrar's office and executed the sale deed and rectification deed. To substantiate the factum of registration, the official records from the Office of the Sub Registrar were also produced. All these documents were not disputed by the appellants. In such circumstances, it shall be presumed that the sale was for valid consideration until it proved contra. On the other hand, the appellants would contend that even though there is a statement with regard to payment, it was made over a period of ten years. There is no proof as to whether the money was paid towards sale consideration of the property or for any other purpose. There is also no proof for payment of Rs.1,25,000/- at the time of registration. In fact, according to the appellants, the property is worth more than the amount mentioned in the sale deed and therefore, the respondents have fraudulently got the sale deed executed by using undue influence over the said Rajammal.

17. Yet another point raised by the appellants is that the sale shall be followed by possession. According to them, till her death, the said Rajammal was in possession of the property and she died in the suit property. Since the appellants were fishermen and had to go into the sea for the purpose of their avocation, they could not ascertain other facts as to the registration.

18. Per contra, the respondents have proved through ample evidence that sale deed was executed and money was received by the vendor. In the absence of any proof to the contrary or denial by the said Rajammal, a stranger cannot make a wild allegation that no sale consideration was passed. Immediately after sale, they were put in possession of the property and they continued to be in possession. The clear finding of the Courts below based on legal evidence and the issue raised by the appellants is not sustainable in law.

19. A submission was made that in the criminal proceedings, the appellants were convicted for trespassing into the property, by the Court. Further, the said Rajammal had died at No.14, Pudu Kamarajar Nagar, Kasimedu, Royapuram, Chennai, at the residence of the respondents. It is not as stated by the appellants that she died in the suit property. The appellants have approached the Court with ambiguous and false statements. In the absence of proof of legal possession, the appellants cannot claim any equity.

20. The contention that the sale deed was executed through undue influence is contrary to the fabrication of document. On both Courts the appellants have failed to prove their case through clinching evidence. The appellants have not proved that the sale deed was executed by undue influence and it is sham and nominal. The appellants have in fact filed an application for sending the thumb impression for forensic examination. Since they have not produced any document, as claimed to be in their possession, the Trial Court has dismissed the same and it was confirmed in the revision petition filed before this Court. Therefore, in the absence of any evidence, the contention of the appellants that the sale deed is sham and nominal and was obtained by undue influence is not sustainable. Further, the presumption is that the sale was made for a valid consideration cannot also be deprecated without any evidence from the vendor. If at all the appellants are the legal representatives of the predecessor in title, they should have proved it by suitable documentary evidence and by producing the other witnesses, who are related to the said Rajammal. The relationship between the said Rajammal and the appellants itself was not proved. Further, it is to be noted that the said Rajammal had three brothers and they had sons namely, Desigan, Duraikannan, Sundar, Nayagan, Ramachandran and Chinnaponny apart

from the appellants. Without impleading the other legal heirs and without specific pleadings as to how the appellants have derived title to the property, they are not entitled to any relief. Therefore, the attempt of the appellants to prove their possession is not based on any evidence and they have not set out any case claiming equity and balance of convenience. Therefore, the findings of both the Courts below are confirmed and the Second Appeal viz., S.A.No.1271 of 2010 is dismissed.

S.A.NO.741 OF 2008

21. The above second appeal was admitted on 28.05.2008, on the following substantial questions of law:-

" 1) Whether the sale deed is a valid one giving title to the respondents?

2) Whether the sale deed is supported by valuable consideration and whether the same was paid by the respondents? "

22. As discussed above, it is seen from the deposition of D.W.1 and D.W.2 that the sale deed was registered at the office of the Sub Registrar. The recitals would go to show that the vendor had received the sale consideration. It is no doubt that the said Rajammal has put her thumb impression before the Sub Registrar. The presumption goes to show that as long as sale is not disputed before the Court of Law, it is valid. There is no document to show that the thumb impression put by the said Rajammal is forged. In fact, the evidence of the appellants also is that it was obtained by undue influence. In that event, the appellants categorically admit that there was an execution of the sale deed and rectification deed before the Sub Registrar. The thumb impression was certified by the Registration Officer and marked as Ex.B13 and B14. D.W.2, who is an independent witness speaks about the execution and presence of Rajammal at the Registrar's office for execution of the sale deed and putting the thumb impression in the document as well as in the registers. When the said Rajammal nowhere raised any claim against the vendees, namely, the respondents, it cannot be said that the valid consideration was not passed. The appellants have failed to prove that the sale is not for valuable consideration. In the absence of any proof and in view of the discussions made in the previous paragraphs, it cannot be construed that sale is no doubt valid one.

23. As stated supra, the respondents have clearly proved that they have derived title through validly executed document. Furthermore, as admitted by the appellants, they were never in possession of the subject property as evidenced by Exs.A1 and A4, where the addresses of the appellants shown are

entirely different. Only because printing a card for performing the final rites, it cannot be said that the appellants have proved their title over possession of the property. On the other hand, the respondents have rightly proved the derivation of title through valid document and substantiated by oral evidence. In that event, it is no doubt that the sale deed is a valid one.

24. The learned counsel appearing for the appellants would rely on a judgment of the Hon'ble Supreme Court in SUBHRA MUKHERJEE AND ANOTHER VS. BHARAT COKING COAL LTD., AND OTHERS [AIR 2000 SC 1203] wherein it is held that whether the transaction is a bonafide and genuine one or is sham and bogus, it shall be proved by the person, who purchased the property and not by a person alleging it to be sham. But in the instant case, the respondents have proved that the transaction taken place between themselves and Rajammal is a bonafide one by documentary evidence. When it is proved that the transaction taken place is a bonafide one, the burden is caused on the appellants to prove that it is sham, bogus and fictitious transaction.

25. The learned counsel for the appellants would rely on another judgment of the Hon'ble Supreme Court in THIRUVENGADA PILLAI VS. NAVANEETHAMMAL AND ANOTHER [AIR 2008 SC 1541] wherein the instrument written on two stamp papers purchased by the same person on different dates. In the instant case, the appellants have neither pleaded nor put any question to the witnesses on this aspect.

26. The learned counsel for the respondents would contend that the stamp papers were purchased by the respondents on the same day. The excess stamp paper used was to the value of Rs.10/- and it will not render a document as invalid one, as rectification deed does not require any stamp duty to correct the typographical error. Furthermore, the opportunity to explain the same was not given at the time when the witness was in the box. In that event, the appellant cannot raise such a ground at this distance point of time.

27. The other point raised by the appellants taking support of the judgment of the Madhya Pradesh High Court in DAYAWANTIBAI W/O. TULSIRAM LODHI VS. SMT. SARULA BAI [2006 (4) MPLJ 346] that in a transfer of ownership in exchange for a price, delivery of possession is also an essential ingredient. Where both the ingredients are lacking and the possession remains with the vendor, it cannot be said to be a sale of immovable property.

28. On the other hand, as discussed above, it is clear that the possession was passed on to the vendees and it was amply proved by documentary evidence that they are in possession. Other than making statement in the pleadings, the

appellants have not proved the factum by convincing evidence. Therefore, the judgments relied on by the appellants does not support their case. Hence, the substantial question of law as to whether the sale is valid one and is for valid consideration is answered in the affirmative and the declaration of title by the Courts below is based on sound reasons supported by oral and documentary evidences. Therefore, the Second Appeal viz., S.A.No.741 of 2008 also merits no consideration and accordingly dismissed.

29. In fine, both the Second Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

TK

To

- 1) The VII Additional Judge
City Civil Court
Chennai.
- 2) The IV Assistant Judge
City Civil Court
Chennai.
3. The Section officer
VR Section, High Court, Madras 104.

+2 CCS to Mr.K.S.Gnanasambandan, Advocate sr 6756 & 6757.

+2 Ccs to Mr.R.Karunakaran, Advocate sr 6469

S.A.NOS.741 OF 2008 AND 1271 OF 2010

EV(CO)

SP(04/12/2018)

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