

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2018

PRONOUNCED ON : 13.03.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1124 of 2003

1. Ratnam Chettiar

2. Arumugam Chettiar ... Appellants/Defendants 2 and 3

Vs.

Gundu ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Sub Judge at Villupuram in A.S.No.30/1997 and dated 24.12.1999 in reversing the well considered judgment and decree of the District Munsif Court at Tirukoilur in O.S. No.575/86 and dated 30.04.1996.

For Appellant : Mr.V.Raghavachari

For Respondent : No appearance/set ex-parte
vide order dated 21.02.2018

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 24.12.1999 passed in A.S.No.30/1997, on the file of the Subordinate Court, Villupuram, reversing the judgment and decree of dated 30.04.1996 passed in O.S. No.575/86, on the file of the District Munsif Court, Tirukoilur.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit properties originally belonged to Rangasami achari and he had

sold the suit properties and other properties to Appavu chettiar, by way of a registered sale deed dated 15.01.1928 and accordingly, Appavu chettiar had been in possession and enjoyment of the same and after his death, his three sons, namely, the defendants effected oral partition amongst themselves 35 years ago and in the said partition, the suit properties and other properties were allotted to the first defendant's share and the plaintiff had purchased the suit properties by way of a registered sale deed dated 07.02.84 and since then, it is only the plaintiff, who has been in possession and enjoyment of the suit properties and enjoying the same. The items 3 to 6 of the suit properties originally belonged to Krishnan son of Munian and the plaintiff purchased the same by way of a registered sale deed dated 01.06.64 and purchased items 7 to 9 belonging to Munusamy, Appadurai and Chinnappan, by way of a sale deed dated 07.06.60 and enjoying the suit properties by obtaining patta, paying kist etc., and the defendants have no manner of right, title and interest in the suit properties and due to enmity, the defendants attempted to interfere with the possession and enjoyment of the plaintiff in respect of the suit properties and hence, the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that the suit properties had been acquired by the defendants' father Appavu chettiar, by way of sale deed dated 15.01.28 and been in possession and enjoyment of the same and it is false to state that suit properties as described in the plaint had been allotted to the first defendant and that he had been enjoying the same and subsequently sold the same to the plaintiff and it is false to state that the plaintiff thereby has title, possession and enjoyment of the suit properties. The description of the suit properties is not correctly given and the boundaries given to the suit items are not correctly furnished. It is true that an extent of 0.96 cents in the second item belonged to the first defendant and he had only alienated his 0.60 cents on the eastern side to the plaintiff and retained the west 0.36 cents in the second item and therefore, the plaintiff cannot claim any title to the extent of 0.36 cents. The plaintiff has deliberately given wrong boundaries to the suit items and the boundaries given for the first item are also not correctly given and the second defendant had purchased an extent of 0.97 cents located in the north western portion of the first item, by way of a sale deed dated 7.5.43, from one Muniyapandidhar and enjoying the same and the patta stands jointly in the name of the plaintiff and the second defendant in respect of the suit survey number consisting the first item and the plaintiff, by way of the present suit, is attempting to grab the property purchased by the second defendant as above stated and it is false to state that the

defendants are attempting to interfere with the plaintiff's possession and enjoyment of the suit properties and the plaintiff is not entitled to seek the reliefs sought for and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 to 4 were examined, Exs.A1 to A14 were marked. On the side of the defendants DWs 1 to 4 were examined, Exs.B1 to B26 were marked. Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant the reliefs in favour of the plaintiff as regards the items 1 and 2 of the suit properties excluding the properties purchased and enjoyed by the second defendant of an extent of 0.97 cents on the northwest portion in survey number 305/10 and the extent of 0.36 cents of lands orally purchased in survey number 305/10 and accordingly, decreed the suit in favour of the plaintiff in respect of the items 1 and 2 and dismissed the suit in respect of the other items of the suit properties.

8. On appeal, the first appellate Court, on a appreciation of the materials placed on record, was pleased to modify the judgment and decree of the trial Court and decreed the suit as prayed for in favour of the plaintiff in entirety. Aggrieved over the same, the present second appeal has been preferred by the defendants 2 and 3.

9. At the time of admission of second appeal, the following substantial questions of law were formulated for consideration:

1. Whether the lower appellate court had not erred in shifting the burden of proof on the appellants to prove that they were in possession of remaining 0.36 cents in item 2 of schedule mentioned property?

2. Whether the lower appellate court had not erred in decreeing the suit as against the very admissions made by the respondents?

3. Whether the lower appellate court had not erred in decreeing the suit for the entirety when plaintiff himself admitted that he purchased only 0.60 cents out of 0.96 cents from first defendant?

4. Whether the court below is right in holding that defendant is not entitled to 0.97 cents in S.No.305/10 when the same was established by Exs.B2 and B3?

10. As per the pleadings set out in the matter and the

materials placed, even as per the case of the plaintiff, it is seen that the defendants' father Appavu chettiar had purchased the suit properties along with the other properties by way of a sale deed dated 15.01.1928, which document has come to be marked as Ex.B1. On a perusal of Ex.B1, it is found that Appavu chettiar had purchased an extent of 1.40 acres of land in survey number 305/10 and 0.60 cents of land in survey number 305/11. It is found that survey number 305/10 measures a total extent of 3.60 cents of land and survey number 305/11 measures a total extent of 0.96 cents of land and by way of Ex.B1, Appavu chettiar is found to have acquired title to the property in survey number 305/10 of an extent of only 1.40 cents of land and in survey number 305/11, an extent of 0.60 cents of land only. That apart, it is also noted that the extent of 1.40 cents of land in survey number 305/10, acquired by Appavu chettiar, by way of Ex.B1, is stated to be located to the south of the lands purchased by Ponnusamy Chetty and it is also noted that in survey number 305/11, Appavu chettiar had acquired only a common share of 0.60 cents of lands out of 0.96 cents of land. The boundaries had not been described as regards the above said extent of 0.60 cents of lands in Ex.B1.

11. According to the plaintiff, in the oral partition effected amongst the defendants, after the demise of Appavu chettiar, the suit properties and other properties were allotted to the first defendant as such and it is his further case that he had acquired the suit properties from the first defendant by way of a registered sale deed dated 07.02.84, which document has come to be marked as Ex.A1. On a perusal of the Ex.A1, it is found that the plaintiff had been conveyed the properties acquired under Ex.B1 by the first defendant and the first defendant had stated that the said properties had been acquired by him by way of partition. When as per Ex.A1, the plaintiff has purchased only the common share of 0.60 cents of land out of 0.96 cents of land in survey number 305/11, it does not stand to reason as to how the plaintiff had given the boundaries to the above said extent of 0.60cents of lands while describing the second item of the suit properties. The plaintiff has described the second item as located to the west of Appavu chettiar land, east, north and south of his lands. When as per the case of the plaintiff, he has been alienated only the common 0.60 cents of land out of 0.96 cents of land in survey number 305/11, by way of Ex.A1, the plaintiff cannot lay any claim of title as such to the remaining 0.36 cents of lands in R.S. No.305/11. Though the plaintiff only claims title to the extent of 0.60 cents of land in R.S.No. 305/11, during the course of evidence, the plaintiff has staked a claim that he is owning the entire extent of 0.96 cents of land in survey number 305/11. The plaintiff would also claim that he has also enjoyed 0.36 cents of lands on varam basis and in continuous possession and enjoyment of the same. However, with respect to the above claim of the plaintiff and

his claim of possession and enjoyment of the 0.36 cents of land in survey number 305/11, there is no material forth coming. It is the specific case of the defendants that the first defendant had retained the western 0.36 cents of land with himself and only alienated the eastern 0.60 cents of land to the plaintiff by way of Ex.A1. Therefore, in the absence of any material to hold that the plaintiff has title, possession and enjoyment of the western 0.36 cents of land in survey number 305/11, the claim of the plaintiff that he has title to the entire extent of 0.96 cents of land in the above said survey number is found to be untenable and equally, it is also found that the plaintiff has not given the correct description of the item 2 of the suit properties and the description of the item 2 of the suit properties as found in the plaint, is seem to be misleading, as if, the plaintiff owns the entire extent of land in survey number 305/11 and the said claim of plaintiff that he owns entire extent has not been established. As rightly argued, the plaintiff has not given the correct description of the item 2 of the suit properties. The plaintiff has described that the extent of 1.40 cents of land in survey number 305/10 (item 1) purchased by him by way of Ex.A1, is situated to the south of his land, thereby meaning that, he also owns other lands in survey number 305/10. However, there is no material worth acceptance to hold that the plaintiff has title to the other extent of lands in survey number 305/10. As per Ex.B1, the above said extent of 1.40 cents of land is stated to be located to the south of Ponnusamy's purchased lands. Thus, even the description of the item 1 of the suit properties is incorrectly given and found to be misleading.

12. In the plaint, at the first instance, the plaintiff would claim that he had acquired the suit properties as described in the plaint from the first defendant by way of Ex.A1 sale deed. Subsequently, he would state that item 3 to 6 were purchased by him from Krishnan by way of registered sale deed dated 01.06.64 and items 7 to 9 were purchased from Appadurai and others by way of a registered sale deed dated 07.06.60. The above said sale deeds have come to be marked as Exs.A2 and A3. Items 3 to 9 of the suit properties are stated to be located in survey number 305/10.

13. According to the defendants, the second defendant has purchased an extent of 0.97 cents of lands from one Muniyapandidhar by way of a registered sale deed dated 7.5.43, which document has been marked as Ex.B3. A perusal of the materials placed on record would go to show that Ponnusamy chettiar owned the extent of lands in survey number 305/10 and 305/9 and it is found that Ponnusamy chettiar had alienated an extent of 0.60 cents of land on the northern side in survey number 305/9 and an extent of 0.97 cents of lands in the northern side in survey number 305/10 to Muniyan son of Ambalavanan. The parent title deed dated 21.03.25 has been

marked as Ex.B2. According to the defendants the second defendant had purchased the above said extent of land from Muniyapandidhar by way of Ex.B3 sale deed and it is thus found that the second defendant owns an extent of 0.97 cents of lands on the northern side in survey number 305/10. In the light of the above position, the claim of the plaintiff that he owns the remaining extent of land in survey number 305/10, as such, cannot be countenanced.

14. The plaintiff claims to have acquired the other extent of land in survey number 305/10 from the sons of Muniyan and Arumugam. From Ex.B4 sale transaction dated 22.09.25, it is found that Muniyan and Arumugam had purchased only an extent of 0.60 cents of lands on the southern side in survey number 305/9 and an extent of 0.97 cents of land in survey number 305/10 on the southern side and thus, it is found that other than the above said extent of lands in the above said survey numbers, they would not be entitled to lay claim to a more extent of land in the said survey numbers. In such view of the matter, the claim of the plaintiff as well as the evidence tendered by PWs 2 and 3, the legal heirs of Muniyan and Arumugam that they had sold an extent of 0.98 cents of lands and 0.86 cents of lands to the plaintiff by way of Exs.A2 and A3, as such, cannot be countenanced. As rightly determined by the trial Court, when their predecessors in title namely Muniyan and Arumugam had acquired an extent of 0.96cents of lands only in survey number 305/10 located on the southern side, they would be each entitled to an extent of 0.42 and half cents of land in survey number 305/10. In such view of the matter, the claim of the plaintiff that their legal heirs had conveyed an extent of 0.92 cents of lands and 0.86 cents of lands by way of Exs. A2 and A3 cannot be countenanced and it is thus found that the plaintiff seeks claim of title to the remaining extent of lands in survey number 305/10 from the persons who have no title to the same by way of Exs.A2 and A3 and in such view of the matter, it is seen that the trial Court has rightly assessed the materials placed on record in the correct perspective and declined the reliefs sought for by the plaintiff as regards the items 3 to 9 of the suit properties. On the other hand, the first appellate Court has failed to appreciate the materials placed on record in the correct perspective and thereby erred in upholding the plaintiff's claim of title in entirety.

15. When it is found that the plaintiff is not entitled to the entire extent of 3.60 cents in survey number 305/10 and on the other hand, when it has been established by the defendants that the second defendant had acquired title to an extent of 0.97 cents of lands located on the northern side in the said survey number by way of Exs.B2 and B3, the description of the first item of the suit properties as being located to the south of the plaintiff's land is found to be incorrect and misleading and therefore, it is seen that as rightly contended by the

defendants' counsel, the plaintiff has not also given the correct description of the first item of the suit properties.

16. In the light of the above discussions, the other documents projected by the plaintiff by way of patta, chitta and kist receipts, by themselves would not be of use to sustain the plaintiff's claim of title, possession and enjoyment of the entire suit properties, as projected in the plaint.

17. In the light of the above discussions, when it is found that the plaintiff has not correctly given the description of the items 1 and 2 of the suit properties and the description given as regards the above said items being found to be incorrect and misleading and the plaintiff is found to have falsely laid a claim of title to the entire extent of the properties comprised in survey number 305/10 and 11, however, having failed to establish the same, as rightly put forth, when the description of the properties are not correctly furnished as mandated under law, even though the plaintiff is found to have purchased an extent of 1.40 cents of land in survey number 305/10 and a common extent of 0.60 cents of land in survey number 305/11, the description of the said items having not been correctly furnished and found to be misleading, in such view of the matter, the relief of declaration sought for by the plaintiff as regards the said items also cannot be granted as such and it is thus found that both the trial Court as well as the first appellate Court have erred in granting the relief of declaration as regards the items 1 and 2 of the suit properties in favour of the plaintiff and the other reliefs sought for by him with reference to the same, particularly, failing to note that the plaintiff has miserably failed to correlate the items 1 and 2 of the suit properties with the description of the properties mentioned in Ex.A1 and further, particularly, the plaintiff having failed to establish that he has acquired a valid title to the other extent of the properties comprised in the above said two survey number. As above discussed, the second defendant has established that he has acquired an extent of 0.97 cents of land on the northern side of survey number 305/10 by way of Exs.B2 and B3. The plaintiff having failed to establish that his vendors had a valid title to the properties alienated under Exs.A2 and A3 and on the other hand, when it is found that his vendors had acquired only a lesser extent in the survey number 305/10 by way of Ex.B4, it is seen that the plaintiff cannot lay any claim of title to the suit properties by way of Exs.A2 and A3. In the light of the above position, it is found that the first appellate Court has totally erred in decreeing the suit as prayed for, failing to take into consideration the materials placed on record in the proper perspective as above discussed and also erroneously shifted the burden of proof on the defendants to establish their claim of

title to the suit properties. The plaintiff having come forward with the suit seeking the reliefs of declaration and other reliefs and when the defendants are disputing the claim of title to the plaintiff, it is for the plaintiff to establish the same by placing acceptable and reliable materials and the plaintiff having failed to establish the same and on the other hand, seem to grab the suit properties by claiming title to the same from persons who do not have a valid title to convey and also by misdescribing the suit properties as such, it is found that the plaintiff cannot be granted the reliefs sought for in respect of the suit properties as described in the plaint.

18. In the light of the above position, the substantial questions of law formulated in the second appeal are answered against the plaintiff and in favour of the defendants.

19. Materials placed on record go to disclose that the first defendant had died even during the pendency of the trial court proceedings. In this connection, the third defendant examined as DW1, during the course of evidence, has clearly deposed that the first defendant had died immediately after the institution of the suit. It is thus found that the factum of the death of the first defendant had been made known to the Court during the course of the proceedings and despite the same, it is found that the plaintiff had not taken steps to implead the legal representatives of the first defendant on record. The trial Court had also not endeavoured to direct the plaintiff to take appropriate steps as regards the deceased first defendant. However, despite the above said evidence of the third defendant, examined as DW1, the matter proceeded further and ultimately, the trial Court granted the decree partly in favour of the plaintiff as regards all the defendants. It is thus found that the decree granted by the trial Court against the dead person is invalid and cannot be upheld. As rightly argued, the first appellate Court has also not endeavoured to direct the parties concerned to take steps to implead the legal representatives of the first defendant on record. On the other hand, it is found that by way of a memo, the death of the first defendant had been recorded in the decree drafted by the first appellate Court. As to what further steps had been taken by the plaintiff to implead the legal representatives of the first defendant on record, there is no material forth coming. It is thus found that both the Courts had decreed the suit in favour of the plaintiff, the trial Court in part and the first appellate court in entirety as against the dead person. It is thus found that the decrees of the Courts below are a nullity having been passed against the dead person and therefore, cannot be sustained in any manner. On the above ground also, it is found that the judgment and decree of the Courts below are liable to be set-aside.

20. Though it is also found that DW1 has deposed that the second defendant had also died, however, the fact remains that the second defendant is still alive and he has also been made a party in the first appeal proceedings by plaintiff and contested the first appeal. That apart, he has also preferred the second appeal along with the third defendant, challenging the judgment and decree of the first appellate Court. It is thus found that the reporting of the death of the second defendant by the third defendant is factually not correct and therefore, the same is ignored.

21. For the reasons aforesaid, both the judgment and decree dated the 24.12.1999, passed in A.S.No.30/1997, on the file of the Subordinate Court, Villupuram and the judgment and decree dated 30.04.1996 passed in O.S. No.575/86, on the file of the District Munsif Court, Tirukoilur are set-aside and resultantly, the suit laid by the plaintiff in O.S.No.575/86 is dismissed in toto with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Court, Villupuram.
- 2.The District Munsif Court, Tirukoilur.
3. The Section Officer, VR section,
High Court, Madras.

+1cc to Mr.V.Ragavachari, Advocate SR.No.18601

AK(CO)
GN(18/04/2018)

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