

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.Nos.403 and 404 of 2015
and M.P.No.1 of 2015 and C.M.P.No.19918 of 2016

1. Kumar
2. Selvaraj

.. Appellants/Appellants/Plaintiffs
in both the appeals

Vs.

Gopal

.. Respondent/Respondent/Defendant
in both the appeals

* * *

Prayer in S.A.No.403 of 2015 : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 12.02.2014 passed in A.S.No.2 of 2013 on the file of the Subordinate Court, Cheyyar, confirming the judgement and decree dated 03.12.2012, passed in O.S.No.267 of 2008 on the file of the Principal District Munsif, Cheyyar.

Prayer in S.A.No.404 of 2015 : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 12.02.2014 passed in A.S.No.3 of 2013 on the file of the Subordinate Court, Cheyyar, confirming the judgement and decree dated 03.12.2012, passed in O.S.No.281 of 2008 on the file of the Principal District Munsif, Cheyyar.

* * *

For Appellants in : Mr.P.Mani
both the appeals

For Respondent in : Mr.S.Makesh
both the appeals

COMMON JUDGEMENT

For the sake of convenience, the parties will be referred to as per their litigative status in O.S.No.267 of 2008.

2. The plaintiff in O.S.No.267 of 2008 had filed the suit for :

- (i) declaration of title ;
- (ii) permanent injunction restraining the defendants 1 and 2 from interfering upon the suit property ;

(iii) permanent injunction restraining the third defendant from changing the revenue records in the name of the defendants 1 and 2 ;

(iv) permanent injunction restraining the defendants 1 and 2 from alienating the suit property ; and

(v) permanent injunction restraining the fourth defendant from registering any document that would be produced by the defendants 1 and 2.

3. The case of the plaintiff is that the properties originally belonged to one Kannan and Ramasamy, who are sons of one Arumugam. The plaintiff had purchased the same by way of two sale deeds dated 05.01.1985 and 06.12.19683, which are marked as Exs.A.1 and A.5 respectively. According to the plaintiff, the revenue records are still reflect the name of his vendors. The defendants 1 and 2 are the sons of one of the vendors of the plaintiff, namely, Kannan. It is stated that the defendants 1 and 2 tried to create a forged document and attempted to trespass into the suit property. They had also applied for change of patta in their names. Hence, the plaintiff was constrained to file the suit seeking the abovesaid reliefs.

4. The defendant No.2 had filed written statement in the suit resisting the claim of the plaintiff. It is stated that by the defendant No.2 that the defendants 1 and 2, who are the appellants herein, had purchased 24 cents in Survey No.78A/10 on 28.04.2008 and put up a thatched house in the suit property. It is stated that as there was no encumbrance in the suit property, they had purchased the same in the year 2008. The defendants 1 and 2, being the owners of the suit property, the plaintiff cannot seek for declaration and sought for dismissal of the suit.

5. In the meanwhile, defendants filed a suit in O.S.No.281 of 2008 praying for permanent injunction restraining the defendant (the plaintiff herein) from trespassing into the suit property and disturbing their peaceful possession. The plaintiff, as the defendant in O.S.No.281 of 2008, had filed written statement tracing his title to the sale deeds dated 05.01.1985 and 06.12.1983. It is specifically contended by him that the defendants (the plaintiffs in O.S.No.281 of 2008) had purchased the property from the vendors, who had no marketable title on the date of the purchase.

6. The suits, though related to the same subject property and parties were also the same, they were tried independent of each other before the trial court. The trial court partly decreed the suit in O.S.No.267 of 2008 and dismissed the suit in O.S.No.281 of 2008.

7. Appeals were preferred in A.S.Nos.2 and 3 of 2013 against O.S.Nos.267 of 2008 and 281 of 2008 respectively. The appeals were also met with the same fate, resulting in the filing of the above second appeals Nos.403 and 404 of 2015.

8. S.A.No.403 of 2015 was admitted on the following substantial questions of law :

- (1) "Whether the Courts below erred in law in holding that the defendants failed to prove their vendors' title over the suit property when it is for the plaintiff to prove his vendors' title over the suit property and the plaintiff cannot succeed on the failure of the defendants to prove their case ?
- (2) Whether the courts below erred in law in holding that the survey number relied on by the plaintiff and the survey number relied on by the defendants relate to the suit property on mere surmises and conjecture without there being sufficient documentary evidence ?
- (3) Whether the judgment and decree passed by the courts below are sustainable in law when they have failed to consider and appreciate oral and documentary evidence in their proper perspective and based on their conclusions on mere surmises and conjectures ?"

9. S.A.No.404 of 2015 was admitted for determining the question as to "Whether the courts below erred in law in holding that the suit property purchased by the plaintiffs in S.No.78A/10 and the property purchased by the defendant in S.No.78/1B2-10 are one and the same and that the said two survey numbers related to the same property on the basis of Ex.B.7 letter issued by the Deputy Tahsildar, Cheyyar, without the said letter being proved by examining competent person from the office of Tahsildar ?" सत्यमेव जयते

10. The plaintiff claimed to be the purchaser of the property from one Kannan and Ramasamy on 05.01.1985 under Ex.A.1 and also on 06.12.1983 under Ex.A.5. In the written statement, the defendants have specifically stated that they have not claimed any right in the suit property. As the suit property in O.S.No.267 of 2008 is an extent of 0.30 cents in S.No.78A/1B2 in Vadamavanthal village, Cheyyar Taluk, they claimed to be the owners of 0.24 cents in Survey No.78A/10. As the survey numbers of the parties are different from each other, the defendants had stated that they have got no interest in the property situate in Survey No.78A/1B2. It appears that there is a confusion with respect to the identity of the property, as both plaintiff as

well as defendants claimed right to the same property by way of their respective sale deeds. Though the plaintiff has purchased 0.30 cents in survey No.78A/1B2, the defendants claimed to have purchased the property in Survey No.78A/10. Though survey numbers are different, both the parties are identifying the property, which is one and the same. The properties under Ex.A.1 and Ex.A.5 were purchased by the plaintiff from one Kannan and Ramasamy. The defendants seemed to have purchased the property under Ex.B.1 from one Muthammal, Ellammal and Dhanakotty.

11. Ramasamy and Kannan, who have sold the property to the plaintiff, are brothers and they are the sons of Arumugam. It is stated that Kannan, one of the vendors of the plaintiff, is, in fact, the father of the defendants 1 and 2. The property that was purchased by the plaintiff originally belonged to the family of Kannan and Ramasamy. Muthammal and Ellammal are the sisters of the said Kannan and Ramasamy. The defendants, who claimed to have purchased the property from Muthammal and Ellammal, have not stated as to how their vendors derived title and whether they had saleable right on the date of Ex.B.2. The trial court had placed reliance on the admission of D.W.1, who had stated that Survey No.78/1B2 stood converted into 78/1B2-10. The defendants had further deposed that during the lifetime of their grandfather, there was a division of the property. Ramasamy and Kannan were allotted 0.30 cents and Muthammal and Ellammal were allotted 0.31 cents orally.

12. In the plaint in O.S.No.281 of 2008 filed by the defendants, who are the appellants herein, as plaintiffs, they have not traced their title and there is no mention about the said oral partition. The plaintiff had placed his reliance on Ex.A.8, which is obtained under the Right to Information Act, wherein, it is stated that Survey No.78A/1B2 was renumbered as 78A/10. Therefore, the Courts below had rightly held that both Survey No.78A/10 and 78A/1B2 are one and the same and the survey mentioned by the plaintiff, i.e., Survey No.78A/1B2 was renumbered as Survey No.78A/10.

13. As mentioned earlier, the defendants had filed a suit only for permanent injunction and has not sought for declaration of the title. The defendants have not established how the said Muthammal and Ellammal derived title and whether they had right to sell the property. The oral partition relied on by them is also not supported by pleadings, much less any proof. The sale to the plaintiff is prior in point of time, whereas, Ex.B.1 came into existence only on 28.04.2008. If the property covered under Ex.B.1 is already sold and the defendants are in possession of the same, the vendors of the defendants, namely,

Muthammal and Ellammal, would have taken steps to cancel the sale deed in favour of the plaintiff. Even the revenue records are standing only in the name of Kannan and Ramasamy. Therefore, Ellammal and Muthammal could not have had any right in the said property to convey it to the defendants. As per Ex.A.8, it is found that the survey numbers mentioned in Ex.A.1 and A.5 and the survey number in Ex.B.5, though are different, but refer to the same property. As the plaintiff is the purchaser prior in point of time, the defendants could not have purchased the same from vendors, who were found to have no marketable title. Therefore, the claim of the defendants cannot be accepted.

14. The defendants also have filed C.M.P.No.19918 of 2016 for receiving additional documents, namely, the communication received under the Right to Information Act dated 29.05.2014 and the report of the Commissioner filed in O.S.No.138 of 2009 on the file of the Additional District Munsif Court, Cheyyar.

14.1. It is the case of the defendants in the said petition that there was another suit filed by them in O.S.No.138 of 2009 against the plaintiff/respondent, in which, a Commissioner was appointed to inspect the property and give a report. The Advocate Commissioner had inspected the suit property with the assistance of the Taluk Surveyor and filed a report, wherein, it is specifically mentioned that the survey No.78A/10 and 78A/1B2 are different lands. The documents, according to him, are vital to the case. Admittedly, the said suit itself is subsequent to the filing of the present suit and the document and the report of the Advocate Commissioner filed in another suit cannot be received in the present case, without the Commissioner being examined. Besides, in the absence of any amendment in the pleadings about the mentioning of the subsequent suit and the appellant having failed to take out a fresh application, the same cannot be admitted in evidence.

14.2. The other document is the information from the Deputy Tahsildar, Chennai, obtained on 27.05.2014 under the Right to Information Act. The said information only says that the patta for survey No.78A/10 is in the name of one Ramasamy. The second information is that the patta for survey No.78A/1B2 is a joint patta in the names of Subramani, Kasi Shanmugam, and Elumalai. The said information are not relevant and hence, this Court is of the view that CMP No.19918 of 2016 is liable to be rejected.

15. Accordingly, considering the fact that the defendants, who have filed only a suit for injunction and have not asked for the relief of declaration, the plaintiff in O.S.No.267 of 2008 had categorically established his title to the suit property and also the defendants had specifically expressed that they have

got no connection with the suit property, this Court is of the view that the Courts below had rightly decreed the suit.

16. The defendants/appellants, having failed to prove that their vendors had saleable right, who are none else than their paternal aunt, were rightly non-suited. The defendants/appellants also ought to have included the relief of declaration, when the title was disputed and denied. In this regard, the Hon'ble Apex Court in Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, (2008) 4 SCC 594, has held as follows :

"11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction."

17. Thus, the questions of law formulated are answered against the defendants/appellants.

18. In the result, the second appeals are dismissed confirming the judgment and decree of the courts below. No costs. Consequently, C.M.P.No.19918 of 2016 is dismissed. M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

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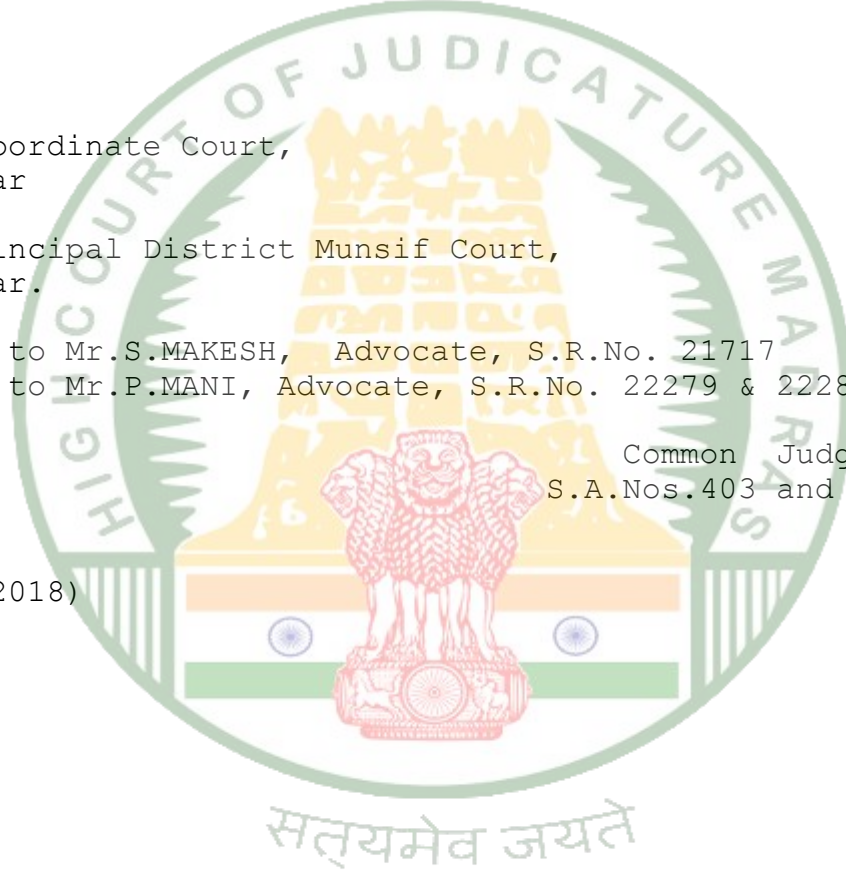
To

1. The Subordinate Court,
Cheyyar
2. The Principal District Munsif Court,
Cheyyar.

+1cc to Mr.S.MAKESH, Advocate, S.R.No. 21717
+2cc to Mr.P.MANI, Advocate, S.R.No. 22279 & 22280

Common Judgement in
S.A.Nos.403 and 404 of 2015

GJ(CO)
TR(18/05/2018)



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