

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.06.2018
PRONOUNCED ON : 06.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1417 of 2004

Chandran @ Chandrasekaran ... Appellant/Plaintiff

Vs.

Sekar ... Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 24.12.2003 made in A.S.No.75/2003 on the file of the District Judge, Nagapattinam, reversing the decree and judgment dated 28.07.2003 made in O.S. No.36/2001 on the file of the District Munsif, Nagapattinam.

For Appellant : Mr. M.V. Venkataseshan

For Respondent : Mr.Srinath Sridevan

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 24.12.2003 passed in A.S.No.75/2003, on the file of the District Court, Nagapattinam, reversing the judgment and decree dated 28.07.2003, passed in O.S. No.36/2001, on the file of the District Munsif Court, Nagapattinam.

2. The second appeal has been admitted on the following substantial questions of law:

(1) Whether the lower appellate Court is right in holding that Ex.B3 is hit by doctrine of lis pendens?

(2) Whether the lower appellate Court is right in holding that the so called purchaser should be deemed to be in possession, when overwhelming documentary evidence filed before trial

Court has proved the possession of the appellant and his family?

3. The suit has been laid by the plaintiff/appellant simpliciter for bare injunction. The plaintiff claims title to the suit property based upon Ex.A18, which is an agreement executed in favour of the plaintiff's mother Sundrambal by her sister Sornambal. On the materials placed, it is found that the parties are in unison that the suit property originally belonged to Sornambal and this could be evidenced from the documents marked as Exs.A1/B4. Accordingly, it is seen that Sornambal is the original title holder of the suit property. The plaintiff claims title to the suit property based upon the agreement dated 07.08.1948 marked as Ex.A18 which is alleged to have been executed in favour of his mother by Sornambal. Ex.A18 has been seriously challenged by the defendant tooth and nail. Despite the same, the plaintiff has not placed any acceptable and reliable material to evidence that Sornambal had indeed conveyed the suit property in favour of the plaintiff's mother Sundrambal by way of Ex.A18. As rightly determined by the first appellate Court, when from Ex.A18 the plaintiff has not made clear as to what is the sale consideration agreed to between the parties concerned and when the sale consideration should be parted with and further, when it is seen that the plaintiff has failed to establish that following Ex.A18 his mother had paid the sale consideration to Sornambal, it is seen that solely based upon Ex.A18 agreement, the plaintiff cannot claim any valid and legal title to the suit property. Though the plaintiff would aver that following Ex.A18 his mother had paid the sale consideration to Sornambal, with reference to the abovesaid claim of the plaintiff, there is no acceptable material forthcoming on the part of the plaintiff. The plaintiff has claimed in the plaint that following Ex.A18, his mother had acquired title to the suit property by parting with the sale consideration to Sornambal. However, during the course of evidence, it has been stated by the plaintiff that only on the permission granted by Sornambal, his mother had taken the possession of the suit property and enjoying the same and after his mother, it is the plaintiff, who had been enjoying the suit property on behalf of his sisters and brother through one Nagarajan. However, when on the basis of the materials placed, it is found that the defendant had acquired an agreement in respect of the suit property from the legal heirs of Sornambal marked as Ex.B1 and further, when it is seen that from Ex.B3 the suit property had been conveyed in favour of Pakirisamy by the power agent Muthuperumal of the legal heirs of Sornambal, it is seen that the suit property had been conveyed in favour of one Pakirisamy, by virtue of Ex.B3 and it is the claim of the defendant that the suit property had been conveyed in favour of Pakirisamy, his nominee, pursuant to the sale agreement marked as Ex.B1. Though it is contested by the plaintiff that Pakirisamy or for the matter, the defendant,

has not acquired title to the suit property from all the legal heirs of Sornambal, as rightly determined by the first appellate Court, the plaintiff being a stranger to the suit property is not entitled to question the same and the best person to challenge the same would be only the other legal heir of Sornambal who had not joined the execution of the sale deed marked as Ex.B3.

4. As rightly determined by the first appellate Court, the plaintiff's claim of title to the suit property has been stoutly challenged by the defendant. Despite the same, the plaintiff has not chosen to seek the relief of declaration in respect of the suit property. No reason has been adduced by the plaintiff for not seeking the relief of declaration. As rightly determined by the first appellate Court, when the plaintiff's claim of title to the suit property has been seriously contested by the defendant and the defendant has set up the title to the suit property in favour of Pakirisamy by virtue of Exs.B1 and B3, as rightly determined by the first appellate Court, the plaintiff should have endeavoured to seek the relief of declaration for upholding his claim of title, possession and enjoyment of the suit property as put forth in the plaint. However, the plaintiff has not taken any steps to seek the relief of declaration despite the defence raised by the defendant challenging the title of the plaintiff to the suit property. As above seen, though the plaintiff has claimed title to the suit property i.e., claimed that his mother had acquired title to the suit property by parting with the sale consideration to Sornambal, during the course of evidence, it has been admitted that the plaintiff's mother had been in the possession of the suit property only on the permission granted by Sornambal. However, when the said plea of the plaintiff has not been established by placing acceptable and reliable materials and the plaintiff having laid the suit simpliciter for bare injunction, as rightly determined by the first appellate Court, to sustain the plea of legal possession and enjoyment of the suit property for seeking the entitlement of the relief of permanent injunction, the plaintiff should establish that she is in actual physical possession of the suit property and that she has the right to be in the possession of the suit property as per law. However, when the plaintiff has failed to establish his mother's title to the suit property on the basis of Ex.A18 and as rightly determined by the first appellate Court, when the revenue documents projected by the plaintiff would not confer title to the suit property as claimed in the plaint and when it is found that the plaintiff by way of this suit is seeking the claim against the true owner of the suit property and further, when the plaintiff has not endeavoured to seek the relief of declaration, as rightly put forth by the respondent's counsel, the second appeal is found to be devoid of any question of law,

much less any substantial question of law to be adjudicated.

5. In the light of the above discussions, in my considered opinion, there is no substantial question of law involved in the second appeal. For the reasons aforesaid, the first appellate Court is justified in holding that the plaintiff has failed to establish his legal possession and enjoyment of the suit property based on Ex.A18 and accordingly, justified in negating the relief of permanent injunction sought for by the plaintiff. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff.

6. In view of the above reasons, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

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To

1. The District Judge,
Nagapattinam.
2. The District Munsif Court,
Nagapattinam.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.V.Venkatesan, Advocate SR.No.34936
+lcc to Mr.Srinath Sridevan, Advocate SR.No.35287

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KS(CO)
GN(02/07/2018)