

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2018

PRONOUNCED ON : 26.06.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No. 1881 of 2004

Sulochana

...Appellant/1st
Respondent/Plaintiff

Vs.

1. Manicka Mudaliar

2. The Executive Engineer
Tamil Nadu Electricity Board,
Arakandanallur.

3. The Assistant Engineer (Building)
Tamil Nadu Electricity Board,
Arakandanallur.

4. The Assistant Executive Engineer (O & M),
Tamil Nadu Electricity Board,
Thayagadurgham.

... Respondents/
Respondents 2 to 4
/Defendants 2 to 4

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Subordinate Judge, Kallakuruchi dated 26.02.2004 and made in A.S.No.76 of 2001 reversing the judgment and decree of the First Additional District Munsif of Kallakurichi dated 26.06.2001 and passed in O.S.No.497 of 1993 and prays to call for the records of the Subordinate Judge, Kallakurichi and set aside the decree and judgment dated 26.02.2004 and made in A.S.No.76 of 2001 and restore the decree and judgment dated 26.06.2001 of the First Additional District Munsif, Kallakurichi and passed in O.S.No.497 of 1993.

For Appellant : Mr.V.Bhiman

For RR1 : Mr.P.Dinesh Kumar
for M/s.Sarvabhauman Associates

For R2 to R4 : Mr.V.Viswanathan

J U D G M E N T

Challenge is made to the judgment and decree dated 26.02.2004 made in A.S.No.76 of 2001 on the file of the Subordinate Court, Kallakurichi, reversing the judgment and decree dated 26.06.2001 passed in O.S.No.497 of 1993 on the file of the Additional District Munsif Court, Kallakurichi.

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

3.Suit for permanent injunction and mandatory injunction.

4.The case of the plaintiff in brief is that the suit properties originally belonged to Mannangatti and the said Mannangatti entered into an agreement with the plaintiff for the sale of the suit properties in her favour for Rs.2000/- on 21.02.1988 and received an advance of Rs.1,100/- on the date of the sale agreement and agreed to receive the balance within three months and thereafter, the said Mannangatti evaded to execute the sale deed and complete the sale transaction, hence, the plaintiff filed a suit in O.S.No.482 of 1988 for specific performance and the said suit ended in an exparte decree in favour of the plaintiff on 28.04.1993 and the plaintiff also issued a notice to Mannangatty on 03.05.1988 and despite the same, he had evaded to execute the sale deed and the plaintiff has learnt that the first defendant had taken a sale deed from the said Mannangatty during the pendency of the abovesaid suit and the said sale is not binding on the plaintiff and on that basis, the first defendant seems to have raised some constructions in a portion of the suit properties and applied for the service connection of the same and in this connection, the plaintiff has issued notices to the defendants 2 to 4. As the plaintiff is entitled to the suit properties following the decree passed in O.S.No.482 of 1988 and inasmuch as the first defendant without any authority, is attempting to put up the construction in the suit properties and obtain the service connection to the same and also liable to pull down the construction put up by him, according to the plaintiff he has been necessitated to lay the suit for appropriate reliefs.

5.The case of the first defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts and the plaintiff is not having any right or possession in respect of the suit properties and the defendant is not a party to O.S.No.482 of 1988 and the said suit is filed only for specific performance against one Mannagatty and the plaintiff has suppressed the material facts in the said suit and the entire properties i.e., 0.43 cents including the suit properties, originally belonged to Periyar, Krishnan and Sanniyasi, each entitled to 1/3 share, accordingly, it is stated that Sanniyasi entitled only to 1/3 share and his wife, two sons including Mannagatty and one daughter are entitled to 1/4th share in the abovesaid 1/3 share. It is stated that the sale agreement projected by the plaintiff is a forged document and Mannagatty at the most would be entitled only to 1/12th share in the suit properties and according to the first defendant, he has purchased the entire properties of 0.43 cents including the suit properties from all the lawful owners, by way of a registered sale deed dated 03.07.1991 and the sale deed is valid in law and thereafter the defendant has put up a Mill in the properties purchased by him and obtained license from the authorities concerned and running the mill by obtaining service connection etc., and thus, it is only the first defendant, who has got title, right, possession and enjoyment of the entire properties of 0.43 cents including the suit properties and hence the suit laid by the plaintiff is not maintainable. The plaintiff is not in the possession of the suit properties and on that score alone, the plaintiff has to fail and the plaintiff is not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

6. The case of the defendants 2 to 4 in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. The defendants deny that the suit properties belong to Mannagatty and that the plaintiff entered into an agreement of sale with Mannagatty in respect of the suit properties. The defendants have no knowledge about the suit properties in O.S.No.482 of 1988 and accordingly the suit properties is not solely owned by Mannagatty and on the other hand, it is owned by 15 persons including Mannagatty and that the first defendant had purchased the suit properties from the above 15 persons in the year 1991 and put up construction and after getting the approval from Panchayat, the first defendant applied for service connection and the service connection had been effected on 23.07.1993 as S.C.237 and hence according to them, the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A8 were marked. On the side of the defendants,

D.Ws.1 to and 2 were examined. Exs.B1 to B 68 were marked. Exs.C1 to C4 were also marked.

8. 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 as prayed for. On Appeal, the first appellate court on an appreciation of the materials placed on record, set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the first defendant, dismissed the plaintiff's suit. Impugning the same, the present Second Appeal has been laid.

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

- (i) Whether the lower appellate Court was right in reversing the well considered judgment of the trial court?
- (ii) Whether the lower appellate Court was right in holding that the sale deed in O.S.No.482 of 1988 against Mannangatti can be held against him in the absence of any appeal filed against the said decree?
- (iii) Whether the lower appellate court is right in discussing the validity of Ex.A1 after a period of 6 years.
- (iv) Whether the lower appellate court is right in granting the injunction in the absence of possession by the respondents?

10. The plaintiff lays claim to the suit properties on the footing that the same originally belonged to Mannangatty and that she had entered into an agreement of sale with the said Mannangatty on 21.02.1988 for Rs.2,000/- and paid a sum of Rs.1100/- on the date of the sale agreement and as the said Mannagatty evaded to complete the sale transaction, it is the case of the plaintiff that she had instituted a suit against the said Mannangatty in O.S.No.482 of 1988 and obtained a decree and thus it is stated that the plaintiff has title, possession and enjoyment of the suit properties.

11. The abovesaid case of the plaintiff has been stoutly disputed by the defendants and according to the first defendant in particular, the entire properties measuring 0.43 cents inclusive of the suit properties belonged to 15 persons and according to the first defendant, he has obtained the transfer of the said properties from the abovesaid 15 persons on 03.07.1991 and accordingly put up the construction and running a mill therein, by obtaining license, service connection etc., and therefore it is contended that the plaintiff is not

entitled to obtain the reliefs as sought for. The defendants 2 to 4 also had sailed with the case of the first defendant and sought for the dismissal of the plaintiff's suit.

12. The case of the plaintiff that the suit properties originally belonged to Mannangatti is strongly disputed by the defendants. Despite the above defence projected by the defendants, it is found that the plaintiff has not placed any acceptable and reliable material to hold that Mannangatty had a valid title to the suit properties. The materials placed on record go to show that, as determined by the first appellate court, the properties measuring 0.43 cents inclusive of the suit properties belonged to three persons namely Periyar, Krishnan and Sanniyasi and it is found that Mannangatty is one of the heirs of Sanniyasi and thus it is found that at the most, Mannangatty would be entitled only to 1/12 share in the suit properties. In this connection, the first appellate court had relied upon the various documents projected by the defendants and come to the conclusion that the suit properties were owned by several persons as projected by the first defendant and accordingly, it is found that the plaintiff has failed to place any material to hold that the suit properties exclusively belonged to Mannangatty.

13. On a perusal of the description of the suit properties, it is found that the same are only undivided portions in the total extent and therefore the case of the plaintiff that she had obtained the possession of the suit properties pursuant to the decree obtained by her in O.S.No.482 of 1988 as such cannot be readily accepted. Though, in this connection, the plaintiff would rely upon Exs.A3 and A4, however considering the fact that the suit properties are only undivided portions, as rightly held by the first appellate court, the actual physical delivery of the suit properties to the plaintiff pursuant to Ex.A4 being impossible, it is seen that the plaintiff's present suit that she had obtained the possession of the suit properties pursuant to Exs.A3 and A4 cannot be readily accepted. The determination of the first appellate court that the plaintiff has failed to establish her alleged possession and enjoyment of the suit properties, does not call for any interference.

14. As above stated, the first appellate court, on an appreciation of the materials projected by the defendants has rightly come to the conclusion that the suit properties do not exclusively belong to Mannangatti. Accordingly, it is found that it is only the first defendant, who had obtained the sale deed in respect of the suit properties from all the persons

entitled thereto and accordingly, it is seen that the first defendant had put up a Mill in the suit properties and obtained the license from the authorities concerned in respect of the same and also obtained the service connection for running the Mill and with reference to the same, voluminous documents had been projected by the first defendant to establish that he had already effected the service connection in respect of the suit properties i.e., the Mill erected therein and accordingly, it is found that as rightly determined by the first appellate court, the reliefs of permanent injunction sought for by the plaintiff had become infructuous.

15. It is mainly contended by the plaintiff's counsel that the title deed of the first defendant dated 03.07.1991 has come into existence during the pendency of O.S.No.482 of 1988 and therefore, it is stated that the abovesaid sale deed is hit by the Principle of lis pendens and hence the first defendant cannot be allowed to challenge the title of the plaintiff in respect of the suit properties and further, it is contended that the first defendant cannot be allowed to resist the plaintiff's action without taking steps to set aside the decree passed in O.S.No.482 of 1988. However, as discussed and determined by the first appellate court, when the first defendant has thrown a challenge to the claim of title of Mannangatti in respect of the suit properties as projected by the plaintiff and when the plaintiff has not placed any material as such to hold that Mannangatti has exclusive title to the suit properties and entitled to enter into an agreement with the plaintiff in respect of the same and when the materials placed on record go to show that 15 persons had title to the suit properties inclusive of Mannangatti and when it is further seen that Mannangatti only owns title to a fraction of the suit properties i.e., 1/12th share and accordingly, it is found that Mannangatti cannot defend and also had not evinced interest to contest the suit in O.S.No.482 of 1988 and when it is seen that the decree passed in O.S.No.482 of 1988 is only an exparte decree and considering the materials placed on record, it is found that the plaintiff and Mannangatti had collusively joined together and brought about the sale agreement dated 21.02.1988 and accordingly, Mannangatti had not chosen to contest the suit in O.S.No.482 of 1988 and left it go exparte, it is found that on the footing that the decree had been granted in favour of the plaintiff in the abovesaid suit, on that score alone, we cannot come to the conclusion that the plaintiff has got a valid title to the suit properties as such. When the plaintiff has miserably failed to establish her vendor's alleged title to the suit properties, it is found that the case of the plaintiff goes out and therefore the plaintiff cannot be allowed to contend that she has secured a valid decree in O.S.No.482 of 1988 on the

strength of the agreement dated 21.02.1988. In such view of the matter, the failure of the first defendant in not taking steps to set aside the exparte decree passed in O.S.No.482 of 1988, in my considered opinion, on facts, would not in any manner affect the case of the first defendant. Equally, it is found that when Mannangatti is not shown to be entitled to the suit properties wholly and when the alleged sale agreement dated 21.01.1988, said to be executed by Mannangatti is not shown to be a valid document and when prima facie, it is seen that the decree obtained by the plaintiff in O.S.No.482 of 1988 is a collusive decree as above discussed, it is found that the sale deed of the first defendant dated 03.07.1991 would not in any manner be affected by the decree obtained by the plaintiff in O.S.No.482 of 1988 and thus it is seen that the first appellate court is justified in holding that the first defendant's sale deed is not affected by the principle of lis pendens.

16. To cap to all, It is found that the plaintiff cannot be allowed to lay this suit on the strength of the decree obtained by her in O.S.No.482 of 1988 in respect of the suit properties. It is found that in the present suit, the suit properties are described to be located to the east of Pukulam colony road and to the south of Pottu Kannan's land. It is thus found that as per the plaint schedule, Pukulam colony road is the western boundary of the suit properties. Moreover, it is found that the properties involved in O.S.No.482 of 1988 as described in Exs.A1, A2 sale agreement, Ex.A3 sale deed and Ex.A4 delivery receipt, it is found that the properties described therein are situated to the east of Pukulam Colony Road. Thus, it is found that when the plaintiff had obtained the decree in respect of the suit properties situated to the east of Pukulam Colony Road and whereas in the present suit, the suit properties are actually found to be located to the west of Pukulam Colony Road as seen from the Commissioner's report and plan marked as Exs.C1 and C2, and therefore has rightly held by the first appellate court, the plaintiff has not even identified the location of the properties before venturing into the agreement of sale with Mannangatti and accordingly, it is found that unable to correlate the suit properties with that of the actual lie of the suit properties on ground as depicted in Exs.C1 and C2 and on that basis also, it is found that the plaintiff would not have obtained the possession of the suit properties pursuant to the decree obtained by her in O.S.No.482 of 1988 as contended by her.

17. The plaintiff has sought for the relief of mandatory injunction. However, when the plaintiff's claim of title to the suit properties is being seriously contested by the first

defendant and when the plaintiff is not at all found to be in possession of the suit properties as put forth by her and the suit properties being only undivided shares and the plaintiff also have been not established that Mannangatti has exclusive title to the suit properties as pleaded and on the other hand, it is found that the suit properties were owned by several persons, accordingly, it is found that the plaintiff should have sought for the relief of declaration of title in respect of the suit properties and the plaintiff failure to secure the relief of declaration of title also would be fatal to the plaintiff's case.

18. For the foregoing reasons, first appellate court is right in holding that the plaintiff cannot lay a valid claim of title to the suit properties pursuant to the decree obtained in O.S.No.482 of 1988, considering the position that the plaintiff has failed to establish that Mannangatti has exclusive title to the suit properties as projected by her and accordingly the first appellate court is right in discussing the validity on Ex.A1 decree obtained by the plaintiff and holding that the same by itself would not confer a valid title in respect of the suit properties and further, the first appellate court is also found to be right in not granting the reliefs prayed for by the plaintiff, when it is found that the first defendant has been in the settled possession and enjoyment of the suit properties by putting up a mill and obtaining service connection etc., and accordingly the plaintiff in the absence of establishing her claim of valid title to the suit properties, the first appellate court is justified in non suiting the plaintiff on all counts. Thus it is found that the first appellate court was right in reversing the judgment and decree of the trial court wholly and the substantial questions of law formulated in the second appeal are accordingly answered against of the plaintiff.

19. In this connection, the plaintiff's counsel in support of his contentions placed reliance upon the decision reported in (2017) 6 CTC 187 [Vijay Singh Vs. Shanti Devi and another] and on the other hand, the counsel appearing for the first defendant in support of his contentions placed reliance upon the decisions reported in

(i) MANU/TN/0298/2018 [R.Padmanabhan Vs.K.Shanmugam]

(ii) 2017 (3) SCC 702 [Executive Officer, Arul mugu Chokkanatha Swamy Koil Trust, Virudhunagar Vs. Chandran and others]

(iii) MANU/TN/0296/2018 [Duraikannu Vs. Sankar and Others]

The principles of law outlined in the abovesaid decisions are

taken into consideration and followed as applicable to the facts and circumstances of the present case.

20. In conclusion, the Second Appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Sub Court,
Kallakuruchi.
2. The First Additional District Munsif,
First Additional District Munsif Court,
Kallakuruchi.
3. The Executive Engineer
Tamil Nadu Electricity Board,
Arakandanallur.
4. The Assistant Engineer (Building)
Tamil Nadu Electricity Board,
Arakandanallur.
5. The Assistant Executive Engineer (O & M),
Tamil Nadu Electricity Board,
Thayagadurgham.
6. The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.V.Bhiman, Advocate, S.R.No.40543
+1cc to Mr.P.Dinesh Kumar, Advocate, S.R.No.40485
+1cc to Mr.V.Viswanathan, Advocate, S.R.No.40160

S.A.No.1881 of 2004

SVI (Co)
CS/23/07/18