

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2018

PRONOUNCED ON : 19.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1994 of 2004

Marimuthu ... Appellant/Plaintiff

Vs.

Narayanan ... Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 28.01.2004 made in A.S.No.14 of 2003 on the file of the Principal District Judge, Salem confirming the judgment and decree dated 30.10.2002 made in O.S. No.372 of 2000 on the file of the I Additional District Munsif Court, Salem.

For Appellant : Ms. Zeenath Begum

For Respondent : No appearance

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.01.2004, passed in A.S.No.14 of 2003, on the file of the Principal District Court, Salem, confirming the judgment and decree dated 30.10.2002, passed in O.S. No.372 of 2000, on the file of the I Additional District Munsif Court, Salem.

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

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that in respect of the suit property, the defendant had executed an agreement of sale in favour of his mother on 17.09.78 for a sum of Rs.1,250/-

and on the date of the sale agreement, the suit property was put in the possession of his mother and it is only the plaintiff and his mother, who has been in possession and enjoyment of the suit property thencefrom. The defendant is not entitled to any title, possession and enjoyment of the suit property. The plaintiff's mother had died about 1 ½ years ago and the adangal extract stands in the name of the plaintiff and it is only the plaintiff who has been paying kist in respect of the suit property and enjoying the same and after the demise of the plaintiff's mother, the defendant with an ulterior motive attempted to interfere with the plaintiff's possession and enjoyment of the suit property with a view to grab the same and in this connection, the plaintiff has also filed a caveat petition in the Court and despite the same, the defendant persisted in his acts to interfere and grab the suit property of the plaintiff with the help of his henchmen and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. There was no agreement of sale in favour of the plaintiff's mother by the defendant as regards the suit property on 17.09.78 as alleged in the plaint and the abovesaid agreement has been created by the plaintiff by committing forgery and the defendant never entrusted the possession of the suit property to the plaintiff's mother and the suit property continued to be only in the possession and enjoyment of the defendant and the suit property is a poramboke land and the adangal stands in the name of the defendant and it is the defendant who is paying kist to the Government and neither the plaintiff's mother nor the plaintiff has ever been in the possession and enjoyment of the suit property, as alleged in the plaint and the case of the plaintiff that the defendant is attempting to interfere with the possession and enjoyment of the suit property and grab the same illegally is false and there is no cause of action for the suit, as the plaintiff is not in possession and enjoyment of the suit property at any point of time and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 to 3 were examined, Exs.A1 to A8 were marked. On the side of the defendant, DWs 1 and 2 were examined, Exs.B1 to B6 were 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 dismiss the suit laid by the plaintiff. In the first appeal preferred by the plaintiff, in support of the plaintiff's case, an additional document has come to be marked as Ex.A9. The first appellate Court, on an appreciation of the materials placed on record, was pleased to

confirm the judgment and decree of the trial Court. Aggrieved over the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

"Whether the judgment of the lower appellate Court is vitiated in that having accepted the plaintiff's document Ex.A1 evidencing transfer of possession, it has thereafter refused to grant the relief of injunction to protect his possession?"

9. The plaintiff claims that the defendant had executed an agreement of sale in respect of the suit property in favour of his mother on 17.09.78 for a sum of Rs.1,250/- and thereby, the defendant had inducted his mother into the possession of the suit property and on that basis, it is contended by the plaintiff that the suit property has been in the possession and enjoyment of his mother and after the demise of his mother, it is only the plaintiff, who has been enjoying the suit property by paying kist etc., and inasmuch as the defendant without any authority interfered with the possession and enjoyment, with a view to grab the suit property from him forcibly, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

10. The plea of the sale agreement projected by the plaintiff in respect of the suit property as having been executed by the defendant in favour of the plaintiff's mother has been stoutly denied by the defendant in the written statement and according to the defendant, the abovesaid sale agreement is a forged document and the defendant has never put the plaintiff's mother into the possession of the suit property, pursuant to the alleged agreement of sale as claimed in the plaint and according to the defendant, he continued to be in the possession and enjoyment of the suit property which is a poramboke land and hence, according to the defendant, the plaintiff has never been in possession and enjoyment of the suit property at any point of time and hence, there is no question of the defendant interfering with the possession and enjoyment of the suit property as alleged in the plaint and hence, it is contended by the defendant that the suit is liable to be dismissed as devoid of any valid cause of action.

11. Materials placed on record go to show that the suit property is only a poramboke land and it is found that Government is the owner of the suit property. Such being the position, the case of the plaintiff that the defendant had executed a sale agreement in respect of the suit property in favour of his mother, agreeing to convey the same for a sum of Rs.1,250/- as such does not merit acceptance. When the

defendant himself has no valid title to the suit property as such, the case of the plaintiff that the defendant had agreed to convey the title of the suit property in favour of his mother by way of the sale agreement marked as Ex.A1 does not merit scrutiny as per law. Accordingly, it is seen that, though the first appellate Court has come to the conclusion that Ex.A1 has been established to have been executed by the defendant in favour of the plaintiff's mother, on the basis of the materials placed on record, still, as rightly determined by the first appellate Court, the legal validity of Ex.A1 is at stake and it is thus found that based on Ex.A1, the plaintiff cannot lay any valid possession and enjoyment of the suit property as such and thus, it is found that the plaintiff's case based on Ex.A1 sale agreement is unsustainable in the eyes of law.

12. As per the case of the plaintiff, it is found that prior to the sale agreement Ex.A1, it is the defendant, who has been in possession and enjoyment of the suit property i.e., poramboke land. According to the plaintiff, the defendant has put his mother in the suit property pursuant to the agreement of sale. Per contra, it is the defence of the defendant that he continued to be in the possession of the suit property and never parted with the possession of the same to the plaintiff's mother under Ex.A1. It is the contention of the defendant that Ex.A1 is a forged document. Be that as it may, it has to be seen whether the plaintiff has established his claim of possession and enjoyment of the suit property as put forth in the plaint.

13. In this connection, as analysed by the first appellate Court, it is found that the document Ex.A2 adangal extract cannot be relied upon, as it is found to be issued by an incompetent person. Further, as seen from the kist receipts marked by the plaintiff marked as Exs.A3 and A9, as rightly determined by the first appellate Court, they seem to be of recent origin just prior to the institution of the suit i.e., emanating from 1999 only and on the other hand, as seen from the documents of possession projected by the defendant marked as Exs.B1 and B2, it is found that they range from faslis 1402 to 1409 and it is found that the defendant has been paying the kist in respect of the suit property right from the year 1974 to 2001 continuously and it is thus found that even after the alleged sale agreement had come into existence during 1978, the defendant continued to pay the kist in respect of the suit property and also produced the adangal extract to evidence that it is he who remains in the possession and enjoyment of the suit property for several faslis prior to the institution of the suit and in such view of the matter, as rightly determined by the first appellate Court, the defendant has established his long and continuous possession of the suit property for several years and accordingly, when it is found that Ex.A1 has no legal validity for upholding the plaintiff's claim of possession and

enjoyment of the suit property. As such, the Courts below are found to be justified in not acceding to the plaintiff's claim of possession and enjoyment and accordingly, upholding the claim of possession and enjoyment of the suit property as projected by the defendant. I do not find any reason to dislodge the abovesaid well considered reasonings and conclusions of the Courts below for upholding the defence version as regards the possession and enjoyment of the suit property and for the reasons aforesated, the substantial question of law formulated in the second appeal is answered against the plaintiff and in favour of the defendant.

14. For the reasons aforesated, the second appeal fails and is accordingly dismissed. No 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 Principal District Judge, Salem.
2. The I Additional District Munsif Court, Salem.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

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+lcc to Mr.S.Krishnamoorthy, Advocate sr.no.38365

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