

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.08.2018
PRONOUNCED ON : 28.08 .2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2042 of 2004

1. Deivanayagam
2. Janakiraman
3. Vasudevan
4. Mangalakshmi Ammal
5. Narayanasamy

...Appellants /Defendants 3 to 7

Vs.

Ramasamy Gounder

.... Respondent /Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 14.02.2003 passed in A.S.No.32 of 1992 on the file of the Principal Subordinate Court, Tindivanam, reversing the judgment and decree dated 25.02.1992 passed in O.S. No.58 of 1981, on the file of District Munsif Court, Gingee.

For Appellants : Mr. N.Maninarayanan

For Respondent : Mr.B.Soundarapandiyan

JUDGMENT

In this second appeal challenge is made to the judgment and decree dated 14.02.2003 passed in A.S.No.32 of 1992 on the file of the Principal Subordinate Court, Tindivanam, reversing the judgment and decree dated 25.02.1992 passed in O.S. No.58 of 1981, on the file of District Munsif Court, Gingee.

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

- 1) Whether the lower appellate court is legally right for placing the burden on this appellant when he is found to be in possession?
- 2) Whether the lower appellate court is legally right in upholding the claim of plaintiff on

the basis of Exs.A.5 and A.2?"

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

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

5. The suit has been laid by the plaintiff for the reliefs of declaration and possession.

6. The suit property has been described as covering an extent of 0.33 cents of land with half right in the well and other irrigating rights from the said well and it is seen that the abovesaid land lying in survey No.25/2A1 is stated to be lying within the specific boundaries and it is further described, in partiticular, that the suit property is lying to the south of 32 cents land purchased by the defendants from Gopal Gounder and others.

7. The materials placed on record go to show that the total extent of 1 acre and 98 cents in Survey No. 25/2A1, originally belonged to Narasimhachari and he had alienated the same in favour of Gopal Gounder by way of a sale deed dated 03.10.1938, the copy of which document has come to be marked as Ex.A11. It is found that out of 1.98 acres of land purchased by way of Ex.A11, Gopal Gounder had alienated 1.33 acres of land in the abovesaid survey number to one Kuppusamy Gounder by way of a sale deed dated 07.07.1958, the certified copy of the same has come to be marked as Ex.A1. On a perusal of Ex.A1, it is found that the above 1.33 acre covered under the said sale deed is lying to the south of the remaining extent of land owned by Gopal Gounder in the abovesaid survey number and accordingly described therein. It is further seen that Gopal Gounder and his son Panduranga Gounder had alienated an extent of 0.33 cents of land, which is the suit property including the half right in the well and other allied rights of irrigating the well water, etc., to one Narayanasamy Gounder by way of a sale deed dated 14.04.1959, the certified copy of the same has been marked as Ex.A2 and therein, the above extent of 0.33 cents of land had been described as lying to the south of remaining extent of land owned by Gopala Gounder in the abovesaid suit survey number. Thus, it is found that by way of Ex.A1 and A2, Gopala Gounder had alienated a total extent of 1.66 acres of land out of 1.98 acres of land in the abovesaid survey number acquired by him by way of Ex.A11. Thus, it is found that he would be only owning 32 cents of land in the abovesaid survey number and by way of a sale deed dated 02.11.1959, the copy of which is marked as Ex.A3 and the original of which has been marked as Ex.B2, Gopala Gounder had alienated the said extent of 32 cents of land to the

defendant and in Ex.B2, the lie of the property is shown to be located to the north of the Narayanasamy Gounder land, i.e. the land acquired by Narayanasamy Gounder under Ex.A2. No well right is found to have been conveyed under Ex.A3/B2 in favour of the defendant. Further, it is noted that, by way of Ex.A4 sale deed dated 27.06.1966, one Vasudeva Gounder has purchased an extent of 1.66 acres including the half right in the well with other allied rights of irrigating of well water and thereafter, Vasudeva Gounder had alienated the abovesaid extent of 1.66 acres of land within the specific boundaries to the plaintiff by way of a sale deed dated 19.08.1974, marked as Ex.A5. A perusal of Ex.A5 would go to show that the plaintiff had acquired the suit property inclusive of half right in the well and other rights of irrigating the well water as described in the said document. Thus, it is the case of the plaintiff that he has come to have acquired the suit property from his predecessors in title as above detailed.

8. Further, it is stated by the plaintiff that taking advantage of his absence, he, being the driver of the Government Transport Corporation, the defendant effected encroachment into the suit property and in as much as refused to deliver the possession of the encroached property i.e. the suit property to the plaintiff, despite the issue of notice, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

9. The defendant has a set up title to the suit property on himself on two grounds, i.e., the defendant would state that he had acquired 32 cents of land by way of Ex.A3/B2 from Panduranga Gounder, Son of Gopala Gounder and further he would claim that he had purchased 33 cents of land in the abovesaid suit survey number by way of oral sale and accordingly claimed title to a total extent of 65 cents of land in the abovesaid survey number and thereby resisted the plaintiff's suit for recovery of possession of the suit property on the footing that he is only in the possession and enjoyment of suit property in his own right and also perfected the title to the suit property by way of adverse possession on account of long and continuous enjoyment and therefore sought for the dismissal of the plaintiff suit.

10. When it is not in dispute that Gopala Gounder originally acquired the total extent of 1.98 acres of land in the suit survey number under Ex.A11 and following the same, he had alienated 1.66 acres of land by way of Exs.A1 and A2 sale deeds as above described and thereby when it is further seen that by way of Ex.A5 sale deed, the plaintiff had purchased the abovesaid 1.66 acres of land in the suit survey number inclusive of half right in the well and other allied rights and when

thereafter Gopala Gounder would be owning right in the suit survey number only to an extent of 32 cents of land and when the abovesaid 32 cents of land had been alienated in favour of the defendant by way of Ex.A3/B2 sale deed and when the defendant claims title to the suit property, i.e. 33 cents of land by way of an oral sale, it is found that as rightly determined by the first appellate court, it is for the defendant to establish his claim of title to the suit property as put forth by him by way of an oral sale.

11. When, in the light of the above factual position and as above described, the suit property had been sold to Narayasamy Gounder even prior to the alleged oral sale put forth by the defendant by way of Ex.A2 sale deed by Gopala Gounder and when even prior to the same, Gopala Gounder had alienated the 1.33 acres of land in the suit survey number to Kuppusamy Gounder and when it is found that 33 cents of land is lying to the north of 1.33 acre of land and the remaining extent of 32 cents of land lying further north in the suit survey number, i.e., north of 33 cents of land and when Gopala Gounder's family, after Exs.A1 and A2 sale deeds, is found to have been only owning 32 cents of land in suit survey number and when the same had been alienated to the defendant by way of Ex.A3/B2 sale deed, it is found that as rightly determined by the first appellate court, taking advantage of the sub divisions effected and common patta issued in favour of the persons, who own the abovesaid extents of land in the suit survey number and when it is seen that the suit survey number had been subsequently sub divided as 25/2A-1A, 25/2A-1B , 25/2A-1C and 25/2A-1D and accordingly joint patta had been issued in favour of the plaintiff as well as the defendant and when the suit survey number totally consists of 1.98 acres of land and when the said total extent had been alienated by the original owner as above detailed, as rightly found by the first appellate court, the defendant seems to be claiming title to the suit property by taking advantage of the joint patta on the footing that he has acquired the same by way of an oral sale. However, when the plea of oral sale projected by the defendant has not been established, particularly, as to when the same has taken place and whether his vendor had the entitlement to sell the same to the defendant and when from the inception, the properties comprised in suit survey number had been alienated within specific boundaries as above detailed, it is seen that the plaintiff having acquired the total extent of 1.66 acres of land in the suit survey number under Ex.A5 and other than the joint patta, the defendant is unable to place any other material to seek the claim of valid title to the suit property as described in the plaint and accordingly, it is found that the trial court seems to have accepted the defendant's version based on the commissioner's report and plan and when the reasoning of the trial court that the plaintiff is found to be in more extent

of land than what he had acquired and on the other hand, as rightly argued, when the plaintiff has placed the title deeds in respect of the properties inclusive of the suit property from the lawful owners, it is seen that on the contra, the defendant basing his claim only upon the oral sale, which fact has not been established in any manner, in all, the first appellate court on an appreciation of the materials, both oral and documentary in the right perspective, accordingly and rightly held that the defendant had encroached into the suit property by taking advantage of the plaintiff's absence and in such view of the matter rightly held that it is only the plaintiff who has title to the suit property and also entitled to recover the possession of the same from the defendant and accordingly by setting aside the judgment and decree of the trial court, granted the reliefs in favour of the plaintiff. In such view of the matter, no interference is called for in the reasonings and conclusions of the first appellate court for upholding the plaintiff case. As regards the claim of adverse title projected by the defendants, the same cannot be upheld sans any acceptable and reliable material pointing to the same.

12. In the light of the above discussion, in my considered opinion, no substantial question of law is found to be involved in the second appeal and the matter is only centering on the appreciation of the factual aspects projected by the parties through various documents of title and accordingly when it is found as per the projected materials, it is only the plaintiff who has title to the suit property based upon Ex.A5 and the plaintiff having traced his title from his predecessors in title as above discussed and when the defendant has failed to establish his claim of title to the suit property as above pointed out, all the substantial questions of law formulated in this second appeal are accordingly answered against the defendants and in favour of the plaintiff.

13. In conclusion, 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

bga

To

1. The Principal Subordinate Court,
Tindivanam,

2. The District Munsif Court,
Gingee.

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

+1cc to Mr.N.Mani Narayanan, Advocate, S.R.No.59593

+1cc to Mr.B.Soundarapandian, Advocate, S.R.No.58622

S. A.No.2042 of 2004

KGK (CO)
GSP (23/10/2018)



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