

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2018

PRONOUNCED ON : 19.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2199 of 2004

Jothi ... Appellant/defendant

Vs.

Mohanamambal ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Additional District Judge, Fast Track Court No.I, Tindivanam dated 23.10.2002 and made in A.S.No.107 of 2002 confirming the judgment and decree of the Additional District Munsif, District Munsif Court, Tindivanam dated 27.11.1998 and made in O.S.No.646 of 1993.

For Appellant : Mr.T.Thirumandhiram, for
Mr.T.D.Vasu

For Respondent : Ms.R.V.Gayathri
for M/s. P.B.Ramanujam

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 23.10.2002, passed in A.S.No.107 of 2002, on the file of the Additional District Judge, Fast Track Court No.I, Tindivanam, confirming the judgment and decree dated 27.11.1998, passed in O.S.No.646 of 1993, on the file of the Additional District Munsif Court, Tindivanam.

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

"Whether the courts below are right in decreeing the suit for declaration when inasmuch as the appellant proved his title by virtue of sale deed dated 27.10.1992 which has been marked as Exhibit B3 and the same is

much earlier to Exhibit A1?"

3. Considering the scope of issues 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. The suit has been laid by the respondent against the appellant for the reliefs of declaration and permanent injunction.

5. The respondent claims title to the suit property on the strength of the sale deed dated 01.02.93, marked as Ex.A1, executed by Samikannu and Nagarathinam, whereas, the appellant claims title to the suit property based on the sale deed dated 27.10.92, the copy of which has been marked as Ex.B3 said to be executed by Samikannu and his sons, namely, Arumugham, Varadharaju and Nagarathinam. It is not in dispute that that an extent of 1.26 acres in survey No.272/2 of the suit village belonged originally to Samikannu and his three sons as their joint family property. It is found that by way of the sale deed dated 23.09.91 and the sale deed dated 03.02.1992, the appellant had purchased an extent of 35 cents and 10 cents respectively in the suit survey number and thus, it is seen that, in toto, the appellant has title to 45 cents in the suit survey number. The sale deed date 03.02.1992 has come to be marked as Ex.B7 in the first appellate Court.

6. According to the respondent, Samikannu and his sons orally partitioned the remaining properties belonging to them and thereafter, it is stated that the suit property had come to be allotted to Nagarathinam and accordingly, it is the case of the respondent that Nagarathinam executed a sale deed in his favour in respect of the suit property by way of Ex.A1 sale deed and it is his further case that Samikannu also joined in the execution of the same and thus, the respondent claims title to the suit property. Whereas, the appellant impugning the validity of Ex.A1 sale deed contending that no partition had been effected between Samikannu and his sons as put forth by the respondent, it is his contention that by way of a sale deed dated 27.10.92, Samikannu and his sons had alienated the remaining extent in the suit survey number in his favour. Thus, it is only the appellant who has title to the suit property.

7. On a perusal of Ex.A1, it is found that, as determined by the Courts below, there are clear recitals contained therein that the extent in the suit survey number had been divided amongst the family members of Samikannu and the suit property had come to be allotted to Nagarathinam. Accordingly, it is found that Nagarathinam along with his father had joined in the

sale of the suit property in favour of the respondent under Ex.A1 and while describing the suit property, it has been specifically stated to be located to the west of the share allotted to Arumugham, son of Samikannu. In addition to that, the other two sons of Samikannu, namely, Arumugham and Varadharaju had signed as attestors in Ex.A1. Thus, it is found that inasmuch as the extent in the suit survey number had been orally divided between Samikannu and his three sons and accordingly, it is found that the suit property having come to be allotted to Nagarathinam, Nagarathinam along with his father had executed Ex.A1 sale deed in favour of the respondent and the said sale deed had been attested by the other two sons of Samikannu.

8. Even though the appellant would dispute the oral partition amongst Samikannu and his sons, as above seen, the respondent has purchased 10 cents of land in the suit survey number by way of Ex.B7 sale deed marked in the first appellate Court and as could be seen from the recitals found in Ex.B7, it is found that the same had come to be executed by one Varadharaju and Samikannu and not by the other two sons of Samikannu. If really the suit property had jointly belonged to Samikannu and his three sons, on the date of Ex.B7 sale deed, all the members of the family would have joined the execution of Ex.B7 sale deed and on the other hand, when it is found that Ex.B7 has come to be executed by Varadharaju along with his father Samikannu, as rightly held by the Courts below, inasmuch as after Ex.B1 sale deed, the remaining extent in the suit survey number had come to be orally divided between Samikannu and his three sons, accordingly, it is seen that one of the sons, Varadharaju had conveyed 10 cents of land in favour of the appellant and the other son Nagarathinam had alienated the suit property allotted in his favour, along with his father, by way of Ex.A1 sale deed, in favour of the respondent. The abovesaid document by themselves would go to expose that the remaining extent in the suit survey number has not remained joint in the family of Samikannu on the date of Ex.B7 sale deed and as rightly determined by the Courts below, after Ex.B1, the property of the joint family had come to be orally divided and accordingly, the sharers had proceeded to alienate their shares to third parties and accordingly, it is seen that the appellant is unable to place any material to show that Samikannu and his family members had remained joint so as to entitle them to sell the suit property to him by way of the sale deed dated 27.10.1992.

9. As aboveseen, when Ex.A1 is found to be attested by the other two sons of Samikannu and accordingly, on that basis also, it is found that the members of Samikannu family had effected

oral partition of their properties and accordingly, there is no material placed by the appellant to evidence that Samikannu and his three sons had owned any extent jointly in the suit survey number as put forth by him. Further, the appellant claiming title to the suit property by way of sale deed dated 27.10.1992, in the light of the abovesaid factors, has to establish that Samikannu and his three sons had remained joint on the date of the abovesaid sale deed. When from Ex.A1 and Ex.B7 it is found that Samikannu and his sons had already become divided members and in such view of the matter, the appellant has failed to establish his vendors title to the suit property as such on the alleged date of the sale deed marked as Ex.B3.

10. The title deed under which the respondent claims title to the suit property marked as Ex.A1 is found to have been registered on the same date. Now, according to the respondent, with a view to grab the suit property from him, the appellant had fabricated the sale deed dated 27.10.1992 and appear to have created the abovesaid sale deed in collusion with Samikannu and his three sons and therefore, it is his case that on the strength of Ex.B3 sale deed, the appellant is not entitled to claim title to the suit property as such. Though it is seen that Ex.B3 is dated 27.10.1992, it is found to have been registered only on 08.02.93 and no plausible explanation has been offered by the respondent as to why the document has come to be registered on 08.02.93. However, the appellant would plead that prior to Ex.B3 sale deed, the parties had entered into an agreement on 09.05.92 and following the same, Ex.B3 sale deed had come to be effected and therefore, it is his case that the sale deed dated 27.10.1992 marked as Ex.B3 is true, valid and binding upon the respondent. When as per Ex.B7 sale deed it is found that Samikannu and his sons had already become divided members, the case of the appellant that Samikannu and his three sons had executed the sale agreement in respect of the suit property as such in his favour marked as Ex.B2 cannot be countenanced. Similarly, the case of the respondent that thereafter they had executed the sale deed in his favour on 27.10.1992 also could not be accepted. When it is seen that Samikannu and his three sons had become divided prior to Ex.B7 sale deed, it is for the appellant to establish that even thereafter they remained joint in respect of the suit property as such. But when with reference to the same, there is no material worth acceptance projected by the appellant, Ex.B7 by itself would belie his case and therefore, it is found that the Courts below had rightly not accepted the sale agreement dated 9.5.92 marked as Ex.B2 and the sale deed dated 27.10.1992 marked as Ex.B3. Though the respondent would mark the revenue document as Exs.B4 to B7 in support of his case, as rightly determined by the Courts below, the said revenue documents by itself could not be relied upon when it is found that the abovesaid documents had

emanated following Ex.B3 sale deed. When Ex.B3's validity itself has not been established by the appellant, it is found that the revenue documents issued based on the same cannot be accepted to countenance the claim of the appellant. Further, based on the revenue documents marked as Exs.B4 to B7, we cannot uphold the claim of title, legal possession and enjoyment of the suit property as projected by the appellant.

11. As aboveseen, there is no proper explanation offered by the appellant as to why Ex.B3 sale deed has come to be registered belatedly. According to the appellant, as Samikannu and his three sons were not available at that point of time, the said document could not be registered and however, the abovesaid explanation projected by the appellant could not be accepted sans materials pointing to the same. Further, there is no material to show that following Ex.B2 and B3, it is only the appellant, who had been in exclusive possession and enjoyment of the suit property. It is thus found that when by way of Ex.B7 alone, it is found that Samikannu and his family members had already become divided, the alleged sale deed executed by them in favour of the appellant by way of Ex.B3 cannot be given any legal credence and accordingly, it is seen that the appellant is unable to establish the veracity of Ex.B3 sale deed.

12. The arguments put forth by the appellant that the registration would take effect from the date of the execution of the sale deed would not apply to the facts and circumstances of the present case when it is seen that the appellant has failed to establish the validity of Ex.B3 sale deed. Thus, it is found that the abovesaid contention of the appellant had been rightly discountenanced by the Courts below.

13. In the light of the above discussions, the Courts below are correct in holding that the appellant has failed to establish his title to the suit property by virtue of the sale deed dated 27.10.1992 marked as Ex.B3 and on the other hand, the Courts below are found to be justified in upholding the title of the respondent in respect of the suit property on the strength of the sale deed dated 01.02.93 marked as Ex.A1. As the abovesaid determination of the Courts below are based on the proper appreciation of the materials placed on record in the correct perspective both factually and legally, in such view of the matter, the judgment and decree of the Courts below do not call for any interference. The substantial questions of law formulated in this second appeal are answered against the appellant and in favour of the respondent.

14. In fine, 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 Additional District Court,
Fast Track Court No.I,
Tindivanam.
2. The Additional District Munsif Court,
Tindivanam.

Copy to:

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

+1cc to M/s. P.B.Ramanujam, Advocate sr.no.47826
+1cc to Mr.T.D.Vasu, Advocate sr.no.47780

S. A.No.2199 of 2004

SSI(CO)
NR 28/08/2018

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