

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.07.2018

PRONOUNCED ON : 20.07.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.2192 of 2002

and

CMP.No.19081 of 2002

M. Geetha Appellant/Plaintiff

Vs

Thilagam @Rajeswari Respondent/Defendant

PRAYER:Second Appeal filed under Section 100 of C.P.C, against the judgment and decree dated 29.11.2002 passed in A.S.No.37 of 2002, on the file of Principal District Judge, Pondicherry reversing the Judgment and the decree dated 05.04.2002 passed in O.S.No.296 of 2001 before II Additional District Munsif, Pondicherry.

For Appellant : M/s.R.Meenal

For Respondent : M/s.G.Sumitra
for M/s.M.Sudhakar

JUDGMENT

This Second Appeal has been filed by the plaintiff against the Judgment and Decree passed by the Principal District Judge, Pondicherry, in A.S.No.37 of 2002 dated 29.11.2002 reversing the judgment and decree passed by the II Additional District Munsif, Pondicherry in O.S.No.296 of 2001 dated 05.04.2002.

2. The appellant herein has filed a suit in O.S.No.296 of 2001 on the file of the II Additional District Munsif, Pondicherry for permanent injunction restraining the respondents herein from in any manner interfering with her peaceful possession and enjoyment of the suit property. The learned District Munsif by the judgment dated 05.04.2002 has decreed the suit as prayed for. Aggrieved by the same, the respondent herein has filed an appeal in A.S.No.37 of 2002 on the file of the Principal District Judge, Pondicherry. The learned Principal District Judge has allowed the said appeal and set aside the judgment and decree passed by the trial court and dismissed the suit in O.S.No.296 of 2001. Feeling aggrieved, the plaintiff has filed the present

second appeal. For the sake of convenience, the parties are referred to as described before the trial court.

3. The averments made in the plaint are, in brief, as follows:

The suit property is the shop situated inside the Pondicherry Big market (grand Bazaar). The plaintiff is carrying on business in vegetables in the said shop under the name and style of "A.Murugan Vegetable Commission Mandi". The suit property originally belonged to one Appasami. The said Appasami sold the suit property to one Annapoorani, who is mother-in-law of the plaintiff under a registered sale deed dated 29.05.1994. The said Annapoorani sold the property to the defendant on 08.01.1999. The defendant, in turn, sold the suit property to her sister Bama Parameswari under a registered sale deed dated 18.02.2000. The said Bama Parameswari, in turn, sold the suit property to the plaintiff for valid consideration under the registered sale deed dated 04.10.2000. The plaintiff took possession of the suit property in pursuance of the sale deed and she is carrying on the wholesale business in the suit property. While so, the defendant attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. Hence, she was constrained to file a suit for permanent injunction to restrain the defendant from interfering with her peaceful possession and enjoyment of the suit property.

4. The averments made in the written statement are, in brief, as follows:

Since 1995, the defendant has been and is carrying on wholesale and retail vegetable business in the suit property in the name and style of "M/s.Vigneswara Traders". The defendant purchased the suit property from her mother Annapoorani for valid consideration under the sale deed dated 08.01.1997. The plaintiff's husband Murugesan is younger brother of the defendant. The defendant's husband addicted to several vices and demanded her to transfer the suit property in his favour. Hence, the defendant sought the help of her mother for the safety of her person and property who made arrangement for creation of the sham and nominal sale deed dated 18.02.2000 in favour of her sister Bama Parameswari. No consideration was passed for the said transaction. Possession also not given to the said Bama Parameswari. Till the death of her mother, the defendant was in peaceful possession of the suit property without any hindrance. The allegation that Bama Parameswari took possession of the suit property is false. She denied the allegation that on 04.10.2000, the said Bama Parameswari sold the suit property to the plaintiff and possession was given to her. The alleged transaction is a sham and nominal one, and brought into existence in collusion with

each other intending to defeat her right over the suit property and that no consideration was passed for the same. The defendant has been advised to challenge the sham and nominal document dated 18.02.2000 created in favour of the said Bama Parameswari and also the subsequent document brought into existence and that she is taking independent legal action for the same. Neither the plaintiff nor her husband had any source of income to purchase the suit property. Only after the death of her mother, the plaintiff's husband brought some henchmen and attempted to dispossess her from the suit property on 18.04.2001. However, failed in his attempt. Again he made some attempts which had led to the making of complaint and counter complaint by both parties. The grand bazaar police registered a case on 24.04.2001 in Cr.No.117 of 2001 u/s.145 of Cr.P.C., and proceedings are pending before the Sub-Divisional Magistrate, Pondicherry. Therefore, the defendant prayed to dismiss the above suit.

5. Based on the aforesaid pleadings, the learned District Munsif has framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined herself as PW1 and also examined four more witnesses as PW2 to PW5. She has marked Ex.A1 to Ex.A19 as exhibits. On the side of the defendant, the defendant examined herself as DW1 and also examined six more witnesses as DW2 to DW7 and she has marked Ex.B1 to Ex.B24 as exhibits. Ex.X1 to Ex.X4 were marked as third party exhibits.

6. The learned District Munsif, after considering the materials placed before him found that the defendant failed to prove that the sale deeds executed in favour of Bama Parameswari and the plaintiff are sham and nominal. He further found that in pursuance of the sale deed in favour of the plaintiff, the plaintiff took possession of the suit property and she is in possession and enjoyment of the same. Accordingly, he decreed the suit as prayed for. Aggrieved by the same, the defendant has filed an appeal in A.S.No.37 of 2002 on the file of the Principal District Judge, Pondicherry. The learned Principal District Judge has allowed the said Appeal and reversed the judgment and decree passed by the trial court and dismissed the suit. As against the same, the plaintiff has preferred the present second appeal.

7. At the time of admitting the second appeal, this court has formulated the following substantial questions of law:

"1. Whether in law has not the lower appellate court erred in dismissing the suit after finding that the sale deed is valid and the defendant's case of sham and nominal is not established?

2. Whether in law has not the lower appellate court overlooked that once the sale deed is accepted, then the recitals have to be accepted and any contra evidence or finding is opposed to Section 92 of Evidence Act?

3. Whether in law are not the decree and judgment of the lower appellate court vitiated as the documents filed by the plaintiff have been misread?"

8. Heard M/s.R.Meenal, learned counsel for the appellant and the M/s.G.Sumitra for M/s.M.Sudhakar, learned counsel for the respondent.

9. Question Nos.1 to 3:

Learned counsel for the appellant/plaintiff has submitted that the first appellate court erred in reversing the well considered Judgment of the trial court. She further submitted that the first appellate court after accepting the plaintiff's contention that the sale deed dated 18.02.2000 is valid, erred in dismissing the suit. She further submitted that once the sale deed is accepted, the recitals in the documents are also have to be accepted, but contrary to the same, the first appellate court has dismissed the suit. She further submitted that the first appellate court failed to consider that the oral and documentary evidence adduced by the plaintiff would establish her possession of the suit property and therefore, she prayed to allow the second appeal and set aside the judgment and decree passed by the first appellate court and restore the judgment and decree passed by the trial court.

10. Learned counsel for the respondent/defendant has submitted that the plaintiff has not produced the original sale deed which was said to have been executed by the defendant in favour of the plaintiff's vendor viz., Bama Parameswari dated 18.02.2000. She further submitted that the plaintiff has produced only a registration copy of the said sale deed and marked as Ex.A3. She further submitted that it is only the defendant who has produced the said original sale deed and marked as Ex.B3 and the aforesaid fact would clearly show that the defendant has not executed the sale deed dated 18.02.2000 in favour of her sister Bama Parameswari with an intention to sell the suit property. She further submitted that the first appellate court after taking into consideration the documents produced by both sides, has rightly come to the conclusion that the plaintiff failed to establish that she was in possession of the suit property on the date of the suit. She further submitted that the plaintiff has not produced any documentary evidence to show that in

pursuance of the sale deed dated 18.02.2000, the plaintiff's vendor viz., Bama paramesari took possession of the suit property and she has been enjoying the same till the date of execution of the sale deed in favour of the plaintiff. Therefore, she prayed to dismiss the present second appeal.

11. The undisputed facts are as follows:

The suit property is a shop measuring about 344 sq.ft situated in the grand bazaar of Pondicherry. The said property was originally owned by one Appasami and the said Appasami sold the same under a registered sale deed dated 29.05.1994 in favour of one Annapoorani, who is mother-in-law of the plaintiff and mother of the defendant. The said Annapoorani, in turn, sold the suit property to the defendant under a registered sale deed dated 08.01.1997. The defendant, in turn, sold the said property under a registered sale deed dated 18.02.2000 in favour of her own sister, viz., Bama Parameswari. The said Bama Parameswari sold the suit property in favour of the plaintiff under a registered sale deed dated 04.10.2000.

12. According to the plaintiff, in pursuance of the sale deed dated 18.02.2000, the defendant has handed over the possession of the suit property to the said Bama Parameswari and the said Bama Parameswari has sold the property to her for valid consideration under the sale deed dated 04.10.2000 and in pursuance of the said sale deed, she took possession and she is carrying on wholesale vegetable business in the said shop.

13. The case of the defendant is that since her husband is addicted to several vices and ill treated her and demanded for transfer of suit property in his favour, she sought help of her mother Annapoorani for the safety of her person and property and her mother made arrangements for creation of sham and nominal document and accordingly, she executed a sale deed dated 18.02.2000 in favour of her own sister Bama Parameswari. Her further case is that for the said sale deed, she has not received any consideration and she has not handed over the possession of the suit property to the said Bama parameswari and hence, no title was passed to the said Bama Parameswari. Her further case is that since the title was not passed on to the said Bama Parameswari, she could not have any right to convey title in favour of the plaintiff and as such, based on the sale deed said to have been executed by the said Bama Parameswari dated 04.10.2000, the plaintiff cannot claim any right over the suit property. Her further case is that she is in continuous possession of the suit property and therefore, the plaintiff is not entitled to seek any injunction against her.

14. The trial court after taking into consideration, the materials placed before it, came to the conclusion that the defendant failed to establish that the sale deed executed by the defendant in favour of Bama Parameswari dated 18.02.2000 is the sham and nominal one and hence it has held that the said sale deed is a valid one. The first appellate court also has accepted the said findings of the trial court and held that the sale deed dated 18.02.2000 is a valid document. After holding so, the first appellate court disbelieved the case of the plaintiff that she took possession of the suit property and accordingly, dismissed the plaintiff's suit.

15. It is to be pointed out that in paragraph No.7 of the written statement, the defendant has stated that she has been advised to challenge the sham and nominal document dated 18.02.2000 created in favour of the said Bama Parameswari and also the subsequent documents brought into existence and that she is taking independent legal action for the same. But it appears that so far she has not taken any steps to set aside those documents. If really she had executed sham and nominal document dated 18.02.2000 in favour of her sister Bama Parameswari with a view to protect her property, she should have filed a suit to declare that the said document is sham and nominal document as soon as she came to know that the said Bama Parameswari has committed breach of trust. From the averments made in the written statement, it is clear that even on the date of filing of the written statement, the defendant was advised to file a suit for setting aside those documents. But so far, she has not taken steps to set aside the said documents. Therefore, now she cannot take a plea that the said documents are sham and nominal.

16. As stated supra that the defendant has not taken any steps to set-aside the sale deeds dated 18.02.2000 and 04.10.2000. Further, both the Courts below concurrently found that the said sale deeds are not sham and nominal documents, but they are valid documents. Under the said circumstances, merely because the defendant has produced the original sale deed dated 18.02.2000 and marked as Ex.B3, it cannot be said that the said sale deed is a sham and nominal one. In fact, the PW1 gave an explanation in her evidence that the said document was entrusted with her mother-in-law and the defendant has taken away the said document. Since the parties are related to each other, her explanation seems to be probable.

17. The first appellate court found that the sale deed dated 18.02.2000 said to have been executed by the defendant in favour of Bama Parameswari is not a sham and nominal document, but it is a valid document. The plaintiff has produced a registration copy of the said

sale deed dated 18.02.2000 and marked as Ex.A3. The defendant has produced the original sale deed dated 18.02.2000 and marked as Ex.B3. In Ex.A3 and Ex.B3, it is clearly stated that on the date of the execution of the said document itself, possession was given to the said Bama Parameswari. The said Bama Parameswari was examined as PW3. She has categorically deposed that she took possession in pursuance of the said sale deed dated 18.02.2000. PW3 has purchased the suit property on 18.02.2000. Thereafter, within eight months, she sold the suit property to the plaintiff vide Ex.A5 dated 04.10.2000. Thereafter, the plaintiff got mutation of revenue records. Ex.A6 shows patta has been changed into her name. Apart from Ex.A6, she has produced tax receipts and other documents. Those documents would clearly establish the plaintiff's possession. The defendant also has produced certain documents to prove her possession. Under the said circumstances, the Court has to go into the question of title incidentally.

18. At this juncture, it would be relevant to refer a decision in Muthugounder Vs. Poosari @ Palaniappan and four others 1998-2- L.W.333, wherein this court has observed as follows:

"Regarding the objection that the present suit is only for bare injunction, there is no need to go into title, I am of the view that if sufficient proof is there on the side of the plaintiff with regard to his title, apart from considering the evidence leading to injunction, it is open to the courts to go into the title incidentally."

19. From the aforesaid decision, it is clear that in the bare injunction suit, it is open to the Courts to go into the title incidentally for the purpose of finding out whether the plaintiff has got right to lawful possession so as to maintain that possession, the question of title can certainly be gone into. In this case, the plaintiff has established that she has purchased the suit property under Ex.A5. In the said document itself, it is clearly stated that on the date of sale itself, possession of the suit property was given to the plaintiff. Apart from that, she has produced chitta, house tax receipts etc., So, this Court is of the view that the plaintiff has proved her lawful possession.

20. The trial court after taking into consideration all the aforesaid facts, has rightly decreed the suit and in the well considered judgment, the first appellate court has unnecessarily interfered and reversed the same. Therefore, the said judgment has to be set aside. Accordingly, these substantial questions of law are answered.

21. In the result, the second appeal is allowed. Consequently, connected miscellaneous petition is closed. The judgment and decree passed by the first appellate court in A.S.No.37 of 2002 dated 29.11.2002 are set aside. The judgment and decree passed by the trial court in O.S.No.296 of 2001 dated 05.04.2002 are restored. Considering the relationship between the parties, the parties are directed to bear their own costs.

Sd/-
Assistant Registrar(Co)
//True Copy//

Sub Assistant Registrar

gv
To

1. The Principal District Judge,
Pondicherry.
2. The II Additional District Munsif,
Pondicherry.

Copy to
The section officer,
VR Section,
High court
Madras

+1cc to M/s.M.Sudhakar , Advocate SR.No. 48452
+1cc to Mr.R.Subramanian, Advocate SR.No. 48714

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ASK(31/10/2018)

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