

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On: 09.02.2018

Reserved On: 06.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.2203 of 2002

1.Selvam
2.Elizabeth Stella
3.Padmavathi
4.Samy Selvakumar
5.Anjala Vasanthi
6.V.Samikkan
7.Samsujarithabai
8.S.Samsathish Sudhakar Singh

(R6 to R8 brought on record as
L.Rs. of the deceased 2nd appellant
vide order of Court dated 8/1/18 made
in CMP 63 to 65/13 in SA2203/02) ...Appellants/Plaintiff

Vs.

1.Eswari
2.Subbu @ Subramaniam ...Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 7.3.2002 made in A.S.No.42 of 2001 on the file of the Principal Sub Court, Gobichettipalayam, confirming the judgment and decree dated 11.9.2001 made in O.S.No.24 of 1998 on the file of the District Munsif Court, Sathyamangalam.

Appellants : Mr.N.Manokaran
Respondents : Mr.M.V.Karunakaran

J U D G M E N T

The un-successful plaintiffs have come forward with this second appeal against the concurrent judgments of the lower Court as well as the lower Appellate Court.

2.The first plaintiff's husband late one Samuvel was working as Sepoy in Indian Army from 21.03.1943 to 11.04.1959. After retirement, he was a member of the Coimbatore Ex-Serviceman Association at Bhavani Sagar. The said Association was assigned

with an extent of 10.46 acres of land in S.Nos.218/b, 215, 161 and 165 of Mudukkanthurai Village by the Government of Tamil Nadu vide G.O.No.16788, Revenue Department, dated 12.11.1973. After the said Government Order, the Association converted the above said lands into house-sites and also got approval for the layout from the Director of Town and Country Planning, Coimbatore. Subsequently, on 11.05.1980, the General Body Meeting of the Coimbatore Ex-Serviceman New Association was convened and the house-sites were allotted to the members of the said Association by way of lot system.

3. In the said lot, the first plaintiff's husband was allotted site no.60. Thereafter, he had paid the value of the said site and other incidental expenses on the same day and he was granted document confirming the allotment. Thereafter, the Association handed over the possession of the said site to the first plaintiff's husband on 11.05.1980. Since then, the said Samuvel was in possession and enjoyment of the suit property along with the plaintiffs. Subsequently, the said Association represented by its then President N.D. Joseph Raj executed sale deed in favour of Samuvel on 20.03.1981.

4. The plaintiffs are the wife and children of the said Samuvel. As such, the suit property devolved on them. After the death of the first plaintiff's husband, the plaintiffs have been in possession and enjoyment of the suit property. Since the suit property is vacant site, the same was not assessed for any tax. While being so, on 25.01.1998, the defendants along with their men attempted to trespass into the suit property and tried to lay foundation in the said land and it was prevented by one K.R. Ramasamy and on the information received from the said K.R. Ramasamy, when the plaintiffs enquired the defendants, the first defendant said that she purchased the suit property from the second defendant and disclaimed the plaintiffs title to the suit property. Immediately thereafter, the plaintiffs filed the suit for declaration of title over the suit property and for permanent injunction restraining the defendants and their men from in any manner interfering with the peaceful possession and enjoyment of the plaintiffs in the suit property.

5. The sum and substance of the written statement filed by the first defendant which was adopted by the second defendant is as follows: The defendant deny that the first plaintiff's husband was an Ex-Serviceman and also deny the allotment order made by the Association. Though the fact that on 20.03.1981 one Joseph Raj, then President executed sale deed in favour of the plaintiff's husband is true, on the date of execution of sale deed, the said Joseph Raj was not the President of the Association as he was removed from Presidentship by majority of the members of the Association on 22.02.1981 itself.

Accordingly, after the removal, the said Joseph Raj has no right to alienate the Association property in favour of the plaintiff's husband and the alleged sale deed is not legally sustainable one and the said sale deed is not acted upon. When the sale deed is not acted upon, filing of the suit for declaration is not maintainable.

6. According to the defendants, immediately after the removal of the said Joseph Raj, one Anthony Muthu was appointed as the President of the Association by majority of the members and the said Anthony Muthu executed sale deed in favour of the second defendant on 04.03.1985. Immediately thereafter, the second defendant acquired the property and was in peaceful possession and enjoyment of the suit property. Thereafter, the first defendant purchased the property from the second defendant on 12.12.1996 and is in possession and enjoyment of the property.

7. The written statement further averred that the said Joseph Raj after removal from Presidentship, filed O.S.No.326 of 1981 for declaring that the selection of Anthony Muthu is null and void. The suit was contested inbetween the said Joseph Raj and Anthony Muthu and on 23.06.1981, the said suit filed by Joseph Raj was dismissed and the lower Court also held that the selection of Anthony Muthu on 22.02.1981 is valid.

8. Thereafter, the said Anthony Muthu filed O.S.No.306 of 1982 before the District Munsif Court, Gobichettipalayam, by impleading the

first plaintiff and other 15 persons including the said Joseph Raj for declaration declaring that the execution of sale deed by the said Joseph Raj in favour of Samuvel is null and void and for permanent injunction. The suit was decreed in favour of Anthony Muthu on 31.01.1985. However, the first plaintiff's husband died during the pendency of the suit. In the said suit, the learned District Munsif, Gobichettipalayam, granted declaration in favour of Anthony Muthu and consequentially granted injunction restraining the defendants from interfering with the possession of the property. In view of the above, the sale deed executed by the said Joseph Raj in favour of the first plaintiff's husband is null and void and the said Joseph Raj had no right and both the suits were held against the husband of the first plaintiff. Infact the suit schedule property was enjoyed by the defendants and in order to achieve something and for the reasons best known to the plaintiffs, the plaintiffs have filed the vexatious suit.

9. After elaborate discussion, both the Courts concurrently held against the plaintiffs. Aggrieved by the same, the present second appeal is filed.

10. At the time of admission, the following substantial questions of law were framed for consideration:

"(i) Whether the findings of the courts below are correct in law in holding that the decree in O.S.No.306 of 1982 is binding on the appellants, though it was passed against the deceased A.Samuvel, especially when it is not est in law as against the legal heirs of the deceased A.Samuvel?

(ii) Whether the appellants are entitled to get a decree for declaration under Ex.A2 (20.3.1981)? and whether the respondents are bonafide purchasers for the value and that Ex.B1 and B2 are true and valid documents, when the title of the suit property and possession of the same legally vested with A.Samuvel under Ex.A1 and A6 which are earlier document in point of time?

(iii) Whether the courts below are correct in law in holding that the defendants/ respondents have got title to the suit property by virtue of Ex.B1 and B2 and also they have perfected title by adverse possession especially when both cannot go together and also there is no clear pleadings for the claim of adverse possession?"

11. The learned counsel appearing for the appellants would submit that the then President Joseph Raj granted allotment order in favour of the first plaintiff's husband on 11.05.1980 prior to his removal from Presidentship. Through the said allotment order, the first plaintiff's husband was allotted plot no.60 and based on the said allotment order, the said Joseph Raj executed sale deed in favour of the first plaintiff's husband after receiving the sale consideration of Rs.70/-. Ex.A2 is the sale deed dated 20.03.1981 executed by Joseph Raj in favour of Samuvel and Ex.A6 is the slip confirming the allotment dated 11.05.1980. Since allotment was granted in favour of the first plaintiff's husband by the then President prior to his removal, subsequently, sale deed was executed in favour of the first plaintiff's husband and they are in possession and enjoyment of the property without any disturbance till 1998.

12. The learned counsel appearing for the appellants would further submit that the plaintiffs were not aware of the suit filed by Joseph Raj. The plaintiffs are also not aware of the suit filed by Anthony Muthu against Joseph Raj and other defendants, but decree was passed against the defendants and it

is not assailed by the plaintiffs. The plaintiffs are entitled to succeed the second appeal in view of the allotment order and subsequent sale deed and prayed for allowing the second appeal.

13. The learned counsel appearing for the respondents would submit that the lower Court as well as the lower Appellate Court discussed elaborately with regard to allotment order dated 11.05.1980. Even for the purpose of sale deed, the said allotment order was created by one Joseph Raj. On perusal of Ex.A2 it is known that sale deed was executed in favour of the first plaintiff's husband after receipt of Rs.70/-. However, the plaintiffs did not produce any receipt for payment of sale consideration in favour of the Association. In the absence of any receipt interfering with the concurrent decision is not sustainable. Apart from the above, there was a decree against Joseph Raj for acting as President of the Association. Accordingly, he prayed for dismissal of the appeal.

14. I have considered the rival submissions made by the learned counsel appearing for the appellants as well as the respondents and also perused the entire materials placed on record.

15. On perusal of the materials and the findings of the lower Court as well as the lower Appellate Court, admittedly, the said Joseph Raj filed a suit in O.S.No.326 of 1981 before the learned District Munsif, Gobichettipalayam, against his removal by majority of the members of the Association and the learned District Munsif, Gobichettipalayam, rejected his prayer and dismissed the suit. Thereafter, the new President Anthony Muthu filed a suit in O.S.No.306 of 1982 by impleading the first plaintiff's husband and other beneficiaries. The said suit was decreed in favour of Anthony Muthu. Both the suits concurrently upheld the removal of Joseph Raj from the President of the Association. After the removal, the said Joseph Raj executed a sale deed in favour of the plaintiff's husband which is null and void. When a person is not competent to execute a sale deed, the plaintiffs filing a suit based on the sale deed is itself not permissible. Apart from the above, the order in O.S.No.306 of 1982 was passed in the year 1985 itself. Without challenging the said order, filing of suit that too after thirteen years is not sustainable.

16. The appellants/ plaintiffs have averred in the plaint that the plot was allotted through lot. The fourth plaintiff examined himself as P.W.1. However, in his evidence he has admitted that he does not know about the lot conducted by the Association on 11.05.1980. After the lot, the said plot was allotted in favour of the first plaintiff's husband and sale deed was executed. The plaintiffs aver that they had paid the

sale consideration in favour of the Association. However, the plaintiffs has not produced any receipt for payment of sale consideration in favour of the Association. In view of the above, I am of the view that the appellants/ plaintiffs did not establish their case and I do not find any error or infirmity to interfere with the orders passed by the Courts below.

17.In view of the above, the substantial questions of law are answered against the appellants. In the result, the second appeal is dismissed. The judgment and decree dated 07.03.2002 made in A.S.No.42 of 2001 on the file of the Principal Sub Court, Gobichettipalayam, confirming the judgment and decree dated 11.09.2001 made in O.S.No.24 of 1998 on the file of the District Munsif Court, Sathyamangalam, is confirmed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Sub Judge, Gobichettipalayam.
- 2.The District Munsif, Sathyamangalam.
- 3.The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+ 2 ccs to Mr. M.V.Karuna Karan, Advocate Sr.9944 and 9943

+ 1 cc to Mr. N. Manokaran, Advocate Sr.10429

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NMI (CO)
EU(22/03/2018)

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