

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1479 of 2001

- 1.Natesan (deceased)
- 2.Saraswathi
- 3.Dhanalakshmi
- 4.Saratha
- 5.Rajeswari
- 6.Logammal
- 7.Ramasamy
- 8.Lakshmanan
- 9.Rajendra Prasad
- 10.Kumari
- 11.Karupannasamy

(Appellants 2 to 11 brought on record as LR's
of the deceased sole appellant vide order of
Court dated 07/02/2018 made in CMP.1015
to 1017/2018 in S.A.No.1479/2001(MDIJ)

...Appellants

Vs.

V.K.Rathinakumar ... Respondent/Plaintiff

Prayer: The Second Appeal has been filed under Section 100 of C.P.C. against the Judgment and decree passed in A.S.No.18 of 1999 dated 30th April 2001, passed by the learned Sub-Judge, Madurantakam, confirming the Judgment and Decree passed in O.S.No.105 of 1995 dated 24th December, 1998, passed by the learned District Munsif, Madurantakam.

For Appellants : Mr.S.Gopalaratnam
for N.Baskaran

For Respondent : T.S.Baskaran

J U D G M E N T

The first appellant who is the defendant in the original suit has filed the second appeal against the Judgment and decree dated 30.04.2001 made in A.S.No.18 of 1999 passed by the learned Judge, Madhuranthagam confirming the decree dated 24.12.1998, passed in O.S.No.105/1995 by the District Munsif, Madhuranthagam.

2.For the sake of convenience, the parties are referred to as per their rank in the suit. During the pendency of the appeal, the sole appellant died and the legal representatives of the sole appellant are brought on record as appellants 2 to 11. The respondent / plaintiff filed a suit for declaration and permanent injunction.

3.The sum and substance of the plaint averments are as follows:

The plaintiff stated that he is the absolute and exclusive owner of the properties. The plaintiff acquired the schedule mentioned properties by way of registered settlement deed dated 05.10.1992, executed in his favour by his father V.Kuppuswamy. Since then, the plaintiff alone is in absolute possession and enjoyment of the suit

properties and patta for the suit properties was also transferred in the name of plaintiff and he was paying kist and other taxes for the suit properties.

4.The plaintiff stated that the suit properties were originally purchased by his father under a duly registered sale deed dated 30.08.1978 for a valuable consideration from the defendant and was doing all acts of ownership including raising crops in the suit schedule property. The plaintiff father also dealt with the suit properties by settling the same to the plaintiff. Hence, by the long enjoyment, the plaintiff and his father have got prescriptive title over the suit properties.

5.The plaintiff stated that in the sale deed dated 30.08.1978, the Survey numbers were wrongly described as Punja S.No.327(0.23 cents), S.No.325/1(0.56 cents), S.No.326/1 (0.62 cents) instead of correct S.Nos.302/3, 302/4 and 302/5. The mistake was occurred by over sight. The boundaries described in the sale deed dated 30.08.1978, are the suit properties. The boundaries recited in the sale deed will clearly establish the fact. The defendant never objected the enjoyment of the plaintiff and his father over the suit properties.

6.The plaintiff also stated that the properties described in the schedule and the properties described in the sale deed dated 30.08.1978 as well as the properties described in the settlement deed dated 05.10.1992 are one and the same. The plaintiff submits that the defendant has also stopped from

questioning the title of the plaintiff. In the sale deed dated 30.08.1978, the Survey numbers were mistakenly mentioned but the extent and boundaries are one and the same. The patta was also transferred in the name of the plaintiff only after the due enquiry in the village. The defendant was also aware of the transfer of patta. The plaintiff's father alone raised Casurina crops in the suit properties.

7.The plaintiff has stated that the total extent in Punja S.No.302/3, 4, 5 are 3.00 acre out of which, the plaintiff's father purchased 1.01 cents from the defendant. Another 1.06 cents were purchased by the plaintiff's father from one Thamodaran and remaining extent was owned and possessed by one Chinnathambi Vagaiara and the defendant did not possess any property in the suit area except the properties sold by him to the plaintiff's father. The wrongly described survey numbers are never owned by the defendant.

8.The plaintiff further stated that taking advantage of the misdescription of the survey numbers, the defendant had attempted to interfere with the peaceful possession and enjoyment of the plaintiff over the suit property after 22 years and prayed for declaration and consequential permanent injunction.

9.The sum and substance of the written statement filed by the defendant is as follows:

The defendant denied the plaintiff's title over the suit property and the possession of the property by the plaintiff was also denied. The alleged settlement deed is nothing but a myth. The defendant submits that Kuppusamy viz., father of the plaintiff did not acquire any property under the sale deed dated 30.08.1978. The alleged sale deed in favour of Kuppusamy is denied and is a forged one. To the knowledge of the defendant, C.Ramasamy Mudaliar had never executed any registered sale deed in favour of the neighbouring land owner Damotharan. The alleged ownership by the neighbour Damotharan is specifically denied. The said Damotharn had neither title nor possession.

10.The defendant further submitted that the plaintiff's father i.e. Kuppusamy did not derive any valid title to settle the same in favour of the plaintiff. Even now, the possession is only with the defendant. Encumbrance certificate now produced for the past 33 years would also disclose the fact that the said neighbour Damotharan did not purchase any land from Ramasamy

Mudaliar. This defendant is the brother-in-law of the plaintiff's father vendor. Taking undue advantage of the relationship, the plaintiff wants to exploit the defendant and the plaintiff is not entitled for any declaration and consequential injunction.

11. After perusing the entire records, the Trial Court as well as the First Appellate Court granted decree in favour of the plaintiff. As against the concurrent findings, the defendant filed the second appeal.

12. At the time of admission of the second appeal, this Court framed the following substantial questions of law:

i) Whether the Ex.A2 has been proved so as to convey title to the plaintiff especially when none connected with Ex.A2 has been examined, encumbrance certificate not produced, revenue records not produced and Registrar or other officials not examined and the recitals therein do not fully support the case of the plaintiff?

ii) In the absence of any positive evidence to support the case of the plaintiff, whether the learned Appellate Court is right in granting a decree merely based on Ex.A2?

iii) Whether the Lower Appellate Court is right in accepting the defendant's signature contained in A2 as true, without comparing the same with his admitted signature by calling for a report from a finger print expert?

12. The learned counsel appearing for the appellant / defendant would submit that initially the property was owned by the Clubwala and Vedachalam Mudaliar family. The defendant and his neighbour Damodaran have no right over the property. They occupied the suit property only as tenants and later they have started to pay kist and other taxes to the suit properties. The kist receipts are produced before the Trial Court and they have been marked as Ex.B4 to B14 and Ex.B1 to Ex.B3 are 'A' register extract. The Adangal, kist receipts and 'A' Register show that the defendant is in possession of the property and accordingly is paying revenue taxes in the name of Vedachalam Mudaliyar to the Government.

14. In the absence of any title as alleged by the defendant, the execution of sale deed by the defendant in favour of the plaintiff's father (Ex.A2) is not valid and the same is forged. Without analyzing the fact, the Trial Court and the First Appellate Court granted decree in favour of the plaintiff. Accordingly, the defendant is entitled to succeed in the second appeal.

15. The learned counsel appearing for the respondent / plaintiff would submit that admittedly the entire properties belong to Clubwala and Vedachalam Mudaliar family and the revenue records also stand in their names. In the year 1978, the defendant approached the plaintiff's father in order to sell the suit property and after the verification, the plaintiff's father purchased the property from the defendant by way of sale deed i.e. Ex.A2, for a valuable consideration. After the sale deed, the plaintiff's father took possession of the suit properties from the defendant. Thereafter, he planted Casaurina and raised cash crops. The entire suit properties were assessed in the name of plaintiff's father and the plaintiff's father paid kist and revenue taxes in the name of Clubwala and Vedachalam Mudaliar.

16. Thereafter, the plaintiff's father also purchased the lands from the defendant's relatives through other sale deeds along with the suit properties and was in possession and enjoyment of other properties purchased from the relatives of the defendant.

17. After the purchase, the plaintiff's father executed a settlement deed in favour of the plaintiff. After the settlement, the plaintiff effected mutation of revenue records. Accordingly, the revenue authorities also transferred patta in the name of the plaintiff and he has started to pay kist and revenue taxes and the same were assessed in his name.

18. Since the defendant interfered with the peaceful possession and enjoyment of the suit properties, the plaintiff was constrained to file a suit for declaration and consequential injunction against the defendant.

19. The Trial Court as well as the First Appellate Court after considering the oral and documentary evidence on record, concurrently granted decree in favour of the plaintiff. As

against the concurrent findings, the present second appeal is filed.

20. On a perusal of the material records, Ex.A1 is the settlement deed executed by the plaintiff's father based on the sale deed purchased from the defendant. Ex.A2 is the sale deed dated 30.08.1978 executed by the defendant to the plaintiff's father, Ex.A3 is the patta muted in favour of the plaintiff, Ex.A4 is the Chitta extract, Ex.A5 is the Adangal extract, Ex.A6 is the certificate issued by the Village Administrative Officer and Ex.A7 is the kist receipts, which clearly prove that the plaintiff is in possession and enjoyment of the suit properties.

21. The learned counsel appearing for the appellants contended that even the defendant has no title over the properties. The plaintiff's father purchased the properties from the defendant is unsustainable in law. Originally the properties stood in the name of Clubwala and Vedachala Mudaliar family and there is no transferable title in favour of the defendant to sell properties in favour of the plaintiff and it is non-est in law.

22. On a perusal of other revenue records i.e. Ex.A3 to Ex.A7 will disclose that the plaintiff is in possession and enjoyment of the properties. In this background, it is necessary to rely upon the decision reported in MANU/SC/1044/2003: 2004 (1) SCC 769 (Rama Gowda (dead) by LRs., V. M.Varadappa Naidu (dead) by LRs., and another, in which para 11 reads as follows:

"11. In the present case the trial court has found the plaintiff as having failed in proving his title. Nevertheless, he has been found to be in settled possession of the property. Even the defendant failed in proving his title over the disputed land so as to substantiate his entitlement to evict the plaintiff. The trial court, therefore, left the question of title open and proceeded to determine the suit on the basis of possession, protecting the established possession and restraining the attempted interference therewith. The trial court and the High Court have rightly decided the suit. It is still open to the defendant - appellant to file a suit based on his title against the plaintiff - respondent and evict the latter on the former establishing his better right to possess the property.

23. On a perusal of the above decision, the Hon'ble Apex Court held that if the Court has found that even if the plaintiff failed to prove his title and if he has been found to be in possession of the property, he is entitled for injunction. In the present case, the plaintiff has not filed any documents to prove the defendant has title other than the revenue records. Whereas, he has proved that he has been in possession of the properties from the date of purchase through Ex.A2, registered sale deed dated 30.08.1978, accordingly, he is entitled for injunction. However, in the absence of materials to prove his title, he is not entitled for the relief of declaration.

24. Admittedly, the defendant did not produce any materials with regard to his title. The claim made by the plaintiff is based on the sale deed dated 30.08.1978 from the defendant is unsustainable one and the plaintiff is not entitled to seek declaration of the title, in the absence of title in favour of the defendant.

25. In view of the above, this Court rejects the prayer for declaration since the revenue records disclose the possession of the properties and hence, the second appeal is partly allowed, modifying the Judgment and Decree passed in A.S.No.18 of 1999 dated 30th April 2001, by the learned Sub-Judge, Madurantakam in respect of declaration alone. However, the plaintiff is entitled for injunction. Accordingly, the substantial questions of law have been answered in partly favour of the appellant.

26. In the result the second appeal is partly allowed. The Judgment and Decree of the First Appellate Court dated 30.04.2001 is modified to the extent as indicated above. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To.

1.The Subordinate Judge
Madurantakam

2.The District Munsif
Madurantakam.

3.The Section Officer
V.R.Section
High Court of Madras
Chennai 600 104

+ 1 cc to Mr.N.Baskaran Advocate,SR.15783

+ 2 cc to Mr.T.S.Baskaran Advocate,SR.15994

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