

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2017

PRONOUNCED ON: 10.01.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.913 of 2002

Ellammal

...Appellant/Appellant/
Plaintiff

Vs.

Panjaliammal

...Respondent/Respondent/
Defendant

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 11.02.2001 and made in A.S.No.43 of 1993 on the file of the Additional Subordinate Judge, Tindivanam as confirmed the Judgment and decree dated 12.03.1997 and made in O.S.No.481 of 1988 on the file of the District Munsif Court, Gingee.

For Appellant : Mr.A.C.Kumaragurubavan

For Respondent: Mr.P.Srinivas

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 11.02.2001 passed in A.S.No.43 of 1993 on the file of the Additional Subordinate Court, Tindivanam, confirming the judgment and decree dated 12.03.1997 passed in O.S.No.481 of 1988 on the file of the District Munsif Court, Gingee.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4.The case of the plaintiff in brief is that the suit properties originally belong to Varadharaja Gounder. The first item of the suit properties had been purchased by the plaintiff, from Varadharaja Gounder for a valid consideration, by way of a registered sale deed dated 01.08.1988 and the second item of the suit properties was purchased by the plaintiff from Varadharaja Gounder by way of a registered sale deed dated 12.08.1985 and

the third item of the suit properties was purchased by the plaintiff by way of a registered sale deed and thus the plaintiff is entitled to the suit properties and been in possession and enjoyment of the same. The defendant has no right or title to the suit properties while so, the defendant attempted to interfere with the plaintiff's possession and enjoyment of the suit properties and thereby questioned the title of the plaintiff, in respect of the same and hence the suit for appropriate reliefs.

5.The case of the defendant in brief is that the suit is not maintainable either in law or on facts. The plaintiff is the daughter-in-law of Varadharaja Gounder and the defendant is his daughter and Varadharaja Gounder had three sons and four daughters and his son Raja Gopal had died leaving his L.R's and Varadharaja Gounder and his family members jointly enjoyed the suit properties as family properties and accordingly, Varadharaja Gounder had agreed to sale the same in favour of the defendant and the parties had entered into an agreement of sale for a sum of Rs.23,600/- and accordingly, Varadharaja Gounder had received a sum of Rs.21,000/- as advance and agreed to receive the balance amount at the time of registration and the sale agreement dated 09.06.1988 has come to be effected between the parties. Pursuant to the sale agreement, the possession of the suit properties had been entrusted to the defendant and later on 05.07.1988, Varadharaja Gounder had received a sum of Rs.1,600/- towards sale consideration for meeting out the medical expenses from the defendant and received the balance sum of Rs.1000/- on the date of sale effected on 15.07.1988 and the plaintiff in order to grab the suit properties had anti-dated her sale deed and it is false to state that the suit properties had been purchased by the plaintiff by way of two sale deeds as put forth in the plaint and the same had been fabricated by the plaintiff with the help of her husband and it is only the defendant who had been in possession and enjoyment of the suit properties and hence the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.W's 1 to 5 were examined. Exs.A1 to A18 were marked. On the side of the defendant, D.W's1 to 4 were examined. Exs.B1 to B8 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the suit laid by the plaintiff. Assailing the same, the present second appeal has been laid.

8.At the time of admission of the second appeal the following substantial questions of law were formulated for

consideration.

(i) Whether the Courts below are right in holding that Ex.B3 is a genuine sale Deed and title to the suit property passes through the defendant when there exists an earlier registered sale deed Ex.A4 and A5 which was not at all set aside in the manner known to law?

(ii) Whether the Courts below are right in dismissing the suit without giving any specific finding with regard to the important aspect of the possession of the original title deed of the suit property?

(iii) Whether the Courts below are right in marking Ex.A1 and A2 which are inadmissible for evidence for want of stamp duty in according to Indian Stamp Act?

9. The plaintiff's counsel in support of his contentions placed reliance upon the decisions reported in

1. 2014 (3) CTC 473 [Jayalakshmi Ammal Vs. Kaliaperumal]
2. 2005 (7) SCC 605 [Bhaurao Dagdu Paralkar Vs. State of Maharashtra and other]
3. 2015 (2) MWN (Civil) 47 [K.Sundararaj Vs. R.Chellamuthu and others]
4. 2001 MLJ 788 [P.Klairaj Vs. Nallammal and others]

The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the case at hand.

10. It is not in dispute that the suit properties belonged to Varadharaja Gounder. The plaintiff claims to have purchased the suit properties from Varadharaja Gounder, by way of separate sale deeds dated 12.03.1985 and 01.08.1988. The defendants have disputed the entitlement of the plaintiff to the suit properties by way of the above said sale transactions. According to the defendant the suit properties had been alienated in her favour by Varadharaja Gounder on 15.07.1988 following the sale agreement entered into between them dated 09.06.1988. Further, according to the defendant the sale transactions relied upon by the plaintiff for acquiring title to the suit properties have been fabricated and created by the plaintiffs with help of her husband and hence the plaintiff is not entitled to obtain the reliefs sought for.

11. In the light of the above defence set out by the defendant, it is for the plaintiff to establish that she had

purchased the suit properties from Varadharaja Gounder as put forth by her. In this connection, the plaintiff has examined herself as P.W.1 and the plaintiff during the course of her evidence, has admitted that she does not know the patta number for the suit properties and does not know the sale price agreed to for effecting the sale transactions, on what date and how much amount was advanced for the same and only her father had advanced the amount and she did not pay any sum as she was not possessed of any means and cannot say when, what extent her father had purchased and cannot say any thing about Exs.A3 to A5 and also accepted that she had not filed any document to evidence her possession and such being the evidence of the plaintiff, it is seen that the plaintiff is completely unaware of the sale transactions projected by her and accordingly not able to throw a clear picture as to the nature of the suit properties enjoyed by her pursuant to the alleged sale transactions. The plaintiff's husband examined as P.W.2, similarly, is also not able to throw any vision as to how the sale transactions have come to be effected in respect of the suit properties in favour of his wife, the plaintiff. The Kist receipts marked as Exs.A12 to A18 are found to have coming into existence after the institution of the suit. The Patta in respect of the suit properties standing in the name of the plaintiff has not been produced. It is further seen that accordingly the Courts below did not place safe reliance upon the evidence of both P.W's.1 and 2 for accepting their claim of the suit properties as projected in the plaint. P.W.3, who is the father of the plaintiff, during the course of his evidence has admitted that in respect of the sale transaction marked as Ex.A3 he did not advance any sum and not witnessed the same and also did not advance any sum for the first sale transaction and does not know the date, the survey number of the second sale transaction Ex.A4 and does not know the boundaries of the properties acquired as he is not the resident of the local village and does not know the names of the persons, who were present at the time of negotiating the sale transactions and during the sale transactions Ex.A3 to A5, the plaintiff did not advance any sum and it is only he who had advanced the sum of Rs.21,000/- to Varadharaja Gounder and such being the evidence and without any material to buttress his above claim, it is found that by the Courts below had correctly held that P.W.3 is also not able to throw a clear picture about all or any of the circumstances under which the sale transactions have come to be effected in favour of the plaintiff in respect of the suit properties. Similarly, P.W.4 has admitted that he is not an attester to the sale transaction Exs.A3 to A5 and not aware of the same directly. Such being his evidence, it is seen that no credence could be attached to his testimony to uphold the plaintiff's case. Similarly, P.W.5 has also admitted that he is not directly aware of the sale transactions in favour of the

plaintiff, accordingly the Courts below did not place reliance upon his evidence for accepting the plaintiff's case.

12. In the light of the above said evidence of P.Ws'1 to 5, it is seen that no clear picture has been projected by them, that it is only the plaintiff, who had actually purchased the suit properties from Varadharaja Gounder by paying the requisite sale consideration and thereby the plaintiff had been put in possession and enjoyment of the suit properties. Accordingly, it is found that the plaintiff is unable to place any acceptable document to hold that it is only she, who had been in possession and enjoyment of the suit properties pursuant to the sale transactions projected by her. Thus, no exception to be taken to the determination of the Courts below for rejecting the plaintiff's case of the purchase of the suit properties from Varadharaja Gounder and her claim of being in possession and enjoyment of the suit properties pursuant to the sale transactions.

13. Per contra, from the defence set out, it is seen that the defendants and Varadharaja Gounder had entered into the sale agreement way back on 09.06.1988 in respect of the sale of the suit properties and accordingly on the payment of the entire sale transaction, it is found that Varadharaja Gounder had alienated the suit properties, in favour of the defendant, by way of a sale deed dated 15.07.1988 and when it is found that Varadharaja Gounder had already alienated the suit properties in favour of the defendant, it is seen that the claim of the plaintiff that she had purchased the suit properties from Varadharaja Gounder by way of Exs.A3 to A5 as such cannot be accepted. Further, as discussed above, the plaintiff has not established that she has paid the sale consideration to Varadharaja Gounder and accordingly taken possession and enjoyment of the suit properties, pursuant to the above said sale transactions.

14. It is mainly contended by the plaintiff's counsel that the defendant's sale deed has come to be registered at a later point of time and therefore the defendant cannot be allowed to claim any title to the suit properties under his alleged sale deed. However, as rightly put forth by the defendant's counsel, though his document has come to be registered subsequent to the sale transaction however, it is found to have been registered within the time allowed by law. It is seen that the registration will have effect from the date of the execution of sale transaction and such being the position, it is found that as rightly found by the Courts below, only the defendant has a valid claim to the suit properties.

15.Despite the challenge made by the defendant to the sale transactions projected by the plaintiff, when the plaintiff is unable to establish her case through her testimony as well as the evidence of P.W.2 and 3 and when P.Ws.4 and 5 are not directly acquainted with the sale transactions as rightly contended and also determined by the Courts below, the plaintiff should have endeavoured to examine the persons associated with the sale transactions under which, she claims title to the suit properties. On the other hand, when no one who are associated with the sale transactions had been examined and the plaintiff is also not established to be in possession and enjoyment of the suit properties pursuant to the above said sale transactions, as rightly found by the Courts below, the plaintiff's claim of title to the suit properties cannot be accepted in any manner.

16.As rightly found by the Courts below D.W3, who is the scribe of the sale transaction involved in this case namely Exs.A4 and A5 and Exs.B1 to B3 has clearly deposed that no sale consideration has been paid by the plaintiff for the sale transactions effected under Ex.A4 and A5 and accordingly, it is seen that Varadharaja Gounder had not been paid the valid consideration, if any, under the above said sale transactions. Further from the evidence of D.W3, it is found that the sale transaction marked as Ex.B3 had come to be executed first and accordingly, it is seen that the subsequent registration of the same would not in any manner affect the validity of the said sale transaction as the subsequent registration would date back to the date of the execution of the document. When it is found that the Exs.B1 to B3 had come into existence between the defendant and Varadharaja Gounder much prior to Ex.A4 and A5, as rightly determined by the Courts below, Varadharaja Gounder would not have any valid title to convey the suit properties, by way of Exs.A4 and A5 to the plaintiff. Similarly, D.W4, the attester has also deposed about Exs.B1 and B2 and the payment of the sale consideration to Varadharaja Gounder by the defendant, by way of the above said documents. In the light of the above position, when it is seen that the plaintiff had failed to establish that she has paid the valid consideration for the sale transactions projected by her and also failed to establish that she has been put in possession and enjoyment of the suit properties by Varadharaja Gounder and further more when she has failed to establish that Varadharaja Gounder had a valid title to convey the suit properties in her favour, by way of the sale transactions projected by her in the plaint, as rightly determined by the Courts below, the plaintiff is not entitled to seek and obtain the reliefs claimed in the plaint.

17. In the light of the above discussions, the substantial questions of law formulated in the second appeal are answered

accordingly against the plaintiff and in favour of the defendant. Resultantly the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Subordinate Judge, Tindivanam.

2.The District Munsif Court, Gingee.

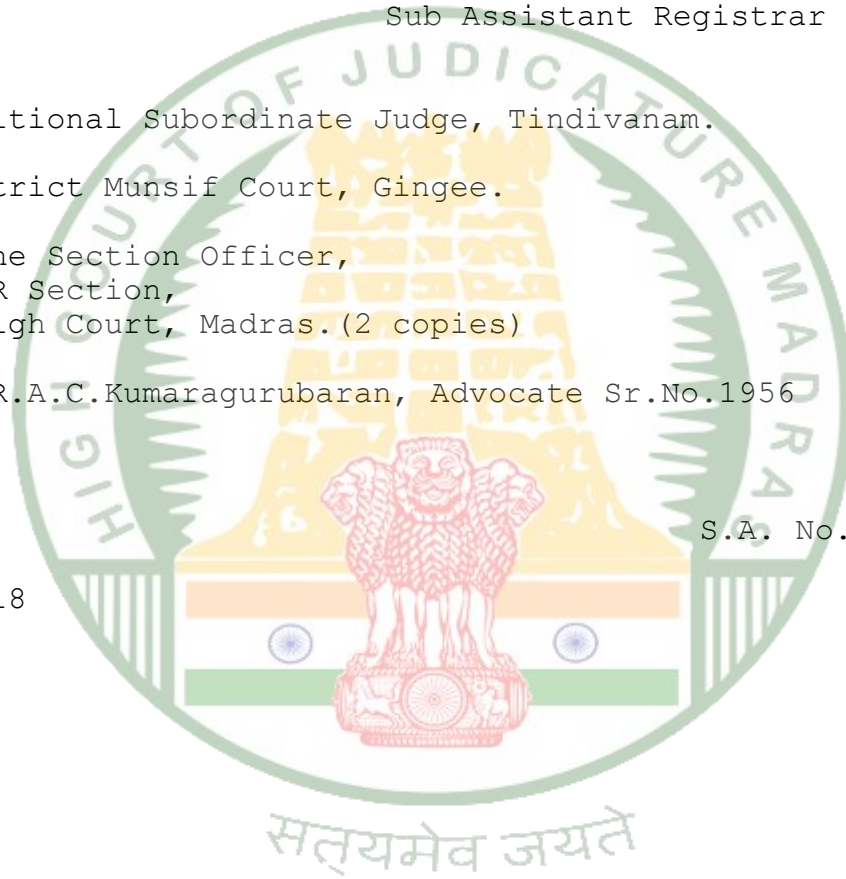
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+1cc to MR.A.C.Kumaragurubaran, Advocate Sr.No.1956

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