



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.04.2018
PRONOUNCED ON : 06.07.2018

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CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Second Appeal (MD) No.113 of 2018
and
C.M.P. (MD) No.2757 of 2018

1.Ansi Joshi : 1st Appellant/1st Appellant/1st Defendant
2.Sudalai Muthu : 2nd Appellant/2nd Appellant/2nd Defendant

-Vs-

1.Abdul Jabbar : 1st Respondent / Sole Respondent
/ Plaintiff
2.Kaja Mohideen : 2nd Respondent / 3rd Appellant / 3rd Defendant

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, to set aside the judgment and decree of the lower appellate Court dated 18.08.2017, made in A.S.No.87 of 2005 on the file of the Principal Sub Court, Tirunelveli, confirming the judgment and decree of the trial Court dated 11.01.2005 made in O.S.No.195 of 2003 on the file of the II Additional District Munsif Court, Tirunelveli.

For Appellants : Mr.S.P.Maharajan

For R1 : Mr.M.P.Senthil

JUDGMENT

The defendant in the suit in O.S.No.195 of 2003 on the file of the II Additional District Munsif Court, Tirunelveli and the second appellant in A.S.No. 87 of 2005 on the file of the Principal Sub Court, Tirunelveli are the appellants in the above second appeal.

2.The first respondent in this appeal filed the suit in O.S.No.195 of 2003 before the II Additional District Munsif Court, Tirunelveli for declaration of title to the plaint schedule property and for recovery of possession. The suit property is an extent of 1 acre 85 cents in S.No.445/3 in Sengulam Village, Palayamkottai Taluk, Tirunelveli District.

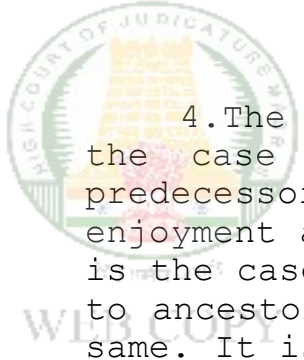


3.The case of the first respondent / plaintiff in the suit is as follows:

3.1.The suit property originally belonged to one Abdul Masjeed and others by virtue of a sale deed dated 26.04.1946. They sold the property to one Uduman. Thereafter, the sons of Uduman divided the suit property into equal half share taking 92 ½ cents each under a partition deed dated 12.03.1969. The sons of Uduman, namely, Mohamed Masthan and Seyadu Hussain sold their respective 92½ cents to one P.K.Hayadudin under two sale deeds dated 02.08.1994 and 01.08.1994. The said P.K.Hayadudin sold the entire suit property to the plaintiff for a valuable consideration by a registered sale deed dated 07.05.2001. The predecessors-in-interest of the plaintiff are in continuous possession and enjoyment of the suit property.

3.2.One P.S.N.Dasan, as power of attorney agent of one Nagoor Mydeen Rowther, executed a sale deed in respect of the suit property in favour of one K.P.Varghees on 10.11.1987. The said K.P.Varghees through his power of attorney agent, by name, Thirunavukkarasu, executed a sale deed dated 25.11.1999 to the defendant. The power of attorney deed is a fraudulent document and the said Nagoor Mydeen Rowther had no title or interest or possession over the plaint schedule property. Similarly, the alienation in favour of the defendant through the sale deed dated 25.11.1999 is also a fraudulent one and it cannot confer or convey any title to the defendant.

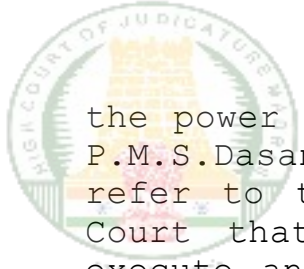
3.3.Since the suit property being a land with coconut trees without any fence, the defendant encroached into the suit property on the basis of the fraudulent sale deed. In the suit property, the predecessors-in-interest of the plaintiff had planted coconut trees and they were in possession and enjoyment of the same. Since the plaintiff, due to his business avocation, was in Bombay and has stayed there for more than a month and returned only in June'2001, he came to know about the fraudulent sale deed and the inclusion of defendant's name in the patta as a joint pattadar. The plaintiff also filed a petition before the Revenue Divisional Officer, Tirunelveli for deletion of defendant's name from the patta. After due enquiry, the Revenue Divisional Officer, Tirunelveli, removed the defendant's name from the patta. However, the defendant, on the basis of fraudulent sale deed, somehow got service connection for supply of electricity and the plaintiff has given representation to the Electricity Board. A police complaint was also given and inspite of that the defendant encroached the suit schedule property again on 04.04.2003 and started construction. It is in these circumstances, the plaintiff was constrained to file the suit for declaration of title and for recovery of possession.



4. The suit was contested by the defendant specifically denying the case of the plaintiff in toto. It is stated that the predecessors-in-interest of the plaintiff had no possession or enjoyment at any point of time in respect of the suit property. It is the case of the first appellant that the suit property belonged to ancestors of Nagoor Meeran and that he was in enjoyment of the same. It is further stated that the said Nagoor Meeran, through his power of attorney agent, sold the suit property in favour of one P.V.Varghees. It is further stated that the first appellant purchased the suit property from the said P.V.Varghees through his power of attorney agent, by a document of sale dated 25.11.1999. It is also the case of the defendant that the suit property is surrounded on all four sides by the property of first appellant's husband and that the first appellant is in enjoyment of the suit property as full owner. The first appellant also pleaded that his enjoyment is for a long number of years and the plaintiff is not entitled to any relief. The first appellant then also filed an additional written statement contending that the sale deed executed in favour of the plaintiff by P.K.Hayadudin, is a sham and nominal document and it is invalid. The first appellant further pleaded adverse possession as he was in enjoyment of the suit property as owner without any obstruction for more than the statutory period.

5. Before the trial Court, the plaintiff produced Ex-A1 to Ex-A15 and examined himself as PW-1. On behalf of defendant, Ex-B1 to 20 were marked and the defendant examined herself as DW-1 and two others as DW-2 and DW-3. The trial Court, on the basis of documents filed by the plaintiff, found that the plaintiff has proved his case by tracing the title from Ex-A1 to Ex-A4. The trial Court further observed that the plaintiff has established his right of his predecessors-in-interest from 1946. Regarding the sale deed obtained by the defendant under Ex-B10, dated 25.11.1999, the trial Court found that the property conveyed under Ex-B10 is on the basis of yet another sale deed executed in favour of defendant's vendor on 06.11.1987. The certificate copy of the sale deed dated 06.11.1987 and the power of attorney deed executed by one Nagoor Meeran in favour of P.S.N.Dasan, is marked as Ex-B14. After scrutinising the documents of title deed, the trial Court found that the Nagoor Meeran, executed a sale deed describing the property conveyed by him, as his ancestral property inherited as heir of his ancestor. However, the names of his ancestors of Nagoor Meeran were not referred to in the documents.

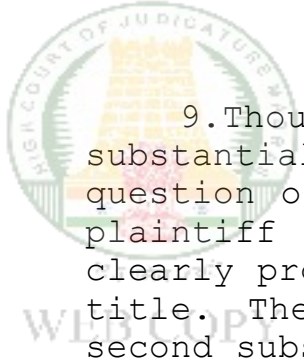
6. It is also pointed out by the trial Court that the sale deed, executed by the power of attorney agent, was described as his own property. No document prior to the sale deed dated 06.11.1987 is referred to in the document. Further, the trial Court also referred to the proceedings of Revenue Divisional Officer, Tirunelveli, dated 27.05.2002, which is marked as Ex-A13. The Revenue Divisional Officer, Tirunelveli, considered



the power of attorney deed executed by Nagoor Meeran in favour of P.M.S.Dasan. Surprisingly, the said power of attorney deed did not refer to the suit property. Hence, it was deduced by the trial Court that the power of attorney agent was not authorised to execute any sale deed in respect of suit property in S.No.445/3, measuring an extent of 1 acre 85 cents. Surprisingly, the power of attorney agent of Nagoor Meeran, by name, P.M.S.Dasan, executed a sale deed vide document No.2628/87, in respect of the suit property in S.No.445/3. From the documents, the trial Court came to the conclusion that the first appellant's vendor's vendor had no title to the suit property and that the power of attorney deed executed by Nagoor Meeran is not with reference to the suit property.

7.It is evident that the sale deed executed by Nagoor Meeran through his power of attorney agent in favour of P.V.Varghees in respect of the suit property is invalid and cannot confer any right in favour of the purchasers. When the said Nagoor Meeran did not execute any power of attorney, in respect of suit property, the sale deed executed by the power of attorney agent cannot confer any right in favour of the purchaser, namely, P.V.Varghees in respect of the suit property. Consequently, the subsequent sale deed executed by the P.V.Varghees through his power of attorney agent cannot have any legal consequences and confer any right in favour of the defendant. After considering all the documents, the trial Court correctly analysed the pleadings and documents in a proper perspective and found that the defendant's case relying upon the sale deed in favour of the defendant and the earlier sale deed in favour of his vendor are invalid documents and incapable of being construed as document of title. From the documents produced by the defendant, it is evident that the sale deed obtained by the defendant is invalid. The defendant, who has purchased the property in the year 1999, cannot claim adverse possession, particularly, when he did not have any document to show that his vendors had either title or enjoyment in the suit property. In the above circumstances, the trial Court specifically found that the first appellant / defendant has not proved his case of adverse possession. Aggrieved by the judgment and decree of the trial Court, the first appellant preferred an appeal in A.S.No.87 of 2005 before the Principal Sub Court, Tirunelveli. During the pendency of the appeal, the second appellant and the second respondent in this appeal were impleaded as appellants 2 and 3.

8.The appellate Court also concurred with the findings of the trial Court and held that the defendant has come forward with a false claim on the basis of surreptitious document, which would not confer any title in favour of the defendant. The lower appellate Court also dismissed the appeal filed by the defendant. Aggrieved by the judgment and decree of the lower appellate Court in A.S.No.87 of 2005, the above second appeal has been preferred by the defendant in the suit and the second appellant in A.S.No.87 of 2005.



9. Though the learned Counsel for the appellants raised several substantial questions of law, he is unable to sustain any of the question of law. The Courts below have concurrently held that the plaintiff has proved his title and the documents of title deed clearly prove that the title of plaintiff and his predecessors-in-title. The learned Counsel for the appellants referred to the second substantial question of law framed by him in the memorandum of grounds and submitted that the sale deed under Ex-A7, in favour of the plaintiff is a sham and nominal document and that the plaintiff has failed to prove the same through independent witness. Except raising a plea in the additional written statement that the document Ex-A7 is a sham and nominal document, there was no attempt on the side of the defendant to substantiate the same. The defendant is the third party to the document and he does not claim any right under the person, who has executed the document, Ex-A7.

10. In such circumstances, by raising a plea with regard to the genuineness of the transaction, the defendant cannot succeed. The defendant also produced several documents to prove his title and none of his predecessors-in-interest have raised any claim against the plaintiff. The Courts below have rendered the findings after elaborately considering the pleadings and evidence. The findings of the Courts below are supported by documents and on the basis of settled principles of law. No question of law, much less a substantial questions of law arises in this second appeal.

11. As a result, this second appeal is dismissed and the judgment and decree in A.S.No.87 of 2005, dated 18.08.2017, passed by the Principal Subordinate Judge, Tirunelveli, confirming the judgment and decree of the learned II Additional District Munsif, Tirunelveli in O.S.No.195 of 2003, dated 11.01.2005 is affirmed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Tirunelveli.

2. The II Additional District Munsif,



3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.S.P.Maharajan , Advocate in SR No. 71727
+ 1 cc TO Mr.M.P.Senthil , Advocate in SR No. 71504

cmr

AE/SV/SAR1/17.07.2018/6P/7C

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