



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

S.A. (MD) Nos. 68 and 69 of 2018
and
C.M.P. (MD) No. 1439 of 2018

Radha ... Appellant in both appeals

-Vs-

1. Sulochana
2. Sasi ... Respondents in both appeals

PRAYER in S.A. (MD) No. 68 of 2018: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the lower Appellate Court dated 19.07.2017, passed in A.S. No. 43 of 2014 on the file of the learned Subordinate Judge, Kuzhithurai, confirming the judgment and decree of the trial Court dated 01.10.2013 passed in O.S. No. 79 of 2009 on the file of the Principal District Munsif, Kuzhithurai.

PRAYER in S.A. (MD) No. 69 of 2018: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the lower Appellate Court dated 19.07.2017, passed in A.S. No. 44 of 2014 on the file of the learned Subordinate Judge, Kuzhithurai, confirming the judgment and decree of the trial Court dated 01.10.2013 passed in O.S. No. 553 of 2009 on the file of the Principal District Munsif, Kuzhithurai.

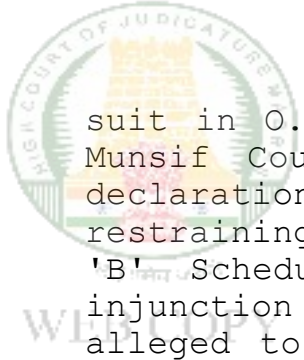
For Appellant in both cases

: Mr. R. Nandakumar

COMMON JUDGMENT

These appeals have been filed against the common judgment and decree of the lower Appellate Court dated 19.07.2017, passed in A.S. Nos. 43 and 44 of 2014 on the file of the learned Subordinate Judge, Kuzhithurai, preferred against the judgment and decree of the trial Court dated 01.10.2013 passed in O.S. Nos. 79 and 553 of 2009 on the file of the Principal District Munsif, Kuzhithurai.

2. The defendant in O.S. No. 553 of 2009 is the appellant in S.A. (MD) No. 69 of 2018. The plaintiff in O.S. No. 79 of 2009 is the appellant in S.A. (MD) No. 68 of 2018. The appellant has filed a suit in O.S. No. 79 of 2009 for bare injunction, in respect of an extent of 20 cents in R.S. No. 310/2 in Methukummal Village, Vilavancode Taluk, Kanyakumari District. The respondents in these appeal have filed a



suit in O.S.No.553 of 2009, on the file of the Principal District Munsif Court, Kuzhithurai, as against the appellant herein for declaration of title and consequently for permanent injunction restraining the defendant and her men from encroaching within the 'B' Schedule property and the suit is also for a mandatory injunction for demolition and removal of a small construction alleged to have been put up by the defendant within 'C' schedule property. In the suit, 'A' schedule property is described as an extent of 31.567 cents, 'B' schedule property is described as an extent of 30.067 cents and the 'C' schedule property is described as an extent of 1 ½ cents and a small house. Suit 'B' schedule property is shown as part of 'A' schedule property in the plaint in O.S.No.553 of 2009.

3.Both the suits, filed by the appellant as well as the respondents, were tried together and common evidence was taken in the suit filed by the respondents in these appeals. The respondents are called as plaintiffs and appellant is referred to as the defendant, even in the common judgments, rendered by the Courts below and this Court for convenience follow the same. The appellant has claimed title in respect of an extent of 20 cents in S.No.310/2, on the basis of a sale deed dated 12.11.1996, executed by one Ponnamma, Girija and Madhasoothanan in her favour. Whereas, the respondents have claimed title on the basis of a registered sale deed, dated 06.12.1980 from one Arjunan Panikker, Viswanathan Panikker and Sundaresan Panikker. The vendors of the respondents have purchased the property from one Subbayyan Panickker, by virtue of a sale deed 12.03.1960. The property sold by Subbayyan Panickker was later allotted to him in the family partition deed dated 20.06.1962 as item No.I of 'E' schedule property. The trial Court found that the property measuring an extent of 38.567 cents was allotted to Subbayyan Panickker in the partition deed dated 20.06.1962. However, Subbayyan Panickker had sold the suit 'A' schedule property measuring an extent of 31.567 cents to the vendors of the respondents, even in the year 1960.

4.The trial Court further found that the appellant had purchased the property measuring an extent of 20 cents only from the legal heirs of the said Subbayyan Panickker. The appellant is also one of the heirs of Subbayyan Panickker. Hence, after finding that the appellant has claimed title only on the basis of the sale deed, dated 12.11.1996, obtained from the other legal heirs of the Subbayyan Panickker, the trial Court held that the appellant's vendors had no right to claim title on the basis of sale deed, which is marked as Ex-B5. In this case, the trial Court categorically found that both the parties let evidences only on the basis of their title deed and that the Court is expected to decide the rights of the parties, only on the basis of title deed. The fact that the suit property was already sold by Subbayyan Panickker, in favour of one Arjunan Panickker and others is not in dispute and it is evident from Ex-A3. Similarly, the property was allotted to Subbayyan Panickker, under Ex-A3, dated 19.06.1962 is not in dispute. After



conveying the suit property in favour of the vendors of the respondent under Ex-A1, dated 12.03.1960, the said Subbayyan Panickker cannot claim any right over the property. It is also stated by the respondents that Subbayyan Panickker out of 38.567 cents allotted to him in the partition had sold another 7 cents to one Sankaran and therefore he left nothing to his legal heirs in the suit survey numbers.

5. In this case, it is only the legal heirs of Subbayyan Panickker, once again claim right under the partition deed, under Ex-A3 and conveyed the property in favour of the appellant under Ex-A5, dated 12.09.1980. Hence, the trial Court held that the appellant is not entitled to get decree for permanent injunction in respect of the suit property in O.S.No.79 of 2009. On the same lines, the trial Court also held that the respondents, who are the plaintiffs in O.S.No.553 of 2009, are entitled to decreed as prayed for in respect of 'B' schedule property. However, with regard to the encroached portion, the trial Court found that the respondents have not proved their case. Hence, the prayer for mandatory injunction in respect of the 'C' schedule property was negatived by the trial Court. Aggrieved by the trial Court, the appellant herein preferred two appeals in A.S.No.43 and 44 of 2014, before the Sub-Court, Kuzhithurai. The appellate Court also dismissed both appeals, confirming the findings of the trial Court. Aggrieved by the same, the appellant has preferred the above two appeals. The learned Counsel for the appellant raised the following substantial questions of law in these two appeals:

(a) Whether the plaintiff / appellant is not entitled to a decree for injunction when the trial Court has dismissed the suit filed by the respondents for possession / mandatory injunction?

(b) Whether the plaintiff / appellant has not proved her possession by her sale deed, Kist/tax receipts?

(c) Whether the Courts below are right in partly decreeing the suit when their vendor's predecessor did not have right to sell the property in 1960 when he gets the property only in 1962 under the partition deed?

(d) Whether the sale deed in favour of the plaintiffs is not valid in view of the fact that the same has been registered in Kerala?

(e) When the trial Court has negatived the main relief of declaration and dismissed the suit regard 'C' schedule, should it not have decreed the suit filed by the appellant for injunction?

6. Quiet contrary to the grounds raised and the substantial question of law framed in these appeals, the learned Counsel for the appellant submitted that the respondents have not purchased the property from Subbayyan Panickker and therefore, the Courts below have wrongly come to the conclusion that the heirs of Subbayyan Panickker had no right to deal with the property, after the property

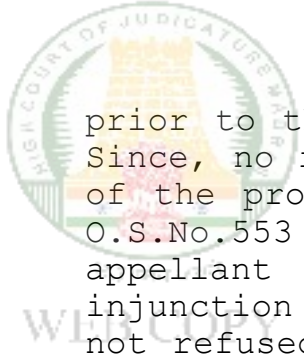


was sold in favour of the plaintiff. The submission of the learned Counsel for appellant cannot be accepted and it is contrary to the case pleaded and evidence produced.

7. First of all, the case of the respondents in the suit in O.S.No.553 of 2009, is that their vendors had purchased the suit property under the sale deed under Ex-A1, dated 12.03.1960. Of Course, it is only after the sale deed, Subbayyan Panickker got the property allotted in the registered partition deed under Ex-A3. Therefore, under the document, Ex-A5, respondents have purchased the property on 06.12.1980 from the persons who have purchased the property from Subbayyan Panickker. Hence, the respondents claimed right only on the strength of the sale deed under Ex-A1, the partition deed under Ex-A3 and the sale deed under Ex-A5. As against this, the appellant has claimed title on the basis of Ex-B5, sale deed, which was admittedly executed by the heirs of Subbayyan Panickker. If the said Subbayyan Panickker sold the property in favour of the vendors of the respondents, Subbayyan Panickker or his heirs had no title over any portion of the suit property. Hence, the sale deed under Ex-B5 is invalid, inasmuch as the same is executed by the persons, who had no title. This position cannot be assailed as no other evidence has been let in to show that the legal heirs of Subbayyan Panickker had any other source. As a matter of fact, even in the sale deed, under Ex-B5, it is categorically stated that the vendors derived title only under Ex-A3, partition deed, wherein, the property was allotted to Subbayyan Panickker.

8. Having regard to the admitted facts, absolutely there is no scope for entertaining these two appeals. The first two questions of law are factual. The documents produced by the appellants are found to be obtained just prior to suit and the suit property in the suit filed by the appellants on the basis of Ex-B5 is unsustainable. The next question of law raised in this case is about the validity of the sale deed executed by Subbayyan Panickker in the year 1960. It is true that Subbayyan Panickker got the property only under partition deed of the year 1962, which was marked as Ex-A3. No other person claim any right in respect of the property conveyed by Subbayyan Panickker in the year 1960. A co-owner is entitled to deal with the property, even before partition. However, alienation is valid only to the extent of his share in the property. In this case, after executing the sale deed, Subbayyan Panickker got the property conveyed by him under the partition deed, which was in the year 1962. It is to be noted that Sections 43 of the Transfer of Property Act, 1882, is relevant in this case. Section 43, protects the transferee's right to get the property, purchased by him, if the property is subsequently allotted to him. Section 43 of the Act, is fully applicable. In a suit by the transferee for declaration of title the legal heirs of transferor cannot dispute the title of transferee.

9. The fourth substantial question of law is also unsustainable, as the transfer, which is the subject matter of this appeal is long



prior to the recent amendment introduced in the Registration Act. Since, no relief was granted in favour of the respondent in respect of the property, which is referred to as 'C' schedule property in O.S.No.553 of 2009, it is contended by the learned Counsel for the appellant that the Court ought to have granted a decree for injunction in respect of 'C' schedule property. The trial Court has not refused the relief in respect of the 'C' schedule on the basis of any right that was found in favour of the appellant. Since, the respondent failed to substantiate the case cogently, even in respect of the 'C' schedule property, as described in the plaint in O.S.No.554 of 2009, the trial Court though dismissed the suit in respect of 'C' schedule property that does not follow that the plaintiff is entitled to a decree for injunction in respect of 'C' schedule property. Hence all the substantial question of law are answered against the appellant. Hence, these appeals have no merits and therefore, these appeals are dismissed and the judgment and decree in A.S.Nos.43 and 44 of 2014 on the file of the learned Subordinate Judge, Kuzhithurai, confirming the judgment and decree of the trial Court dated 01.10.2013 passed in O.S.Nos.79 and 553 of 2009 on the file of the Principal District Munsif, Kuzhithurai, is affirmed. No costs. Consequently, the connected, miscellaneous petition is closed.

Sd/-
Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge, Kuzhithurai.

2.The Principal District Munsif, Kuzhithurai.

+2cc to Mr.R.Nandakumar, Advocate, SR.Nos.52662 and 52663

cmr
RL/5C/5P/SV/MMS/SAR1/28/4/2018

Judgment made in

S.A. (MD) Nos.68 and 69 of 2018

01.03.2018