

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

SECOND APPEAL Nos.1365 AND 1368 OF 2017

COMMON JUDGMENT:

1. Second Appeal No.1365 of 2017 is filed challenging the judgment and decree dt.24.08.2017 in A.S.No.22 of 2001 of VIII Additional District Judge, Chittoor, confirming the judgment and decree dt.29.01.2001 in O.S.No.834 of 1994 of Principal Junior civil Judge, Chittoor.
2. Second Appeal No.1368 of 2017 is filed challenging the judgment and decree dt.24.08.2017 in A.S.No.24 of 2001 of VIII Additional District Judge, Chittoor, confirming the judgment and decree dt.29.01.2001 in O.S.No.835 of 1994 of Principal Junior civil Judge, Chittoor.
3. The appellants in both the appeals claim through Sri C.Subramanyam, who is 1st defendant in both the suits.
4. The subject matter of O.S.No.834 of 1994 are four items of land in survey No.402/2 of Manchineelagunta village of total extent Ac.1-20 cents. The subject matter of O.S.No.835 of 1994 is an extent of Ac.0-24 cents forming part of Ac.0-96 cents in survey No.402/3 of No.5 Venkatapuram village.
5. The respondent in SA.No.1365 of 2017 /plaintiff in O.S.No.834 of 1994 filed the said suit for permanent injunction against the 1st appellant/defendant seeking a perpetual injunction restraining the respondent/defendant

from interfering with her peaceful possession and enjoyment of the plaint schedule properties.

6. Likewise, the 1st respondent in SA No.1368 of 2017 /plaintiff in O.S.No.835 of 1994 sought a perpetual injunction against the 1st appellant, 1st defendant, 2nd respondent/2nd defendant and 2nd appellant/3rd defendant to restrain them from interfering with his peaceful possession and enjoyment of the plaint schedule property.

CASE OF PLAINTIFFS/RESPONDENTS

7. The respondent/plaintiff in SA.No.1365 of 2017 contended that she purchased the plaint schedule property under Ex.B5 dt.24.10.1994 executed in her favour from C.Balakrishnama Naidu, who is the plaintiff in O.S.No.835 of 1994, who in turn purchased it from T.Sundaramurthy Chetty under registered sale deed dt.27.04.1994 (Ex.B-1(A)).

8. The said Sundaramurthy Chetty had filed O.S.No.447 of 1983 before the I Additional District Munsiff, Chittoor for recovery of amounts against Chinnabba Naidu (2nd defendant in O.S.No.835 of 1994), the third son of Munaswamy Naidu, which were borrowed from a firm viz., Venkataswamy Chetty and Sons. The said suit was decreed after contest and decree holder filed OEP.No.209 of 1985 before the I Additional District Munsiff, Chittoor and brought the plaint schedule properties and other items for sale and in that sale/Court auction, T.Sundaramurthy Chetty purchased them and took

possession on 27.04.1994 which is evidence by Exs.B2 and B3.

9. The respondents in SA.No.1365 of 2017 and SA.No.1368 of 2017, who are plaintiffs in both the suits, thus claim that they obtained title to the respective plaint schedule properties and thereafter they were in possession and enjoyment of the same. They contend that the 1st appellant in SA.No.1365 of 2017/defendant in O.S.No.834 of 1994 who is also 1st appellant in SA.No.1368 of 2017/1st defendant in O.S.No.835 of 1994 along with other defendants attempted to interfere with their peaceful possession and enjoyment of the properties on 20.12.1994, because of which, the suits had to be filed.

WRITTEN STATEMENTS OF APPELLANTS/DEFENDANTS

10. The 1st appellant in SA.No.1365 of 2017/defendant in O.S.No.834 of 1994 filed a written statement denying that Chinnabba Naidu owns the plaint schedule properties and contended that there is no partition between Munaswamy Naidu and his sons including Chinnabba Naidu. He denies that any loan was borrowed by Chinnabba Naidu from Venkataswamy Chetty and Sons and also denied filing of O.S.No.447 of 1983, the decree therein or the Court auction therein. He contended that Chinnabba Naidu and Sundaramurthy Chetty colluded with each other and filed the EP and the judgment therein is not binding on him. It is also

contended that the sale deed Ex.B-1(A) dt.27.04.1994 is a sham and nominal sale deed and was never acted upon. He alleged that his father, by name Govindappa Naidu, and Munaswamy Naidu had jointly purchased Ac.4-17 cents in RS.Nos.402/2, 402/3 and 203/1 under Ex.A1 Sale deed dt.09.08.1960 from G.Papaiah Naidu; that his father, Govindappa Naidu and Munaswamy Naidu jointly enjoyed the same and later partitioned the same about 20 years back; that in the oral partition, the property which is subject matter of O.S.No.834 of 1994 was allotted to his father, Govindappa Naidu; that Govindappa Naidu died 7 of 8 years back and himself, his mother and sister by name Sarojamma succeeded to the estate of his father. He contended that he executed a sale deed Ex.A2 dt.21.09.1994 in favour of T.Venkatesulu Naidu and T.Lokanandha Naidu (2nd appellant in SA.No.1368 of 2017/3rd defendant in O.S.No.835 of 1994). He contended that possession and enjoyment of the properties was with Sri T.Venkatesulu Naidu and Sri T.Lokanandha Naidu.

11. Chinnabba Naidu, who is 2nd defendant in O.S.No.835 of 1994 was set *ex parte*.

12. T.Venkatesulu Naidu, 3rd defendant in O.S.No.835 of 1994 filed written statement adopting the stand taken by the 1st appellant in both the appeals, who is also the defendant in O.S.No.834 of 1994 and 1st defendant in OS.No.835 of 1994.

13. Both the suits were tried along with another suit in O.S.No.43 of 1995 filed by T.Venkatesulu Naidu and T.Lokananda Naidu against the plaintiff ; and joint trial was also conducted in O.S.No.43 of 1995.

14. PWs 1 to 4 were examined on behalf of the plaintiffs in O.S.No.43 of 1995 apart from marking Exs.A1 to A8. DWs1 to 3 were examined on behalf of the respondents in the appeals and they marked Exs.B1 to B14.

JUDGMENTS OF TRIAL COURT IN O.S.834 OF 1994 AND O.S.No.835 of 1994

15. A common judgment was delivered on 29.01.2001 in O.S.Nos.43 of 1995, 834 of 1994 and 835 of 1994 by the Principal Junior Civil Judge, Chittoor.

16. He dismissed the O.S.No.43 of 1995 and decreed O.S.No.834 of 1994 and 835 of 1994. Thus, he granted permanent injunction in favour of the respondents in SA.No.1365 of 2017/plaintiffs in O.S.No.834 of 1994 and 1st respondent in SA.No.1368 of 2017/plaintiff in O.S.No.835 of 1994.

17. In its judgment dt.29.01.2001, the trial Court held, on appreciation of evidence, that the plaintiff in O.S.No.834 of 1994 and 835 of 1994 (sole respondent in SA.No.1365 of 2017 and 1st respondent in SA.No.1368 of 2017) had established their possession and enjoyment of the plaint schedule property and they were therefore entitled for the

relief of injunction. He also held that there was no evidence to establish which property fell to the share of Govindappa Naidu and which property fell to the share of Munaswamy Naidu as per their alleged oral partition, though it appears that property of an extent of Ac.4-17 cents was jointly purchased under Ex.A1 by both of them. So, the case set up by the appellants that Govindappa Naidu was in possession and enjoyment of the property, as shown in Ex.A8(10(1) account), was not accepted.

18. The trial Court also held that the appellants who are sailing with the plaintiff in OS.No.43 of 1995 did not file any documentary evidence to show that legal representatives of Govindappa Naidu had been in possession and enjoyment of the plaint schedule property at any point of time. It also held that Ex.B2 and B3, which are Amin's report and possession receipt issued in O.S.No.447 of 1983, being Court documents showing purchase of property by T.Sundaramurthy Chetty from Chinnabba Naidu, cannot be disbelieved. It observed that there is no evidence on record to show that respondents had enquired about the title of their vendors prior to purchase of property under Ex.A2. It further held that the plaintiff in O.S.No.835 of 1994/1st respondent in SA.No.1368 of 2017 is a bonafide purchaser of the plaint schedule properties. It held that though through a reply notice Ex.B9 dt.01.07.1994, the plaintiff in O.S.No.835 of 1994 informed about his purchase and his vendor's purchase in Court

auction, but still the 3rd respondent in O.S.No.835 of 1994, who is one of the plaintiffs in O.S.No.43 of 1995, purchased the property under Ex.A2 and it shows collusion between them. It also held that the 3rd defendant in O.S.No.835 of 1994, who is one of the plaintiffs in OS.No.43 of 1995, and T.Lokanandha Naidu, who is 2nd plaintiff in O.S.No.43 of 1995, did not explain why they purchased half of the property from Munaswamy Naidu and Govindappa Naidu through legal representatives of Govindappa Naidu without mentioning the boundaries in Ex.A2 dt.21.09.1994. He therefore concluded that the 3rd respondent in O.S.No.835 of 1994 and T.Lokanandha Naidu were not certain about the lands which they purchased and they had given fictitious boundaries in O.S.No.43 of 1995. It further placed reliance on Ex.B10 sale deed dt.27.06.1971 under which one of the sons of Munaswamy Naidu by name Ananda Naidu, sold land to one Kanthamma, who is the wife of the plaintiff in O.S.No.835 of 1994 and concluded that the recitals in Ex.B10 show that the property, which fell to the share of Munaswamy Naidu, was succeeded by all his six sons and the property which fell to the share of Chinnabba Naidu(2nd defendant in O.S.No.835 of 1994) was sold in the Court auction and this established the possession and enjoyment of the plaintiffs in O.S.No.834 of 1994 and O.S.No.835 of 1994 over the plaint schedule properties.

19. Assailing this common judgment, separate appeals were preferred in A.S.No.22 of 2001 and A.S.No.24 of 2001 to the VIII Additional District Judge, Chittoor.

JUDGMENTS IN A.S.22 OF 2001 AND 24 OF 2001

20. Both these appeals were dismissed by separate orders on 24.08.2017. The lower appellate Court confirmed the findings of the trial Court. It also held that the appellants did not file any document to show that either the suit schedule properties or written statement schedule properties exclusively fell to the share of Govindappa Naidu and that during his life time he enjoyed the same by cultivating the land. It also observed that the 1st appellant did not file any document to show that he was in possession and enjoyment of the plaint schedule property covered by either plaint schedule or written statement schedule during his life time. It held that, except Ex.A2, there is nothing to show that the plaint schedule property fell to the share of Govindappa Naidu and after his death, it fell to the share of 1st appellant and he had absolute title and interest over the property and sold it to T.Venkatesulu Naidu, who is 3rd defendant in O.S.No.835 of 1994 and 1st plaintiff in O.S.No.43 of 1995, and T.Lokanadha Naidu, who is 2nd plaintiff in O.S.No.43 of 1995. It further appreciated the evidence produced by the plaintiffs in O.S.No.834 of 1994 and 835 of 1994 and concluded that their vendor did purchased the property in Court auction and thereafter sold it to the 1st respondent in SA.No.1365 of

2017/plaintiff in O.S.No.835 of 1994, who in turn sold it to the respondents in SA.No.1365 of 2017/plaintiff in O.S.No.834 of 1994. It also opined that the correctness of the sale in favour of T.Sundaramurthy Chetty cannot be canvassed by the appellants without approaching the Executing Court in O.S.No.447 of 1983 to set aside the same and no suit had been filed for declaring that the execution proceedings are not binding on the appellant and to declare their title over the property ignoring the execution proceedings. It also refused to remand the matter back to the trial Court as sought by the appellants and rejected an application under Order 41 Rule 23(a) C.P.C. to receive certain documents at appellate stage by giving reasons.

21. Assailing the same, these two Second Appeals have been preferred.

CONTENTIONS IN SECOND APPEALS BY APPELLANTS

22. It is contended by the counsel for appellants that permanent injunction could not have been granted against co-owners or their successors, since both the Courts have accepted that the properties had been jointly purchased by Govindappa Naidu and Munaswamy Naidu under Ex.A1 dt.09.08.1960.

23. This contention overlooks the fact that it is the finding of the both the Courts below that there was a partition between Govindappa Naidu and Munaswamy Naidu and that

Ex.B10 sale deed dt.27.06.1971 had been executed by one of the sons of Munaswamy Naidu in favour of wife of the plaintiff in O.S.No.835 of 1994 in respect of the property covered by Ex.A1 and the land of Chinnabba Naidu was shown as one of the boundaries to the property mentioned in Ex.B10. It was this property which was purchased in the Court auction by Sri T.Sundaramurthy Chetty and taken possession by him on 31.01.1988. Therefore, the property by 1971 was no longer joint property of Munaswamy Naidu and Govindappa Naidu and the appellants, who contend that there was a sale by legal heirs of Govindappa Naidu in favour of the 3rd defendant in O.S.No.835 of 1994 and T.Lokanadha Naidu, cannot therefore be said to be having any title to the property, particularly, when there is no evidence to show what properties were obtained by Govindappa Naidu in the partition between Munaswamy Naidu and himself.

24. A further contention is raised that A.S.No.23 of 2001 filed against O.S.No.43 of 1995 was disposed of on 13.10.2014 permitting withdrawal of O.S.No.43 of 1995 by filing a fresh suit, in I.A.NO.7 of 2012 filed under Order 23 Rule 1 CPC.

25. In my opinion, that cannot have any bearing in this Second Appeal preferred against the connected suit O.S.No.834 of 1994 and 835 of 1994, since it is not the case of the appellant that any fresh suit had been filed, as

permitted in O.S.No.23 of 2001, and any orders had been granted in favour of the appellants.

26. I am satisfied on consideration of the judgment of the trial Court as well as the appellate Court that the evidence on record was correctly appreciated and that both the Courts rightly came to the conclusion that the plaintiffs in O.S.No.834 of 1994 and 835 of 1994, (who are sole respondent in S.A.No.1365 of 2017 and 1st respondent in S.A.No.1368 of 2017) had possession and enjoyment of the plaint schedule properties on the date of filing of the respective suits and that the appellants do not have such possession and enjoyment or even thereafter.

27. I therefore do not find any substantial questions of law for consideration in both the Second Appeals and they are accordingly dismissed at admission stage. No costs.

28. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

22st March, 2018.
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