



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.03.2019

Delivered on: 14.06.2019

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CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
S.A.No.1484 of 2000

1.Kuppuswamy
2.Arumugham
3.Malarveni

... Appellants/Defendant 2 & 3/
Respondents 1, 2 & 4

Vs.

1.Viruthambal

.. 1st Respondent/Plaintiff/
Appellant

2.Selvaraj

..2nd Respondent/LR of 1st Defendant/
3rd Respondent

PRAYER:

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the Principal District Judge, Villupuram in A.S.No.7 of 1998 dated 26.10.1999 in reversing the well considered judgment and decree of the Principal District Munsif, Ulundurpet in O.S.No.636 of 1995 and dated 25.11.1997.

For Appellants : Mr.V.Raghvachari

For 1st Respondent : Mr.R.Rajarajan
for M/s.R.BalaKrishnan

: R2 - Exparte

JUDGMENT

This Second Appeal has been filed by the defendants 2 and 3 and one of the LRs of the first defendant against the judgment and decree passed by the Principal District Judge, Villupuram in A.S.No.7 of 1998 dated 26.10.1999 reversing the judgment and decree passed by the Principal District Munsif, Ulundurpet in O.S.No.636 of 1995 dated 25.11.1997.



2. The first respondent herein had filed a suit in O.S.No.636 of 1995 on the file of the Principal District Munsif, Ulundurpet to declare their title over the suit property and for permanent injunction to restrain the defendants, their men, etc., from interfering with her peaceful possession and enjoyment of the suit property. The learned Principal District Munsif, Ulundurpet by the judgment dated 25.11.1997 dismissed the said suit with costs. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.7 of 1998 on the file of the Principal District Judge, Villupuram. The learned Principal District Judge, Villupuram, by the judgment dated 26.10.1999 had allowed the said appeal with costs and set aside the judgment and decree passed by the trial Court and decreed the suit as prayed for. Feeling aggrieved, the defendants 2 and 3 and one of the LR's of the first defendant have filed the present Second Appeal.

3. For the sake of convenience, the parties are referred to as described before the trial Court.

4. The averments made in the plaint are, in brief, as follows:-

The suit properties originally belonged to one Thaiyalnayaki Ammal wife of Marimuthu Padayachi. Since the said Marimuthu Padayachi and his first wife Annammal attempted to trespass into the suit properties, the said Thaiyalnayaki Ammal had filed a suit in O.S.No.210 of 1951 on the file of the District Munsif, Thirukoilur, for the relief of declaration and permanent injunction. The said suit was decreed on 17.09.1950 and hence, the said Thaiyalnayaki Ammal continued to be in possession and enjoyment of the suit properties till her death. She died 40 years ago, and after her death, their only daughter Muniyammal succeeded to the suit properties and she was in possession and enjoyment of the same and she sold the suit properties and other properties to the plaintiff's father Arumuga Padayachi under a registered sale deed dated 17.12.1958 for a valuable consideration of Rs.1,500/- and delivered possession of the said properties. The said Arumuga Padayachi died 25 years ago, leaving behind the plaintiff and her sister Saroja as his legal heirs. The said Saroja also died 8 years ago. Hence, the plaintiff is entitled to the entire suit properties. The plaintiff and her father have been in possession and enjoyment of the suit properties for more than 35 years and thereby, they perfected title by adverse possession also. The defendants not having any right over the suit properties tried to trespass into the suit properties on 27.09.1993 and hence, the plaintiff was constrained to file the above suit for relief of declaration and permanent injunction.



5. The averments made in the written statement filed by the third defendant and adopted by the defendants 1 and 2 are in brief as follows:-

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(a) The defendants denied the allegations that the suit properties originally belonged to Thaiyalnayaki Ammal wife of Marimuthu Padayachi and she filed a suit in O.S.No.210 of 1951 and obtained a decree on 17.09.1952 against the said Marimuthu Padayachi and his first wife. It is also false to state that the said Thaiyalnayaki Ammal was in possession and enjoyment of the suit properties and died 40 years ago, leaving behind her only daughter Muniyammal as legal heir and the plaintiff's father Arumuga Padayachi purchased the suit properties under a registered sale deed dated 17.12.1958 from the said Muniyammal and from the date of said purchase, he was in possession and enjoyment of the same and subsequently, he died and after his death, the plaintiff and her sister Saroja succeeded to the suit properties and subsequently the said Saroja also died and hence, the plaintiff has become absolute owner of the same. It is also false to state that the plaintiff and her father perfected title to the suit properties by adverse possession also. The suit properties originally belonged to Marimuthu Padayachi and the said Marimuthu Padayachi sold the suit properties under a registered sale deed dated 30.10.1950 to his wife Annammal for a valuable consideration of Rs.400/- and he delivered possession also together and hence, the said Annammal has become the owner.

(b) The said Annammal had sold the suit properties under a registered sale deed dated 06.04.1961 to the first defendant's father Natesa Padayachi for a valuable consideration of Rs.400/- and from that date onwards, he was in possession and enjoyment of the same. The said Natesa Padayachi died 30 years ago, leaving behind the first defendant as his legal heir. The first defendant is a person of sound mind and hence, his son Selvaraj and his wife Chinnapillai have enjoyed the suit properties and with their permission on behalf of the first defendant, the defendants 2 and 3 are enjoying the suit properties. Patta bearing No.431 has also been given in favour of the first defendant. On the date of filing of the suit, the plaintiff was not in possession and enjoyment of the suit properties. The said sale deed dated 17.12.1959 which stands in the name of the plaintiff's father is also a colourable transaction. It is false to state that the plaintiff had perfected title to the suit properties by adverse possession also. For the past 43 years, the defendants are in possession and enjoyment of the suit properties and they have been paying kist. Hence they have perfected title by adverse possession also. The plaintiff, her sister Saroja and their mother Parvathiammal had sent a lawyer's



notice dated 13.09.1984 and after receipt of the notice, the first defendant had sent a reply notice dated 03.10.1984 denying the allegation made in the said notice. All other allegations made in the plaint are all false and therefore, the defendants 1 to 3 prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned Principal District Munsif, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined herself as PW1 and also examined one more witness as PW2. She also marked Exs.A1 and A3 as exhibits. On the side of the defendants, the guardian of the first defendant namely, Chinnapillaia examined herself as DW1 and one more witness was examined as DW2. They have marked Exs.B1 to Ex.B20 as exhibits.

7. The learned Principal District Munsif, after considering the materials placed before him, found that the plaintiff has not filed the judgment and decree passed in O.S.No.210 of 1951; on the contrary, she has produced only a suit extract and under the said circumstances, it would not be proper to rely upon the said suit extract. He further found that the plaintiff has not proved her possession also, but on the contrary, the defendants have proved their possession. Accordingly, he dismissed the suit with costs. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.7 of 1998 on the file of the Principal District Judge, Villupuram. The learned Principal District Judge, Villupuram had held that since the first defendant's father had purchased the suit properties during pendency of the suit in O.S.No.210 of 1951, the said sale is hit by the doctrine of lis-pendens. He further held that the kist receipts filed by the defendants came into existence after issuance of lawyer's notice by the plaintiff and hence, no reliance can be placed upon the said documents. Accordingly, he allowed the appeal and set aside the judgment and decree passed by the trial Court and decreed the suit as prayed for with costs. Feeling aggrieved, the defendants 2 and 3 and one of the LRs of the first defendant have filed the present Second Appeal.

8. This Court, at the time of admitting the second appeal, has formulated the following substantial questions of law:-

"1.Whether the lower Appellate Court is right in decreeing the suit on the basis of Ex.A1, when the said document fails to disclose the rights of the parties?

2. Whether the lower Appellate Court is right in applying the principal laid down under Section 52 of



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the Transfer of Property Act, when the sale had taken place between the date of presentation and filing of the suit in O.S.No.210 of 1951 and especially and he being not a party to the proceedings?

3. Whether the lower Appellate Court is right in ignoring the revenue records which declare the possession of the first defendant for over a statutory period?

4. Whether the Court below ought not to have applied the principal laid down under Section 27 of Limitation Act and held that plaintiff's title is extinguished by lapse of time?

5. Whether the lower Appellate Court ought not to have presumed the bonafide nature of transaction between Natesa Padayachi and Annammal?"

9. Heard, Mr.V.Raghavachari, the learned counsel for the appellants and Mr.J.R.Rajaraman, for M/s.R.Balakrishnan, the learned counsel for the respondents.

10. Substantial Questions of law 1 to 5 :

The learned counsel for the appellants has submitted that the first Appellate Court erred in reversing the well considered judgment and decree of the trial Court. He further submitted that the first Appellate Court failed to see that the plaintiff has not produced a certified copy of the judgment and decree passed in O.S.No.210 of 1951. He further submitted that Ex.A10 is the extract of the suit register and in the said document, corrections have been made by pen in the description of properties and there is no explanation for the same. He further submitted that as per the said document, the said suit was dismissed for default on 25.07.1952 and subsequently, as per the order passed in I.A.No.513 of 1952 the suit was restored on 19.09.1952 but it was stated that the said suit was decreed on 17.09.1952 and therefore, the said document does not reflect the correct particulars.

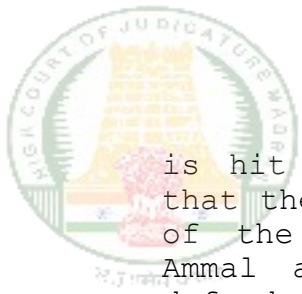
11. He further submitted that in the said document even though it was stated that the said suit was decreed for declaration and permanent injunction, an Execution Petition in E.P.No.597 of 1952 was filed for delivery of possession and delivery was recorded and that would also show that the said document does not reflect the correct particulars. He further submitted that it is not known that after restoring the suit, actually, whether notice was served on the defendants because, in one place it is stated the said suit was restored on 17.09.1952 and the same was disposed of on 19.09.1952 within two days and therefore, the first Appellate Court ought not to have



relied upon the said document. He further submitted that even as per the said document the plaint was presented on 31.03.1951 and it was returned and re-presented on 19.06.1951 and it was taken on file on 19.06.1951. He further submitted that it is not known on what ground the plaint was returned and unless the plaint is properly presented before the Court, it cannot be said that it was properly instituted as per the Rules contained under Orders 6 and 7 of CPC. He further submitted that even if it is assumed that in the said suit, the plaint was presented on 31.03.1951 and it was returned and represented only on 19.06.1951 and in the meanwhile i.e., on 06.04.1951, the first defendant's father had purchased the properties from the said Annammal and as such, the doctrine of lis-pendens will not apply.

12. He further submitted that even as per Ex.A2 sale deed dated 17.12.1958, the suit properties were already mortgaged (usufructuary mortgage) by Marimuthu Padayachi in favour of one Keeliyanandha Padayachi and the same was not discharged till the execution of Ex.A2 sale deed and in such a case, the plaintiff's predecessor in title namely, Thaiyalnayaki Ammal would not have taken possession even by filing Execution Petition and therefore, the findings of the first Appellate Court are against the evidence and hence the said findings have to be set aside. He further submitted that the first Appellate Court failed to see that the plaintiff has produced only one kist receipt that too it was paid just one week prior to the filing of the suit and no other documents have been filed to prove her possession and on the contrary, the defendants have produced number of documents such as kist receipts, patta, and chitta extract and therefore, he prayed to allow the Second Appeal and set aside the judgment and decree passed by the first Appellate Court and restore the decree and judgment passed by the trial Court.

13. Per contra, the learned counsel for the first respondent/plaintiff has submitted that since the suit in O.S.No.210 of 1951 was disposed of in the year 1952 itself, except the suit register all other documents viz., plaint, written statement, judgment and decree were destroyed. He further submitted that since Ex.A1 is a certified copy, its genuineness cannot be suspected. He further submitted that as per the explanation attached to Section 52 of the Transfer of Property Act, for the purposes of the said Section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint and to continue until the suit or proceeding has been disposed of by a final decree. He further submitted that in this case, Ex.A1 shows that the plaint in O.S.No.210 of 1951 was presented before the Court on 31.03.1951 whereas, the first defendant's father had purchased the suit properties from one of the defendants in that suit namely, Annammal on 06.04.1951 and hence, the said transaction



is hit by the doctrine of lis-pendens. He further submitted that the suit in O.S.No.210 of 1951 ultimately decreed in favour of the plaintiff's predecessor in title namely, Thailnayaki Ammal and hence, the said decree will bind upon the first defendant's father. He further submitted that Ex.A3 would clearly show that on the date of suit, the plaintiff was in possession and enjoyment of the suit properties. He further submitted that the trial Court without taking into consideration of the aforesaid facts, had dismissed the suit. However, the first Appellate Court, considering the facts in a proper prospective, had rightly reversed the findings of the trial Court and decreed the suit as prayed for. He further submitted that in the said factual findings, this Court cannot interfere and hence, he prayed to dismiss the second appeal.

14. The suit properties are situated in Ranganathapuram Village in S.No.32/2 ad-measuring 32 cents and in S.No.33/5 ad-measuring 48 cents. The plaintiff is claiming title over the suit properties through one Thaiyalnayaki Ammal wife of Marimuthu Padayachi. According to the plaintiff, the said Thaiyalnayaki Ammal had filed a suit in O.S.No.210 of 1951 on the file of the District Munsif, Thirukoilur for the relief of declaration and permanent injunction against her husband Marimuthu Padayachi and his first wife Annammal and got a decree on 17.09.1952 and subsequently, the said Thaiyalnayaki Ammal died and after her death, her only daughter Muniyammal succeeded to the suit properties and she sold the suit properties to her father Arumuga Padayachi under Ex.A2 sale deed dated 17.12.1958 and after his death, she became absolute owner of the suit properties.

15. The case of the defendants is that originally the suit properties belonged to Marimuthu Padayachi and the said Marimuthu Padayachi had sold the suit properties to his first wife Annammal under Ex.B4 sale deed dated 13.10.1950 and the said Annammal had sold the suit properties to the first defendant's father Natesa Padayachi under Ex.B5 sale deed dated 06.04.1951 and after the death of Natesa Padayachi, the first defendant succeeded to the suit properties.

16. Eventhough Ex.B4 shows that Annammal was the owner of the suit properties, Ex.A1 shows that the said Marimuthu Padayachi's second wife Thaiyalnayaki Ammal had filed a suit in O.S.No.210 of 1951 on the file of the District Munsif, Thirukoilur, claiming that she is the owner of the suit properties and to declare her title over the suit properties and to restrain her husband Marimuthu Padayachi and his first wife Annammal from interfering with her peaceful possession and enjoyment of the suit properties or in the alternative for maintenance at Rs.360/- per annum with a charge on the said



properties. The said suit was decreed, but it is not clear whether it was decreed on 17.09.1952 or 19.09.1952. Any how the said suit was decreed declaring the title of the said Thaiyalnayaki Ammal and also restraining the defendants therein by means of a permanent injunction from interfering with her peaceful possession.

17. According to the plaintiff, in that suit, the plaint was presented on 31.03.1951 whereas, the first defendant's father Natesa Padayachi had purchased the suit properties from one of the defendants in that suit namely, Annammal on 06.04.1951 and subsequently, since the said suit was decreed, the doctrine of lis-pendens will apply and no title conveyed upon the first defendant's father.

18. Ex.A1 shows that on 25.07.1952, the plaintiff's counsel reported "no instruction" and the plaintiff had not appeared, but the name of the defendants' counsel has been mentioned and hence, the suit was dismissed for default with the cost of the defendants. Further, in the said document, at page No.3, it is stated that the suit was restored as per the order passed in I.A.No.513/1952 dated 17.09.1952 and it is also stated that on 19.09.1952, the suit was decreed declaring the plaintiff is entitled to the suit properties and permanent injunction also granted. So, what could be inferred from the aforesaid particulars is that the said suit was restored to file on 17.09.1952 and decreed on 19.09.1952 i.e within two days. It is not known, whether any notice was given to the defendants or their counsel either before or after restoration of the suit and whether they appeared or not. No particulars are available in the said document. It is also to be pointed out that at page No.4 it is stated that E.P.No.597/1952 was filed on 23.10.1952 for delivery of possession and subsequently, at column No.12 it has been mentioned as delivery recorded but the date is not clear.

19. As already pointed out that the said suit was decreed for the relief of declaration and permanent injunction and that being so, how an Execution Petition was filed for delivery of possession and delivery was also recorded. There is no explanation for this. The plaintiff has not examined any person who is having knowledge about the filing of the said suit and Execution Petition. Further the plaintiff has not given any explanation as to why, she has not obtained certified copies of plaint, judgment and decree and produced before the Court.



20. Among the documents filed by both the parties, Ex.B4 seems to be oldest one and in the said document itself, the said Marimuthu Padayachi had stated that he already executed an usufructuary mortgage in respect of the suit properties in favour of one Keeliyanandha Padayachi for Rs.300/- and the said mortgage has to be discharged by the purchaser Annammal. In Ex.B5 sale deed dated 06.04.1951 also the said Annammal had stated that the usufructuary mortgage created by her husband Marimuthu Padayachi in favour of Keeliyanandha Padayachi was not discharged and hence, the purchaser has to discharge the said usufructuary mortgage. In Ex.A2 sale deed dated 17.12.1958 also, the daughter of Thaiyalnayaki Ammal and Marimuthu Padayachi had stated that the usufructuary mortgage executed by her father Marimuthu Padayachi in favour of Keeliyanandha Padayachi was not discharged and subject to the said usufructuary mortgage, her mother Thaiyalnayaki Ammal created simple mortgage on 09.05.1956 in favour of one Chinna appu Gounder and the aforesaid two mortgages were not discharged and subject to the said mortgages, she sold the properties to the plaintiff's father Arumuga Padayachi. Absolutely, there is no evidence adduced by either parties as to whether the said usufructuary mortgage which was created by Marimuthu Padayachi in favour of Keeliyanandha Padayachi was discharged if so, by whom it was discharged. The Courts below also have not given any finding as to whether, the said usufructuary mortgage was discharged if so, by whom and only on finding an answer to the said question, it can be said who took possession from the said mortgagee viz., Keeliyanandha Padaiyachi.

21. There is no finding with regard to whether any notice was given to the defendants therein either before or after restoration of the suit in O.S.No.210 of 1951 and under what circumstances, execution petition was filed for delivery of possession and there is no finding with regard to the discharge of usufructuary mortgage and unless the said usufructuary mortgage is discharged, how the parties could claim possession over the suit properties. Therefore, this Court is of the view that the matter has to be remitted back to the trial Court with a direction to offer an opportunity to both the parties to adduce oral and documentary evidence and also to ascertain whether the records pertaining to O.S.No.210 of 1951 on the file of the District Munsif, Thirukoilur are available including plaint, judgment, decree, notes paper and original suit register and call for the said documents and to verify the same and dispose of the case in accordance with law. Accordingly, the substantial questions of law are answered.



22. In the result, the Second Appeal is allowed. No costs.

The judgments and decrees passed by the Courts below are set aside and the matter is remanded back to the trial Court. The trial Court is directed to restore the suit in O.S.No.636 of 1995 and to ascertain whether the original records pertaining to O.S.No.210 of 1951 on the file of the District Munsif, Thirukoilur are available and if the said documents are available, it has to call for the entire case records and if they are not available then, it has to call for the original suit register itself and thereafter, it has to give an opportunity to both the parties to adduce additional oral and documentary evidence with regard to filing of the suit in O.S.No.210 of 1951 and filing of the Execution Petition in that suit and discharge of the usufructuary mortgage created by Marimuthu Padayachi in favour of Keeliyanandha Padayachi and if the said mortgage is not discharged, how the parties claim that they took possession and thereafter dispose of the suit in accordance with law.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dna

To

1. The Principal District Judge,
Villupuram.
2. The Principal District Munsif,
Ulundurpet.

+1cc to Mr.V.Raghvachari, Advocate, S.R.No.48295

+1cc to Mr.R.Rajarajan, Advocate, S.R.No.48788

S.A.No.1484 of 2000

SJ(CO)

CS/27/11/2019