

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03.07.2019

JUDGMENT DELIVERED ON : 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1361 of 2002

T.S.Ratinammal (Died) ...Appellant/Appellant/Plaintiff

2.Samisuburaya Chettiyar

3.Dhandapani

[3rd appellant set exparte vide order of Court dated 01.08.2018 made in S.A.No.1361/2002]

4.Rani

5.Jamuna

6.Kanchana

7.Malarvizhi

[Appellants 2 to 7 brought on record as LRs of the deceased sole appellant vide order of Court dated 01.08.2018 made in C.M.P.No.9365 to 9367/2018 in S.A.No.1361/2002 (PRMJ)] ... Appellants

...Versus...

1.Samraj

2.Palani

3.The Special Officer,
Tirupattur Co-operative Housing Society Ltd,
Kaliyamman Koil street,
Tirupattur Town

... Respondents /Respondents/
defendants

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.34 of 1999 dated 29.04.2002 on the file of the Sub-Judge, Tirupattur, vellore district confirming the judgment and decree made in O.S.No.25 of 1989 dated 09.02.1999 on the file of the District Munsif, Tirupattur, Vellore District

For Appellants :: M/s.V.Srimathi

For R1& R2 :: Mr.M.Sivavarthanan

For R3 :: Exparte

J U D G M E N T

The legal heirs of the unsuccessful plaintiff are the appellants herein.

2. For the sake of convenience, the parties are referred to as per ranking before the Trial Court.

3. The plaintiff has filed a suit for declaration that the suit property belonged to the plaintiff and for demolition of the building standing thereon and to put the plaintiff in possession of the suit property.

4. The plaint proceeds on the basis that the suit schedule property belongs to the plaintiff and she purchased the above property on 16.02.1960 through the sale deed (Ex.A1). From the property so purchased, the plaintiff has sold 20 feet on East-West and 70 feet on South-North situated on the East of the said property to one Kuppusami Pillai under Ex.A9. The remaining 30 feet on East-West and 70 feet on South-North situated on the West of the said Kuppusami Pillai's property was in the possession and enjoyment of the plaintiff. That is a vacant site.

5. The defendants 1&2 have filed written statement resisting the relief sought for by the plaintiff, inter-alia, contended that:-

(i) The two defendants have purchased from one Pappa alias Rajammal under 2 sale deeds the East-West 30 feet and South-North 70 feet area which is the suit property and the area abutting the suit property on the Western side measuring 10 feet on East-West and on 70 feet South-North which is also suit property. Thus, in all, out of the property measuring on 40 feet East-West and on South-North, the first defendant held the Eastern side half and the second defendant took the Western half of the property so purchased. It is averred that 26.02.1986, which is date of the said purchase by them, the possession of the said property was handed over by Pappa alias Rajammal.

(ii) Defendants 1 and 2 have also constructed houses thereon with their own funds and with the funds borrowed from the third defendant.

(iii) The suit property originally belonged to Pappa alias Rajammal. The possession and enjoyment of the suit property was with her till 28.08.1986. On 28.08.1986, she sold the properties to defendants 1 and 2 and from that date onwards defendants 1 and 2 are in possession and enjoyment of the same.

6. Two witnesses were examined on behalf of the plaintiff in the Trial Court among whom, the plaintiff has examined herself as P.W.1.

9 Exhibits were marked by the plaintiff. Two witnesses were examined for the defendants among whom the first defendant has examined herself as D.W.1. 30 Exhibits were marked on behalf of defendants 1 and 2. The Trial Court, upon considering the above oral and documentary evidence has held that the plaintiff is not entitled to the reliefs prayed in the suit and accordingly, dismissed the suit.

7. Aggrieved against the said judgment and decree, the plaintiff has filed A.S.No.34 of 1999 before the Sub-Court, Tirupattur in Vellore District.

8. On consideration and re-appreciation of the evidence, including the additional documents filed at the appellate stage, that are marked as Exs.A10 to A13. The Lower Appellate Court has given a categorical finding that the plaintiff has failed to properly identify the suit property and the derivative title of the defendants 1 and 2 has been duly demonstrated by virtue of the documentary evidence adduced by them and also their possession over the property and hence, negatived the claim of the plaintiff. Therefore, the present Second Appeal.

9. The above Second Appeal has been admitted on 06.01.2003 on the following Substantial Question of Law:-

"Whether the Courts below are right in ignoring the admission of D.W.1 as regards the occupation of Thiru.Selvaraj and Sivaraman on the eastern side of the property, they being the vendee of the appellant?"

10. Heard both sides and perused the records.

11. The suit property is vacant site measuring in all 2100 square feet viz., East-West 30 feet and South-North 70 feet in present Town survey No.992/1-E which is situated on the South of

scavenging lane and North of Pudhupet road and West of the land sold to Kuppusami Pillai by the appellant and East of the land sold by Pappa alias Rajammal to the defendants/respondents 1 and 2. This is a portion of the total extent of 3.38 acres in Melakkasi Eri Ayacut Survey No.124 situated in Pudupet 4th street situated on the South of Pudupet Road.

12. The learned counsel for the plaintiff has drawn my attention to Exs.A1,A2,A9 and also Exs.A10 to A13, which were marked before the Lower Appellate Court, and contended that the land situated on the East of one Srinivasa Ayya's land measuring East-West 50 feet and South-North 70 feet, which is a vacant land, was purchased by one Sivakumar Pillai from Kamalammal. Then, the said Sivakumar Pillai sold to Thangavel Mudaliar an area measuring 25 feet x 70 feet and to one Pushpa Kanthammal an area measuring 25 feet x 70 feet. The said Thangavelu Mudaliar and Pushpa Kanthammal have sold 50 feet x 70 feet to one Devaraj Mudaliar. The said Devaraj Mudaliar sold the above said 50 feet x 70 feet to one Chinnavadan on 27.12.1958 under the sale deed Exhibit A2. The plaintiff purchased the above property from Chinnavadan's father Katterikadu and Chinnan-Chinnavadan on 16.08.1960 under sale deed Exhibit B5 and was in possession and enjoyment of the same. Then, out of the said East-West 50 feet and South-North 70 feet of vacant lands, the plaintiff sold East-West 20 feet and South-North 70 feet to Kuppusami pillai on 27.03.1962 under sale deed Exhibit A9. Therefore, after he sold that portion of land, the remaining land was on the Eastern side of it, measuring East-West 30 feet and South-North 70 feet to Kuppusami Pillai on 27.03.1962 under sale deed Exhibit A9. Therefore, after he sold that portion of land, the remaining land was on the Eastern side of it, measuring East-West 30 feet and South-North 70 feet and that belonged to the plaintiff and the plaintiff was in possession and enjoyment of the said property.

13. Per contra, the learned counsel for the defendants 1 and 2 placed reliance upon documentary evidence Exs.B1 to B7 and Exs.B24 to B30, which are all original sale deeds, in support of the title of the predecessor-in-title of the said defendants and also drew my attention to Exs.A8 and A9 Town Survey Register and Ex.B12 Mortgage Deed executed by defendants 1 and 2, wherein they have exercised their right of ownership.

14. On considering the submissions of the learned counsel for the plaintiff and on a close scanning and scrutiny of Exs.A1, A2, A10, A12 and A13, it appears that the vacant site on it, the Eastern boundary is said to have been referred to as Srinivasa Iyer's son.

15. On verification of the sale deeds, Exs.B1 and B2, it is found that in Ex.B2, it is mentioned that on the West of Kuppan's house, the land measuring 20 feet x 70 feet purchased by the second respondent is situated, while in Ex.B1, it is mentioned that on the West of the above vacant land, the land measuring 20 feet x 70 feet purchased by the first respondent is situated and to the further West of the said vacant land, one Sivaraman's land is situated. The remaining vacant land is situated on the East of Kuppusami Pillai's house. Therefore, there is no connection between the land purchased by the respondents which is situated on the West of Kuppusami's house and the plaintiffs remaining house-plot measuring 30 feet x 70 feet.

16. At this juncture, it is pertinent to note that on perusal of the multiple number of sale deeds which have been filed by defendants 1 and 2 to demonstrate their derivative title from the predecessors-in-title which have been traced back to 1944, it is seen that under Ex.B7, Kamalammal has sold 2800 sq.feet (40x70) to Srinivasa Iyer wherein, Sivakumar Pillai portion has been shown as Eastern boundary. Thereafter, as per Ex.B6, the said Srinivasa Iyer has sold the plot to Tiruvenkata Mudaliar on 17.08.1959, who in turn sold the plot to Pappa alias Rajammal under Ex.B5-sale deed dated 15.03.1964, who in turn sold the same to Meenakshi Ammal under Ex.B4-sale deed dated 17.02.1965 and she in turn sold the same to Pappa alias Rajammal under Ex.B3-sale deed on 26.10.1967 from whom the defendants have purchased the respective portion of 1400+1400 sq.feet under Exs.B1 and B2.

17. Thus, this Court finds that the derivative title of defendants 1 and 2 under Exs.B1 and B2 has been derived from Exs.B3 to B7 and the ancient documents also have been filed by defendants 1 and 2 under Exs.B24 to B28 and hence, both the Courts below have rightly held that the suit property belongs to defendants 1&2. The Courts below on being satisfied that defendants 1&2 have demonstrated their derivative title coupled with Town Survey register of the year 1973 and 1984 marked as Exs.B8 and B9 respectively and the same correlated with Town Survey No.999/1 have clearly and categorically held that the Town Survey No.999/1 supports the case of defendants 1 and 2.

18. In the light of Exs.B1 and B2, It is to be noted that Ex.B1 is the proceedings of the Tirupattur Commissioner permitting defendants 1 and 2 to put up the construction and Exs.B8,B9 and B11 duly corroborates Ex.B1, whereby the title and possession of defendants 1 and 2 in the suit property has been proved in the manner known to law. That apart, Exs.B13 to B2, the Encumbrance Certificates clearly demonstrated that

defendants 1&2 are alone the owners of the property as per the entries made in the said Encumbrance Certificates and, hence, the concurrent finding rendered by both the Courts below regarding the title of defendants 1 and 2 does not suffer from any irregularity or illegality warranting interference at the second appellate stage.

19. It remains to be stated that in the cross-examination, the first defendant, who was examined as D.W.1, has stated that "நான் வீடு கட்டும் காலத்தில் வீட்டுக்கு கிழக்கு பக்கம் உள்ள இடம் செல்வராஜ் சிவராமன் இவர்களிடமிருந்தது." which is to the effect that he does not dispute that Eastern boundary of the property belongs to the predecessor-in-title of the plaintiff. But, the same does not advance the case of the plaintiff to derive title to the suit property and hence, the above admission corroborates with the documentary evidence adduced by defendants 1 and 2 under Exs.B1 to B7 and B24, B28. Hence, on the above factual matrix of the case and above admission does not advance the case of the plaintiff and the same is answered in negative against the plaintiff.

20. In the result,

- (i) This Second Appeal is dismissed.
- (ii) The judgments and decrees of the First Appellate Court and the Trial Court are confirmed.
- (iii) No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sub-Judge, Tirupattur
- 2. The District Munsif, Tirupattur.

copy to

The section Officer

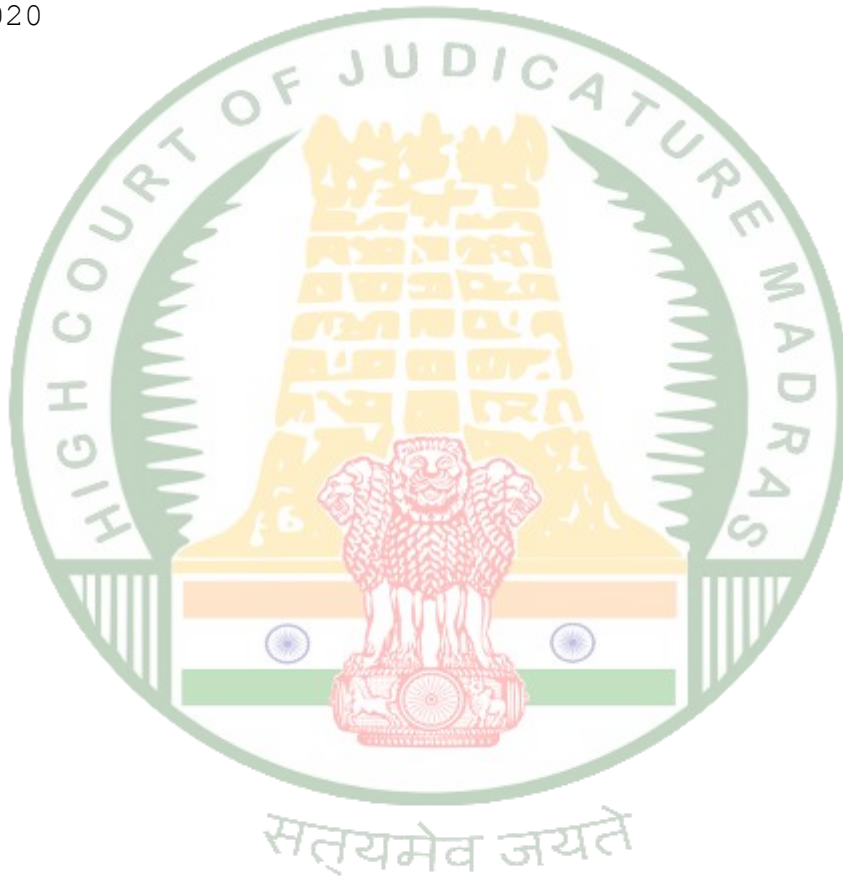
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High Court Madras-104

+1 cc to Mr.V.Raghavachari Advocate sr83327
+1 cc to Mr.M.Sivavarthanam Advocate sr83607

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