

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :30.01.2019

Pronounced on :19.02.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.2176 of 2001

1.Heerabai ... 1st Appellant/1st Defendant/1st Defendant
2.Lakshmibai ... 2nd Appellant/2nd Defendant
3.Saraswathy ... 3rd Appellant/2nd Defendant

3rd appellant impleaded of this court Suo Motu LRs by 1st appellant viz Heerabai made in S.A.No.2176 of 2001 by MSJ order dated 23.03.2017.

Vs.

1.Asarbunnissa ... 1st Respondent/1st Respondent/
Plaintiff
2.Thulasi Rajendran ... 2nd Respondent/2nd Respondent/
3rd Defendant

R2 set exparte in the Lower Court itself

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the learned Principal District Judge, Cuddalore, dated 15.03.2001 passed in A.S.No.141 of 2000 dismissing the appeal confirming the decree and judgment of the learned Subordinate Judge, Panruti, in O.S.No.89 of 1997 dated 31.07.2000.

For Appellants 1 to 3 : Mr.M.V.Vijaya Baskar

For R1 : Mrs.Hema Sampath
Senior Counsel
for R.Meenal

For R2 : No appearance

JUDGMENT

The two defendants in O.S.No.89 of 1997 on the file of the Sub Court, Panruti, are the appellants herein.

2.O.S.No.89 of 1997 had been filed by the plaintiff, Asarbunnissa against three defendants namely, Heerabai and her daughter Lakshmibai and a third defendant Thulasi Rajendran, seeking a judgment and decree for declaration of title with respect to the suit property and for a direction against the defendants to deliver possession of the suit property, failing which the Court may give delivery of the suit property to the plaintiff and for costs of the suit. By judgment and decree dated 31.07.2000, the suit was decreed by the learned Sub Judge, Panruti.

3.Challenging that judgment, the first and second defendants namely, Heerabai and Lakshmibai filed A.S.No.141 of 2000 before the District Court, Cuddalore. By judgment and decree dated 15.03.2001, the learned Principal District Judge, Cuddalore, dismissed the appeal.

4.Challenging the judgment of the First Appellate Court, the first and second defendants then filed the present Second Appeal. The Second Appeal had been admitted on 02.01.2002, on the following five substantial questions of law:

"1.Whether Exs.A1 and A2 sale deeds in favour of the plaintiff are legal and valid?

2.Whether the competent authority conducted a proper and valid enquiry under the Registration Act and whether he passed any order for compulsory registration of Exs.A1 and A2?

3.Whether the sale deeds without any endorsements of compulsory registration have probative value and are valid?

4.Whether sale deeds not followed by possession are valid and convey any title?

5.Whether the judgment in O.S.No.243 of 1987 of Sub-Court, Cuddalore, finding the purchase to be not bonafide does not constitute res judicata?"

5. Pending the Second Appeal a memo had been filed that the first appellant/first defendant Heerabai had died and that the second appellant/second defendant Lakshmibai was her only legal representative. However, this fact was contested by the first respondent/plaintiff, Asarbunnissa, who claimed that Heerabai had another daughter called Saraswathi. Since, this fact was admitted by the learned counsel for the appellants, Saraswathi was suo motu impleaded as the third appellant by order dated 23.03.2017. Learned counsel who appeared for the second appellant Lakshmibai, undertook to file vakalat for the third appellant Saraswathi also. The second respondent/third defendant Thulasi Rajendran, did not participate in the judicial proceedings and consequently, was set exparte.

O.S.No.89 of 1997 (Sub Court, Panruti):-

6. The plaintiff, Asarbunnissa stated that the suit property originally belonged to the second and third defendants namely, Heerabai and Lakshmibai. They sold the suit property to the plaintiff under two sale deeds dated 14.08.1985 and 22.08.1985. The sale deed dated 14.08.1985 was for the building portion of the suit property and the sale deed dated 22.08.1985 was for the garden portion of the suit property. It was further stated in the plaint that on 14.08.1985 itself possession was handed over. However, since the first and second defendants did not come forward to register the sale deeds, the plaintiff filed an application before the Sub-Registrar office, Panruti, for compulsory registration. The Registrar examined the plaintiff and the first and second defendants and also the witnesses to the sale deeds and thereafter registered the sale deeds. It was claimed that the first and second defendants have not preferred any appeal against that official act of the Registrar.

7. The plaintiff, then leased out the suit property to the third defendant Thulasi Rajendran. He did not pay the rents. Consequently, the plaintiff filed RCOP.No.8 of 1990 before the Rent Controller, Panruti, seeking eviction of the third defendant. A decree was passed. The plaintiff then filed execution petition for delivery. In that execution petition, the first and second defendants filed a third party petition in E.A.No.18 of 1991. That was dismissed on 15.11.1994. Thereafter, the first and second defendants filed O.S.No.721 of 1994. It was claimed that the suit and the application have been filed by the first and second defendants on the instigation of the third defendant. It was stated that the possession of the defendants was unlawful. It was also stated that the first and second defendants have disputed the title of the plaintiff. Consequently, the suit was filed seeking declaration of title and for delivery of possession. The suit property was land and

building in Door No.6, S.No.61B7, Tagore Street, Panruti, Cuddalore District.

8.The second defendant filed her written statement, which was adopted by the first defendant. She denied execution of the sale deeds dated 14.08.1985 and 22.08.1985. It was claimed that the suit property originally belonged to the first defendant. She had executed a settlement deed on 24.05.1982 in favour of the second defendant. The second defendant claimed to be residing in the suit property. The first defendant had created a simple mortgage in favour of Ramakrishna Reddiar, even prior to the settlement deed. He obtained a decree in O.S.No.471 of 1982 in the District Munsif Court, Panruti. Later, the first defendant had executed another simple mortgage in favour of Ramakrishna Reddiar's wife Santhabai Ammal. With respect to that mortgage, the mortgagee obtained a decree in O.S.No.243 of 1987.

9.The first and second defendants required further funds. They approached the plaintiff who agreed to lend money on execution of simple mortgage deeds. Consequently, the documents dated 14.08.1985 and 22.08.1985 were prepared. The first and second defendants had signed the said documents under the impression that they were mortgage deeds. It was claimed that the plaintiff had played a fraud. Since they came to know about the nature of the documents, they did not come forward to register them. However, the plaintiff had presented the documents for compulsory registration. The first and second defendants received summons of hearing from the Sub-Registrar after the date of the hearing. It was further claimed that enquiry was not held. It was claimed that the records showing that enquiry was held had been created. It was stated that subsequently, the plaintiff was impleaded as a party in O.S.No.243 of 1987 filed by the Santhabai Ammal. The plaintiff contested the suit. It was stated that the court held that the sale in favour of the plaintiff was not valid. It was claimed that the present suit seeking declaration of title was barred by the principles of res-judicata. It was further stated that they have never handed over the possession to the plaintiff. It was stated that the third defendant was never a tenant in the property and documents were created as if he was a tenant. RCOP.No.8 of 1990 was filed against the third defendant seeking eviction. An ex-parte decree was passed. Execution petition was filed. Since the first and second defendants were residing in the property, they resisted delivery. They filed E.A.No.18 of 1991. That was dismissed. It was claimed that an appeal was pending as on the date of filing of the written statement. It was further stated that the second defendant filed O.S.No.721 of 1994 to declare the proceedings in RCOP.No.8 of 1990 as null and

void. It was claimed that the suit was decreed and an appeal was pending. It was stated that the plaintiff had not come to court with clean hands. It was further stated that the first defendant was an unnecessary party to the suit. It was stated that the suit should be dismissed.

10. On the basis of the above pleadings, the learned Sub Judge, Panruti, framed the following issues for trial:

1. Whether the sale deeds dated 14.08.1985 and 22.08.1985 in favour of plaintiff are true and valid? Whether the plaintiff took possession of the suit property as per said sale deed?
2. Whether the plaintiff is the lawful owner of the suit property by virtue of said sale deeds?
3. Whether the suit is barred by res-judicata?
4. Whether the suit is not properly valued for the purpose of payment of court fees?
5. Whether the suit is barred by limitation?
6. Whether the defendants 1 and 2 have prescribed title to the suit property by adverse possession?
7. Whether the plaintiff is entitled to declaration and for recovery of possession of suit property as prayed for?
8. To what relief is the plaintiff entitled to?

11. During trial, Syed Mohammed, the husband of the plaintiff was examined as PW1. The plaintiff also examined Lakshmibai (not the second defendant) and Gopal who were the witnesses to the sale deeds as PW2 and PW3. Ponnappan, a scribe to the documents was examined as PW4. On the side of the defendants, Lakshmibai, the second defendant was examined as DW1. The plaintiff marked Exs.A1 to A40. Ex.A1, dated 14.08.1985 was the certified copy of the sale deed executed by the first and second defendants. Ex.A2, dated 22.08.1985 was the certified copy of the sale deed executed by the first and second defendants. Registration copies of the said sale deeds were marked as Exs.A3 and A4. Ex.A5 was the statement given by the second defendant before the Sub-Registrar, Panruti. Ex.A6 was the statement given by the first defendant before the Sub-Registrar, Panruti. Ex.A7 was the

statement given by the Gopal, PW3, before the Sub-Registrar, Panruti. Ex.A8 was the statement given by Lakshmibai, PW2, before the Sub-Registrar, Panruti. Ex.A9 was the statement given by the Manikannu Chettiyar, before the Sub-Registrar, Panruti. Ex.A10 was the receipt for discharge of mortgage given by Santhabai Ammal. Ex.A11 was the receipt for discharge of mortgage given by Ramakrishna Reddiar. Ex.A16 was the receipt for satisfaction of the decree given by the Lakshmibai. Ex.A17 was the memo for satisfaction given by Ramakrishna Reddiar. Other documents related to the previous judicial proceedings between the parties and also revenue documents in the name of the plaintiff. The defendants marked Exs.B1 to B154. Ex.B1 was the settlement deed executed by first defendant in favour of the second defendant dated 24.06.1982. Exs.B4 and B5 were the pleadings in E.A.No.18 of 1991. Exs.B2 and B6 were the pleadings and evidence in RCOP.No.8 of 1990. Ex.B8 was the voters identity card of the defendants. Ex.B9 was the gas connection in the name of the second defendant. Ex.B16 was the order in E.A.No.18 of 1991 in RCOP.No.8 of 1990. Ex.B22 was the judgment in O.S.No.243 of 1987, Principal Sub Court, Cuddalore. Exs.B23-B101 were the letters received by the first/second defendants. Exs.B102 to B112 were the electricity payment receipts. Exs.B118 to B139 were the receipts relating to gas connection in the name of the second defendant. Exs.B148 and B149 were the summons in the name of the first and second defendants issued by the Office of the Sub-Registrar, Panruti. The other documents related to the judicial proceedings between the parties.

12.By judgment dated 31.07.2000, the learned Sub Judge, Panruti, took up the Issue Nos.1, 2 and 7 for consideration. These were the primary issue and related to the sale deeds dated 14.08.1985 and 22.08.1985. The learned Sub Judge, observed that the second defendant who had been examined as DW1 had admitted her signature and the signature of her mother/first defendant in Exs.A3 and A4. It was also observed that both the defendants had participated as active litigants with the help of counsels in various judicial proceedings. In fact, DW1 stated that her mother has been litigating in courts from the year 1965. The second defendant herself has been an active litigant from the year 1975. She had engaged for various judicial proceedings, S.K.Soundarajan, Balathandayutham, Seenu Jayaraman and Sachithanantham as her advocates. It was therefore observed that both defendants had more than sufficient opportunity to be advised by legal counsels. It was also seen that the sale consideration was paid by two demand drafts for Rs.50,000/- each by the plaintiff. It was also observed that the payment of this consideration had not been denied by the first and second defendants. On the other hand, they had admitted receipt. It was also seen that they refused to come forward to register the sale

deeds, on the ground that there were other loans to be satisfied and that they have to look out for an alternate place to reside. The learned Sub Judge also quoted the evidence of PW1 who stated that at the time of execution of the sale deeds, the defendants did not reveal about the existing mortgages. It was the existence of the subsisting mortgages that brought about differences between the plaintiff and defendants.

13.It was also observed that there were earlier litigations in O.S.No.53 of 1969 and A.S.No.669 of 1973 with respect to the suit property between the defendants and Lakshmibai, who was examined as PW2 in this case. Finally by a compromise, the suit property was allotted to the first defendant and she was directed to pay compensation to Lakshmibai. The first defendant did not pay the compensation. It was for that reason that both the plaintiff and defendants had insisted that Lakshmibai who was examined as PW2 and PW3, Gopal should be the attesting witnesses to the sale deeds. PW2, during her evidence had affirmed execution of Exs.A3 and A4 sale deeds. Similarly, PW4 also confirmed execution of Exs.A3 and A4. It is also seen that at the time of examination of witnesses, the other attestors, Manikannu Chettiyar and Veerappadoss were not alive. Therefore, they were not examined. It was confirmed by all the witnesses that Exs.A3 and A4 were executed by the defendants with the direct knowledge that they were sale deeds.

14.The learned Sub Judge, further observed that since the first and second defendants did not come forward to register the sale deeds, the plaintiff petitioned the Sub-Registrar, Panruti, to compulsorily register the documents. The first and second defendants gave statements before the Sub-Registrar, Panruti, on 09.10.1985 which statements have been marked as Exs.A5 and A6. Manikannu Chettiyar had also given a statement which was marked as Ex.A9. Veerappadoss had also given a statement which was marked as Ex.A35. The learned Sub Judge, rejected the contention of the defendants that the Sub-Registrar had not made proper enquiry before compulsorily registering the documents. It was also seen that the summons produced by the defendants in Ex.148 and Ex.149 were only xerox copies. They have not produced the originals. It was also seen that DW1, in her evidence tendered conflicting versions with respect to the statements before the Sub-Registrar and as a matter of fact, the learned Sub Judge had given a specific finding that the witness tendered false evidence. It was also seen that during evidence, DW1, stated that she had executed the documents without receiving any consideration and this statement was contrasted with Ex.B142, her advocate's notice, wherein receipt of bank draft for Rs.50,000/- on 01.08.1985 was confirmed. It was also seen in both the documents there are recitals to show that possession had been handed over to the purchaser.

15.The learned Sub Judge, finally held that the documents in Exs.A3 and A4 were genuinely prepared, and executed with knowledge that they are sale deeds and had been executed for adequate consideration. It was seen that the relief sought in O.S.No.343 of 1987 by the plaintiff Santhabai Ammal was totally different, unconnected and unrelated to the relief sought in the present suit. It was therefore held that the present suit was not barred by res-judicata by the judgment in that suit. The learned Sub Judge also found that the first and second defendants have not prescribed title by adverse possession. It was finally held that the plaintiff was entitled for the reliefs of declaration and delivery of possession.

A.S.No.141 of 2000 (Principal District Court, Cuddalore):-

16.Challenging that judgment, the first and second defendants then filed A.S.No.141 of 2000. This appeal came up for consideration before the learned Principal District Judge, Cuddalore. By judgment dated 15.03.2001, the learned Principal District Judge, Cuddalore, framed necessary points for consideration namely, whether the sale deeds executed by the first and second defendants in favour of the plaintiff was true and valid and whether the plaintiff was entitled for recovery of possession and whether the suit was barred by res-judicata.

17.The learned Principal District Judge, Cuddalore, also found as a fact that the admission of the defendants with respect to the recitals Exs.A5 and A6 would show that they had an intention to sell the property. It was also seen that consideration had also been received. The defendants had borrowed money from many persons and had not repaid the amount. There was necessity to sell the property. They had executed the sale deeds but, refused to come forward to register the same. The sale deeds were written by PW4 and were attested by PW2 and PW3. It was also found that the defendants were always in the habit of putting in false pleas of signing in blank papers. They had so pleaded even in the previous suits which had been initiated by mortgagees against them and which had been decreed. It was also found that the originals of Exs.B148 and B149, which are the summons received from the Sub-Registrar office were not filed and as a matter of fact, they were suppressed. It was also observed that there was a possibility of tampering the dates in the xerox copies. It was also observed that the defendants have not explained how they appeared and gave statements before the Sub-Registrar. It was also found as a fact that the defendants have been litigating from the year 1965. They have not taken any steps against the scribe or the attestors for alleged fabrication of documents. It was specifically found that no fraud had been played in the execution of the sale deeds. The

learned Principal District Judge, Cuddalore, confirmed the findings of the learned Sub Judge, Panruti, and dismissed the first appeal.

S.A.No.2176 of 2001:-

18.As stated above, the defendants then filed the present Second Appeal. The Second Appeal had been admitted on 02.01.2002, on the following five substantial questions of law:

"1.Whether Exs.A1 and A2 sale deeds in favour of the plaintiff are legal and valid?

2.Whether the competent authority conducted a proper and valid enquiry under the Registration Act and whether he passed any order for compulsory registration of Exs.A1 and A2?

3.Whether the sale deeds without any endorsements of compulsory registration have probative value and are valid?

4.Whether sale deeds not followed by possession are valid and convey any title?

5.Whether the judgment in O.S.No.243 of 1987 of Sub-Court, Cuddalore, finding the purchase to be not bonafide does not constitute res judicata?"

19.For the sake of convenience, the parties would be referred as plaintiff and defendants.

20.Pending the appeal the first appellant/first defendant died. A memo was filed by the learned counsel for the second appellant/second defendant. It is dated 22.02.2004 and is as follows:

"It is humbly submitted that the 1st appellant died on 27.04.2003. 2nd appellant is her daughter and the only legal heir. In respect of suit property she has also executed a settlement deed in favour of 2nd appellant. In fact 1st appellant had no subsisting title even on the date of suit. She was only a

formal party.

It is therefore, prayed that this Honourable Court may be pleased to record this memo and recognize the 2nd appellant as legal heir of 1st appellant and thus render Justice."

21.A memo was also filed by the learned counsel for the first respondent/plaintiff. It is as follows:

"The first appellant in the above Second Appeal, Heerabai died on 27.04.2003. The counsel for the appellant filed memo dated 23.02.2004 stating that the 2nd appellant is her daughter and the only legal heir and also prayed to record her as legal heir.

It is false to state that 2nd appellant is the only heir. It appears that there is another daughter Saraswathi, who is also a surviving legal heir of the deceased Heerabai. Unless she is brought on record, the Second Appeal cannot be proceeded with. It is the duty of the appellant to bring the other legal heir on record. If not, the Second Appeal may be dismissed as abated."

22.It is thus seen that the second appellant had deliberately attempted to suppress the fact that she had a sister. It is to be noted from the narration of the judgments of the Trial Court and the First Appellate Court extracted above that both the learned Sub Judge, Panruti and the Principal District Judge, Cuddalore, have commented on the false stands taken by the defendants. In continuation of such false stands, in the memo filed on their behalf, it was specifically stated that the second defendant was the only legal representative of the deceased first defendant. It was then revealed that there was another daughter who is obviously a legal representative by name Saraswathi. It is under these circumstances, that this Court had passed an order impleading the said Saraswathi as third appellant. In the order dated 23.03.2017, it had been recorded as follows:

"4.Today it is not disputed by Mr.Gururaj, learned counsel for the appellant that the first appellant has one more daughter viz., Saraswathy. The second appellant viz., Lakshmi Bai is present in Court and Mr.R.Gururaj, informs that he has to got instructions from his client/2nd appellant viz., Lakshmi Bai.

5.On instructions, it is also submitted that if the other daughter of the deceased first

appellant is impleaded/added as the party to the second appeal, Mr.R.Gururaj, learned counsel for the appellant himself shall file vakalat (statement made on instructions from the client, who is present before this Court).

7.This Court Suo Motu impleads Mrs.Sarawathy, residing at No.6, Tagore Street, Panruti, being the other daughter of the deceased first appellant viz., Heera Bai as a party to this proceedings.

8.Ms.Saraswathy shall be now shown as appellant No.3. Mr.R.Gururaj, learned counsel on record for the appellants undertakes to file vakalat for the newly impleaded party within a week from today.

11.Learned counsel for the appellants shall ensure that the above exercise of filing vakalat for the appellant No.3 should be complied with before the next hearing date."

23.The learned counsel for the appellants advanced arguments on the appeal on behalf of both the appellants.

24.The first substantial question of law was whether the sale deeds, Exs.A1 and A2 in favour of the plaintiff are legal and valid. Both the courts below had given a specific finding on facts that both the sale deeds are legal and valid. It had been found as a fact that the second defendant herself had admitted the signatures in the said documents. She had also admitted that the statements given before the Sub-Registrar were true and correct. She had also admitted receipt of sale consideration. It was also specifically found that the defendants had an habit of complaining that they signed in blank papers even in earlier litigations and in those litigations the said stands were consistently negated and the suits were decreed. The learned counsel for the appellants have not placed any material to show that the documents are not valid and legal. Consequently, I hold that both the documents Exs.A1,A2/A3,A4 are valid and binding documents.

25.The second substantial question of law was whether the competent authority conducted a proper and valid enquiry under the Registration Act. It is seen that the defendants have not summoned the Sub-Registrar to obtain clarification on this aspect. This is an issue of fact. They have not filed any appeal against the order of the Sub-Registrar compulsorily registering the documents. As a fact, both the courts have found that proper

enquiry was conducted and that the documents have been properly registered. Therefore, I hold that the competent authority conducted proper enquiry.

26.The third substantial question of law was whether the sale deeds without any endorsements of compulsory registration have probative value. A perusal of the document show that Exs.A1 and A2 are the certified copies of the documents. Exs.A3 and A4 are the registration copies. In the original endorsements are available in Exs.A1 and A2. The statements recorded by the Sub-Registrar have also been produced in Court. They have not been disputed by the defendants. They have actually been admitted. Consequently, I hold that the sale deeds have probative value and are valid. As a matter of fact, it is also seen that the defendants have not instituted any suit challenging the registration of the documents or filed any appeal challenging the registration of the documents. They have not taken any legal steps. They have not established fraud which they claim has been played upon them. As a matter of fact, both the courts below have held that they have not come to Court with clean hands and have tendered false evidence.

27.The fourth substantial question of law, was whether the sale deeds which are not followed by possession are valid. As a matter of fact, possession is a compendium of ownership. By a sale deed, title is transferred. Transfer of possession depends upon the terms of the sale deed. In the sale deeds it has been clearly stated that possession had been granted. The sale deeds speak for themselves. Therefore, this substantial question of law, is answered that the sale deed are valid. Title has been conveyed to the plaintiff. Plaintiff seeks declaration of title. Plaintiff is entitled for declaration of title.

28.The fifth substantial question of law is with respect to O.S.No.243 of 1987, Sub Court, Cuddalore. That was a suit instituted by Santhabai Ammal, to enforce mortgage. The issue of validity of the sale deeds was not the primary issue. Here the sale deeds have been produced. Attesting witnesses have been examined. The scribe has been examined. The documents have been concurrently held to be true and valid. Consequently, I hold the judgment in O.S.No.243 of 1987 is not res-judicata for the present suit.

29.The learned counsel for the appellants relied on 1949 AIR (Madras) 775, Alluru Bapanayya Vs. Chintalapati Bangarraju. The facts in that case are totally different. It is seen that in the present case, the defendants have been litigating in various courts from the year 1965. They are experienced litigants. They have had the benefit of a successive number of advocates advising them. Consequently, the judgment cannot be pressed into service with respect to the facts of this case. The learned counsel for the appellants also relied on 1991 1 L.W. 391,

S.Ramamurthy Vs. Jayalakshmi ammal. That was a case where a suit was filed to set aside the order of the Register authorities declining the prayer to compulsorily register a document. Here the Sub-Registrar compulsorily registered the sale deed. The defendants have not challenged the same. Consequently, the said judgment will have no bearing on the facts of this case.

30.In view of all the reasons stated above, I hold that the Second Appeal has to be dismissed and accordingly, the Second Appeal is dismissed with costs. The Judgment and decree of both the Courts below are confirmed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

smv

To,

- 1.The Sub Court,
Panruti.
- 2.The Principal District Court,
Panruti.
- 3.The Section officer
VR Section, Madras High Court

+1cc to Mr.N.Fidelia, Advocate, S.R.No. 15297

S.A.No.2176 of 2001

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