

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.11.2019
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.No.1078 of 2007
and
M.P.No.1 of 2007

1.Veerappan
2.Mariammal
3.Gurunathan
4.Semban

... Appellants/ Appellants1 to 4/
Defendants1 to 4
Vs

1.Mathappan
2.Raman

... Respondents/ Appellants/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree dated 01.11.2006 made in A.S.No.53 of 2005 on the file of the Principal Subordinate Judge, Gobichettipalayam modifying the Judgment and decree dated 30.07.2004 made in O.S.No.408 of 1994 on the file of the District Munsif Court, Sathyamangalam.

For Appellants : Mr.R.T.Doraisamy
For Respondents : Mr.R.Babu

JUDGMENT

This second appeal has been filed challenging the judgment and decree dated 01.11.2006 passed by the Principal Subordinate Judge, Gobichettipalayam in A.S.No.53 of 2005 modifying the judgment and decree dated 30.07.2004 passed by the District Munsif Court, Sathyamangalam in O.S.No.408 of 1994.

Brief facts leading to filing of the second appeal:

2. The Appellants are the defendants in the suit O.S.No.408 of 1994 on the file of the District Munsif Court, Sathyamangalam. The respondents are the plaintiffs in the said suit.

3. For the purpose of convenience, the parties are referred to as per their ranking before the Trial Court.

4. The plaintiffs filed the suit against the defendants seeking for the reliefs of declaration and injunction as they claim to be the absolute owners of the suit schedule properties. It is their case that the first plaintiff purchased an extent of 3.44 acres under sale deed dated 27.05.1994 and the second plaintiff purchased an extent of 2 acres under sale deed dated 12.05.1993. It is their case that ever since the date of purchase, the plaintiffs are in possession and enjoyment of the suit schedule properties. It is the case of the plaintiffs that the defendants are interfering with their peaceful possession and enjoyment of the suit schedule properties and they have no right over the same.

5. A written statement has been filed by the defendants in the suit denying the allegations contained in the plaint. According to the defendants, they are in possession and enjoyment of the suit schedule properties and the said properties were allotted to them under an allotment letter issued by the Government. According to them, the sale deeds executed in favour of the plaintiffs are fabricated documents.

6. The Trial Court after framing issues and after trial, partly decreed the suit in favour of the second plaintiff for the extent of 2 acres. However, the Trial Court dismissed the suit insofar as the first plaintiff is concerned for the extent of 3.44 acres. Aggrieved by the rejection of the relief sought for by the first plaintiff, both the plaintiffs filed an appeal before the First Additional Sub Court, Gobichettipalayam in A.S.No.53 of 2005.

7. The lower appellate court by its judgement and decree dated 01.11.2006 in A.S.No.53 of 2005 held that the first plaintiff in the suit is also entitled for a declaratory relief and also for injunction. Accordingly, the lower appellate court allowed the appeal filed by the plaintiffs and decreed the suit O.S.No.408 of 1994 in entirety. Aggrieved by the same, the defendants have preferred this second appeal.

8. Heard Mr.R.T.Doraisamy, learned counsel appearing for the Appellants and Mr.R.Babu, learned counsel appearing for the respondents.

9. According to the learned counsel for the Appellants, the sale deed dated 27.05.1994 (Ex.A1) measuring an extent of 3.44 acres and the sale deed dated 12.05.1993 (Ex.A2) measuring an extent of 2 acres are fabricated documents. According to him, the signature of the father of the plaintiffs have been impersonated. It is also his case that the kist receipts also stands in the name of the defendants which were marked as Ex.B1 to Ex.B3. According to him, both the courts below have failed to

take note of the kist receipts Ex.B1 to Ex.B3 which were filed by the defendants.

10. However, the learned counsel for the respondents would submit that before the Trial Court, the plaintiffs have filed their sale deeds dated 27.05.1994 and 12.05.1993 which were marked as Ex.A1 and Ex.A2. According to him, Ex.A1 stands in the name of the first plaintiff and Ex.A2 stands in the name of the second plaintiff. He also produced Kist receipts standing in the name of the respective plaintiffs which were marked as Exhibits namely Ex.A3 and Ex.A4. Therefore, according to the learned counsel for the respondents, the plaintiffs have established their title over the suit schedule properties and the lower appellate court has rightly allowed the appeal by decreeing the suit as prayed for by the plaintiffs in O.S.No.408 of 1994.

Discussion:

11. At the time of admission of this Second Appeal on 30.10.2007, this Court has formulated the following substantial questions of law:

" 1) Whether lower Appellate Court is correct in holding the genuineness of the execution of Exs.A-1 and A-2 without comparing the admitted Thumb impression of father of the plaintiffs with the disputed Thumb impression in Exs.A-1 and A-2 when impersonation in execution of Exs.A-1 and A-2 alleged by the defendants?

2) Whether the lower appellate court is correct in holding that the plaintiffs are in possession of the suit property by relying the land tax receipts for the year 1991 and 1992 Ex.A-3 and Ex.A-4 stands in the name of the plaintiffs while the land itself was purchased by the plaintiffs in the years of 1993 and 1994 and also the Adangals stands in the name of Thimman?"

12. Admittedly, the sale deed dated 27.05.1994 marked as Ex.A1 which stand in the name of the first plaintiff was and sale deed dated 12.05.1993 marked as Ex.A2 which stand in the name of the second plaintiff have not been challenged by the defendants before any Court of law. Though they have taken a defence that the said sale deeds are fabricated, unless and until, the same has been challenged before any court of law, the contention of the learned counsel for the Appellants that the plaintiffs have fabricated those documents cannot be accepted by this court.

13. The plaintiffs have discharged their initial burden to establish their title by producing the sale deeds which were marked as Ex.A1 and Ex.A2 and they have also produced the kist receipts which were marked as Ex.A3 and Ex.A4 to prove their possession over the suit schedule properties. In fact, the

plaintiffs have filed all the revenue records pertaining to the suit schedule properties which were marked as Exhibits before the Trial Court. The Trial Court has by total non-application of mind, rejected the claim of the first plaintiff without any evidence to the contrary. Without any supporting documentary evidence, the Trial Court has erroneously accepted the contention of the defendants that only for his medical expenses, a sale deed was executed in favour of the second plaintiff.

14. As observed earlier, the plaintiffs have established their title by producing the sale deeds which till date remains unchallenged before any court of law and they have also produced all the revenue records pertaining to their possession over the suit schedule properties. The Trial court ought to have decreed the suit in entirety. But, however, erroneously has partially decreed the suit granting the relief only to the second plaintiff.

15. The lower appellate court by its Judgment and decree dated 01.11.2006 passed in A.S.No.53 of 2005 has taken into consideration the sale deeds Ex.A1 and Ex.A2 as well as the revenue records produced by the Appellant before the Trial Court and has rightly come to the conclusion that the plaintiffs are entitled for the suit reliefs. Only based on the materials and evidence available on record, the lower Appellate Court has come to the right conclusion.

16. Admittedly the defendants have not challenged the execution of Ex.A1 and Ex.A2 sale deeds before any court of law. The plaintiffs have also produced the revenue records which were marked as Ex.A3 to Ex.A12 which establishes their possession over the suit schedule properties.

Conclusion:

17. In view of the above, the substantial questions of law formulated by this Court are answered against the defendants who are the Appellants herein. Accordingly, there is no merit in this second appeal and the Judgement and decree dated 01.11.2006 of the Principal Subordinate Judge, Gobichettipalayam in A.S.No.53 of 2005 is hereby Confirmed. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge, Gobichettipalayam

2.The District Munsif Court, Sathyamangalam.

+1cc to Mr.R.T.Doraisamy , Advocate SR.No. 95761

+1cc to Mr.B.Kumarasamy, Advocate SR.No. 95728

S.A.No.1078 of 2007
and

M.P.No.1 of 2007

A.SK(11/09/2020)