

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.01.2019
PRONOUNCED ON: 25 .02.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1108 of 2007

&

MP.No.1 of 2007

1.Arumugam
2.Periasamy
3.Vediammal
4.Palaniammal
5.Kandammal
6.Nagammal
7.Eswari

... Appellants/ defendants 1, 3, 7 to 11

Vs.

1.Madhappan
2.Palanisamy
3.Vellaiammal
4.Nagammal

... Respondents / Respondents / Plaintiffs
2 & 3 , Defendants 4 & 6

(Respondents 3 & 4 are given up in this Second Appeal)

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 26.04.2006 passed in A.S.No.64 of 2005 on the file of the Subordinate Court, Mettur confirming the judgment and decree dated 14.02.2005 passed in O.S.No.211 of 1998 on the file of the District Munsif Court, Mettur.

For Appellants : Mr.P.Mani

For Respondents : Mr.A.Sundaravadhanan for R1

R2 : Died

R3 & 4 : Given up

J U D G M E N T

The appellants herein were the appellants 1,3,7 and 11 in A.S.No.64 of 2005 on the file of learned Subordinate Judge, Mettur. This Second Appeal has been filed against the Judgment

and decree dated 26.04.2006 passed by learned Subordinate Judge, Mettur in A.S.64 of 2005. The respondents 1 to 3 herein have filed a suit in O.S.No.211 of 1998 on the file of learned District Munsif, Mettur, for the relief of declaration that the sub division in Survey No.221/1, in the Sale Deed dated 18.02.1993 should be corrected as S.No.221/7 and the northern boundary in the Sale Deed should be read as "by road" instead of the "Plaintiffs remaining lands" in the Sale Deed dated 18.02.1993 under Document no.113, executed by the defendants 4 to 6 in favour of the plaintiffs, and for the relief of declaration declaring that the sale deed dated 27.03.1998 executed by the defendants 4 & 5 in favour of the third defendant under Document no.305/1998 is null and void and the same cannot be enforced through the Court of law and for permanent injunction against the defendants 1 to 11 and their men restraining them from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit property (Survey No.221/07).

2. The learned Principal District Munsif, Mettur, by the Judgment and decree dated 14.02.2005 allowed the said suit with cost. Aggrieved by the same, appellants herein have filed an appeal in A.S.No.64 of 2005 on the file of learned Subordinate Judge, Mettur. The learned Subordinate Judge, Mettur, by the Judgment and decree dated 26.04.2006 dismissed the said appeal by confirming the Judgment and decree dated 14.02.2005 passed by the learned Principal District Munsif, Mettur and directed the parties to pay their respective costs. Feeling aggrieved, the appellants/defendants have filed the present Second Appeal.

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

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

The defendants 1 & 2 were husband and wife. The third defendant was the son of the defendants 1 & 2. The defendants 4 to 6 are the vendors of the first plaintiff. The first plaintiff on 10.05.1962, purchased and extent of 0.62/2 cents in S.No.32/3, and now it was sub divided as S.No.32/3A. The first plaintiff had also purchased 1.19 acres in S.No.32/3 and now, it was sub divided as 32/3A. The suit property was purchased by the first plaintiff through a Sale Deed dated 10.05.1962 from one Vediappan. On 18.02.1993, the first plaintiff had again purchased the lands in S. No.47/2, S.No.32/3B & S.No.221/7 from the defendants 4 to 6 and the fourth defendant's husband Kandasamy. The extent of property in S.No.221/7 is 0.22 cents. Ever since from the date of purchase, he was in possession and enjoyment of the same.

Claiming right over the Car track in S.No.32/3A, the defendants 1 to 3 have filed a suit in O.S.No.81 of 1993 against the first plaintiff for the relief of declaration and permanent injunction. The said suit was dismissed on 10.02.1998 and thereafter, no appeal was preferred by either side. In a Sale Deed dated 18.02.1993 by over site, the Survey Number in respect to 22 cents of land was mentioned as S.No.221/1 instead of S.No.221/7. In fact, the defendants 4 to 6 were not the owners of the lands in S.No.221/1. One Anaiammal, W/o.Arumugam and their family members were the absolute owners of the land in S.No.221/1. At the time of registering the documents, the above mistake was not detected by the first plaintiff. In the mean while, on 27.03.1998, the defendants 4 & 5 created a false sale deed in favour of the third defendant in respect to S.No.221/7. Since, the said S.No.221/7 was already sold in favour of the first plaintiff, the sale deed executed by the defendants 4 & 5 in favour of the third defendant dated 27.03.1998, was not a valid one. Hence, the sale deed dated 27.03.1998 has to be declared as null and void. So also the Survey number in the sale deed dated 18.02.1993 has to be rectified. On 17.04.1998, the defendants 1 to 5 and their men tried to trespass into the suit property, particularly, in S.No.221/7 and tried to take forcible possession of the same. The unlawful attempt made by the defendants 1 to 5 was prevented by the first plaintiff. Even though, the sixth defendant did not disturb the first plaintiff, she was added as a formal and necessary party to the proceedings. Hence, the plaintiffs have filed a suit for rectifying a mistake in survey number and boundary mentioned in the sale deed dated 18.02.1993, for declaration declaring that the sale deed dated 27.05.1998 is null and void and for permanent injunction restraining the defendants from in any manner interfering with the peaceful possession and enjoyment of the suit property by the defendants.

5. During the pendency of the suit, the first plaintiff died. Hence, his his legal heirs were added as plaintiffs 2 & 3. In the same way, due to the death of the second defendant Anaiammal, her legal representatives were added as the defendants 7 to 11. On 07.10.2004, the fifth defendant Thangavelu died and his legal heirs were already on record.

6. The averments made in the written statement filed by the third defendant and adopted by the other defendants, in brief, are as follows:-

It is false to state that the first plaintiff had purchased the lands in S.No.47/2, 32/3B and 221/7. It is also false to allege that the defendants 1 to 3 had unlawfully claim the suit car track right in S.No 32/3A. The defendants 1 to 3 have preferred an appeal against the Judgment passed in O.S.No.81 of

1993, but, the same was pending. It is false to allege that by over site S.No.221/7 was wrongly typed as S.No.227/1, in the sale deed dated 18.02.1993. The third defendant had purchased 18 cents of land in S.No.221/7 through a sale deed dated 27.03.1998. The property in S.No.221/1 was absolutely belonging to the second defendant. The defendants 4 to 6 have no right to execute the sale deed, in respect to S. No.221/1. The properties in S.No.221/1 belonging to the second defendant by way of service and cared patta. It is false to allege that the defendants 4 to 6 handed over the possession of 22 cents of land in S.No.221/7 to the first plaintiff on the date of the sale deed itself. The sale deed dated 18.02.1993 was not valid in law, since, the defendants 4 to 6 were not the owners of the property in S.No.221/1. In total, the defendants were prayed for dismissal of the suit with cost.

7. Based on the above said pleadings, the learned District Munsif, Mettur, has framed the necessary issues and tried the suit.

8. During the trial, on the side of the Plaintiffs, the second plaintiff namely, Madhappan, examined himself as P.W.1. The third plaintiff namely, Palanisamy, examined himself as P.W.2. Further, on the side of the plaintiffs, two more witnesses were examined as P.W.3 and P.W.4 and 12 documents were marked as Exs.A1 to A12 on their behalf. On the side of the defendants, the third defendant namely, Periasamy, examined himself as D.W.1 and one Govindaraj, was examined as D.W.2. Exs.B1 to B16 were marked on their behalf. Apart from that through P.W.4, who was the Village Administrative Officer, three documents namely, the Adangal, Chitta and the Settlement Register Extract were marked as Exs.X1 to Ex.X3.

9. The learned District Munsif, Mettur after considering the materials placed before him has found that the evidence given by the Village Administrative Officer was in favour of the plaintiffs and also due to the admission of D.W.1, in respect to the northern boundary of cart track in S. No.221/7, came to the conclusion that the plaintiffs have prove their case and accordingly, decreed the suit in favour of the plaintiffs.

10. Aggrieved by the same, the defendants have filed an appeal in A.S.No.64 of 2005 on the file of the learned Subordinate Judge, Mettur. The learned Subordinate Judge, Mettur had found that the claim made by the plaintiffs was proved with evidence, documents and confirmed the declaratory relief given by the learned District Munsif, Mettur. In respect to the relief of permanent injunction, the learned District Munsif modified the judgment, that the plaintiffs were entitled to the relief of permanent injunction in respect to the 18 cents

alone in S.No.221/7. Feeling aggrieved by the same, the defendants 1, 3, 7 and 11 have preferred the present Second Appeal.

11.This Court at the time of admitting the Second Appeal has formulated the following Substantial Questions of law for consideration in this Second Appeal:-

(i)Whether the Courts below erred in law and misdirected themselves in drawing advorce inference against the contesting defendants for their failure to examine the first plaintiff's vendors to prove that what was sold to the first plaintiff under Ex.A1 Sale Deed is the land in S.No.221/1 and not the land in S.No.221/7 when it is for the plaintiff to prove his case by examining his vendors?

(ii)Whether the Courts below erred in law in decreeing the suit as prayed for merely because patta and Chitta were issued in the name of the first plaintiff when patta cannot confer title and moreover the said patta and Chitta were issued to the first plaintiff subsequent to the institution of the suit?

Substantial Question of Law No.1:

12. The learned counsel appearing for the appellants/defendants would contend that, before executing the Sale Deed in favour of the first plaintiff, the vendors, who are the fourth to sixth defendants were not having any title deed, in order to prove their ownership, Ex.X3, which was a copy of the Settlement Register extract alone is available. Further, the vendors of the plaintiffs had not been examined on the side of the plaintiffs, to prove their title, as per the revenue records, the extent of S.No.221/7 was only 18 cents and not 22 cents. The learned District Munsif, Mettur in his judgment clearly observed the above said fact and thereafter, considered the case in favour of the plaintiffs. The learned Subordinate Judge, Mettur, had also following the findings arrived at by the learned District Munsif and confirmed the same.

13. On the other hand, the learned counsel appearing for the respondents/plaintiffs would contend that the mistake found in the sale deed executed by the fourth to sixth defendants in favour of the first plaintiff was a typographical error. Further, it was a comprehensive suit based on the factual aspects only, moreover, after purchasing the property by the plaintiffs, the patta was also changed in favour of the first plaintiff and accordingly, he prayed for dismissal of the suit.

14. As per Ex.A1, Sale Deed dated 18.02.1993, the disputed land in question i.e., S.No.221/7 was purchased by the first plaintiff, in which, it was mentioned that the extent of property in the above said survey number was 22 cents. Further, the northern boundary of the above said land belonging to one Arumugam. It is an admitted fact that the vendors of the plaintiffs are the defendants 4 to 6. On the other hand, on 27.03.1998, the very same property in S. No.221/7 was purchased by the third defendant from the fourth and fifth defendants. Accordingly, for the land pertaining to S.F.No.221/7 two sale deeds were executed by the fourth and fifth defendants, in favour of the first plaintiff and in favour of third defendant. In the said circumstances, it is necessary to see whether the fourth to sixth defendants were having title over the above said S. No.221/7. In this regard, in order to prove their title, no title deed was produced for showing that the fourth to sixth defendants were having right, title and possession in respect to S.F.No.221/7. On the other hand, on the side of the plaintiffs, the Patta pass book pertaining to S.F.No.221/7, stands in the name of Vellaiammal, W/o. Kandasamy, has been marked as Ex.A2. As per the above said document, the Vellaiammal having property in the above said survey number to the extent of 18 cents. Now, on coming to Ex.B1, it was the Patta pass book issued in favour of Anaiammal, W/o. Arumugam. As per the above said document, the said Anaiammal was issued with patta in S.F.No.221/7, to the extent of 22 cents. Accordingly, only the Anaiammal, W/o.Kandasamy was having the right through the said patta in respect to S.F.No.221/7.

15. In the said circumstances, on the side of the plaintiffs, Geonology tree dated 13.07.2004 was marked as Ex.A9. Now, on going through the said Geonology tree, it is seen that the said vendor Vellaiammal, who was the fourth defendant was the wife of Kandasamy. It is also seen that as per Exs.A1 & B1, the fourth defendant Vellaiammal, W/o. Kandasamy has executed a sale deed in favour of the first plaintiff as well as in favour of the first defendant. Now, on going through the date on which the sale deed was executed in favour of the plaintiffs and defendants, it is an admitted fact that on 18.02.1993 itself, the plaintiffs had purchased the property from the original owner namely the Vellaiammal. On that date itself in S.F.No.221/7, the said Vellaiammal lost the right and title in the above said property. After selling the land in question in favour of the first plaintiff on 18.02.1993, after five years from the same, the said Vellaiammal along with her husband executed a sale deed in favour of the first defendant. It shows that without having any right, Ex.B1, sale deed was executed in favour of the first defendant. Accordingly, the sale deed in favour of the first defendant did not confer any right and title

in his favour.

16. Now, on going through the evidence given by P.W.2, who was the Village Administrative Officer, he was categorically mentioned that after purchase by the first plaintiff, the name found in the patta and chitta was changed in favour of the first plaintiff in respect to S.F.No.221/7. Before the trial Court, the very crucial document which was the "A" Register, pertaining to S.F.No.221/1 to 7 was marked as Ex.X3, through P.W.4. As per the above extract, S.No.221/7 previously stands in the name of Ka.Vellaiammal, who was the fourth defendant. At the same time, the S.F.No.221/1 stands in the name of A.Vellaiammal, who was the second defendant in the suit.

17. Accordingly, the above said discussions will confirm that the fourth defendant sold her property in favour of the first plaintiff to the extent of 22 cents instead of 18 cents. In fact, it was only a mistake committed in the sale deed. Apart from that, as per the case of the plaintiffs, on the northern side of the suit property there was a cart track available. In this regard, during the time of giving evidence before the trial Court, the first defendant had admitted that on the northern side of S.F.No.221/7, there was a cart track. So also, the property in the said S.F.No.221/7 was purchased by the plaintiffs.

18. It is true that to prove the title, the vendor of the sale deed i.e., Ex.A1 was not examined on the side of the plaintiffs. In fact, the vendors of the plaintiffs were added as the defendants nos. 4 to 6 in the trial Court. But, they were not entered into appearance and supported either the case of the plaintiffs or the defendants. So also, the non appearance of vendors will prove that they admitted the claim made by the plaintiffs. It was not a fault, on the side of the plaintiffs to examine their vendors to prove that what was sold to the first plaintiff. Even though, the vendors were not in support of the plaintiffs, as per the case of the plaintiffs, the very same vendors sold the very same property in favour of the first defendant for the reasons best known to them. So also, the attempt made by the plaintiffs to prove their title through their sale deed is a bonafide one. Since, the other documents and the evidence given by the Village Administrative Officer in support of the plaintiffs, the non examination of the vendors alone is not vital to the case of the plaintiffs. Accordingly, the first substantial question of law No.1, is answered in favour of the plaintiffs/respondents.

Substantial Question of Law No.2:

19. It is true that the patta stands in favour of the vendors did not confer any title. It is a specific case that the first defendant has also purchased the property from the

very same vendor, he was also relying the patta issued in favour of them and purchased the property. Even though, the patta did not confer any right to the title, the said issue was not challenged before the competent forum by saying that the patta, which stands in the name of fourth defendant, does not confer any right. More over, it is not pleaded on either side that the fourth defendant purchased the property from the third defendant. Accordingly, in this case, the circumstances will shows that the patta and chitta stands in favour of third plaintiff alone will show a prima facie ailment in respect to the title owned by the fourth defendant. Apart from that set asiding Ex.A1, title deed executed in favour of the first plaintiff is not a valid one. Accordingly, the second substantial question of law is also answered in favour of the plaintiffs/ respondents.

20. In fine, the Second Appeal is dismissed by confirming the Judgment and decree dated 26.04.2006 passed by the learned Subordinate Judge, Mettur in A.S.No.64 of 2005. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

dn

To

- 1.The Sub Judge,
Mettur.
- 2.The District Munsiff,
Mettur
3. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.A.Sundaravadhanan, Advocate, S.R.No. 17264

S.A.No.1108 of 2007

NMI (CO)
GN(03/06/2019)