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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2019

PRONOUNCED ON : 25.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1536 of 2003

Ammasi Gounder ... Appellant/Plaintiff

Vs.

1.Chinnathambi Gounder (Died)

2.Velu

3.Ramu

4.Vellaiyan ...

Respondents/Defendants

(RR2 to 4 are recorded as legal heirs of the deceased R1 viz., Chinnathambi Gounder vide order of Court dated 11.03.2019 made in S.A.No.1536 of 2003 as per memo dated 19.07.2016 is recorded)

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 24.01.2003 passed in A.S.No.125 of 1998 on the file of the Subordinate Court, Kallakurichi, confirming the judgement and decree dated 15.10.1998 passed in O.S.No.1105 of 1993 on the file of the II Additional District Munsif incharge I Additional District Munsif Court, Kallakurichi.

For Appellant : Mr.P.Dinesh Kumar
For M/s.Sarvabhauman Associates

For Respondents : Mr.R.Muralidharan

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 24.01.2003 passed in A.S.No.125 of 1998 on the file of the Subordinate Court, Kallakurichi, confirming the judgement and decree dated 15.10.1998 passed in O.S.No.1105 of 1993 on the file of the II Additional District Munsif incharge I Additional District Munsif Court, Kallakurichi.



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2.The second appeal has been admitted on the following substantial questions of law:

"(1). Have not the Courts below committed an error in dismissing the suit for declaration on the basis of a oral sale pleaded by the respondents which was not substantiated by any evidence?

(2).Whether in law the judgment and decree of the Courts below are sustainable when appellant has established his title to the property by material documents?"

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5.Suffice to state that the suit has been laid by the plaintiff for the reliefs of declaration and permanent injunction.

6.The plaintiff has laid the suit against the defendants claiming the reliefs of declaration and permanent injunction in respect of the properties described in the plaint schedule. Three items of the properties are described in the plaint schedule. The first item is stated to be measuring 0.05 ½ cents in survey No.6/5 and with reference to the said item, according to the plaintiff, he has acquired title by way of a sale deed dated 22.10.1990.

7.Per contra, according to the defendants, the entire extent in survey No.6/5 belongs to them and they had acquired the same by way of various sale deeds projected in the matter on their part and further, according to the defendants, they had purchased the remaining extent not covered in the abovesaid sale deeds of an extent of 5 ½ cents from one Veeran S/o.Pavadai by way of oral sale, accordingly, it is put forth by the defendants that the patta for the entire extent in survey No.6/5 had been issued in their favour and it is only they, who are in the possession and enjoyment of the first item of the suit properties.

8.Inasmuch as the claim of title of the plaintiff in respect of the first item of the suit properties is stiffly challenged by the defendants in toto, it is for the plaintiff to sustain



his claim of title to the same as pleaded by him and as abovenoted, the plaintiff relies upon the sale deed dated 22.10.1990 for claiming title to the first item of the plaint schedule properties. At the foremost, the plaintiff has not established as to how his vendor is entitled to claim title to the extent of 5 ½ cents in survey No.6/5. Though in the plaint, the plaintiff has come forward with the case that he has acquired title to the first item of the suit properties by way of the sale deed dated 22.10.1990, during the course of his evidence, the plaintiff would put forth the case that much prior to the abovesaid sale deed, he has purchased the first item by way of oral sale from his vendor viz., Veeramuthu and in recognition of the oral sale effected in the year 1968, according to the plaintiff, the sale deed dated 22.10.1990 marked as Ex.A1 has been executed in his favour. However, as rightly found by the Courts below, there is nothing contained in Ex.A1 sale deed that the said sale deed has been executed in favour of the plaintiff in recognition of the oral sale effected in the year 1968. Therefore, the plea put forth by the plaintiff during the course of his evidence that he had orally purchased the first item in the year 1968 itself and only in recognition thereof, Ex.A1 had come to be executed in his favour cannot be accepted, more particularly, when as abovenoted, the plaintiff has failed to establish his vendor's title to the said property and furthermore, when the plaintiff has not pleaded any oral sale with reference to the said item from his vendor in the year 1968. The plaintiff relies upon Ex.A2 patta said to have been issued in his favour in respect of the first item, however, as rightly found by the Courts below, Ex.A2 patta is found to be issued in respect of the entire extent of Survey No.6/5. That apart, when admittedly the patta in respect of the first item i.e. total extent of 41 cents is standing only in the name of the defendants viz., the first defendant, it does not stand to reason as to how the patta had come to be issued in favour of the plaintiff in respect of the first item of the plaint schedule properties. It has not been established by the plaintiff that the patta marked as Ex.A2 has been issued in his favour validly after due notice to the defendants and inviting their objections with reference to the same. On the other hand, it is found that the patta had been issued in favour of the defendants in the year 1974 itself in respect of 41 cents of land in survey No.6/5 and the other documents of possession have also been placed by the defendants evidencing that the entire extent of 41 cents is in their possession and enjoyment continuously.

9.As could be seen from the materials available on record, it is found that at one point of time, the plaintiff's father was in the possession and enjoyment of the extent available in survey No.6/5 on a Bokiam arrangement, however, it is seen that



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the first defendant had acquired the extent available in survey No.6/5 from Abdul Rahman and also, it is found that he had discharged the Bokiam in favour of the plaintiff's father by paying the Bokiam amount to the plaintiff and his brother and the abovesaid facts have been clearly admitted by the plaintiff during the course of his evidence. Furthermore, the plaintiff has also admitted that before the patta had been issued in his favour, the patta in respect of the first item had been standing only in the name of the first defendant. Therefore, it is seen that as rightly determined by the Courts below, taking advantage of the Bokiam arrangement in respect of the property comprised in survey No.6/5 at one point of time, it appears that the plaintiff had created certain records in his favour one way or the other for claiming title to the first item of the suit properties. On the other hand, from the materials placed on record by the defendants, when it is seen that the defendants had acquired the properties comprised in survey No.6/5 by way of the various sale deeds projected by them in the matter as well as the oral sale from Veeran S/o. Pavadai and been enjoying the total extent of 41 cents in survey No.6/5 and when it is seen that in recognition of the possession and enjoyment of 41 cents of land, the first defendant had been granted the patta and evidencing his possession and enjoyment, when it is further seen that the first defendant has also filed the kist receipts and adangal extracts, in all, it is found that it is only the first defendant, who could be held to have title to the extent of 41 cents including the first item of the plaint schedule properties in Survey No.6/5.

10. In the light of the abovesaid position, when the plaintiff has miserably failed to establish his vendor's title to the first item of the plaint schedule properties, his claim of orally purchasing the same in the year 1968 and in such view of the matter, the further claim of the plaintiff that he had acquired title to the first item by way of Ex.A1 sale deed cannot be accepted, when it is seen that much prior to the same, the first defendant had acquired title to the said item and been enjoying the entire extent in survey No.6/5 as the full owner thereof by obtaining patta, paying kist etc.,

11. It is contended by the plaintiff's counsel that the first defendant has failed to establish the plea of oral sale put forth by him in respect of 5 ½ cents in survey No.6/5. As rightly contended by the defendants' counsel, the plaintiff has come forward with the suit seeking the reliefs of declaration and permanent injunction in respect of the plaint schedule properties, and hence, it is for the plaintiff to establish his case by adducing acceptable and reliable evidence. When the plaintiff has miserably failed to establish his claim of title to the first item of the plaint schedule properties as above



discussed, in such view of the matter, the failure of the first defendant in establishing his claim of title to the first item as put forth by them would not lead to the conclusion that it is only the plaintiff, who has title to the same. On the other hand, as rightly determined by the Courts below, it is only the defendants, who are found to be in the possession and enjoyment of the entire extent of 41 cents in survey No.6/5 and when the defendants are found to have acquired the other extents in the abovesaid survey number by various sale deeds, which could not be impeached in any manner and accordingly, it is found that the defendants have also acquired the remaining 5 ½ cents by way of oral sale as put forth by them and been enjoying the entire extent in survey No.6/5 by obtaining patta and paying kist etc.,

12.In the light of the abovesaid discussions, I do not find any reason to interfere with the judgment and decree of the Courts below in negating the reliefs sought for by the plaintiff as regards the first item of the plaint schedule properties.

13.The plaintiff has not come forward clearly in the plaint as to how he had acquired the item 2 of the plaint schedule properties and during the course of his evidence, he would claim that the second item of the plaint schedule properties belongs to him ancestrally. However, absolutely there is no material placed by the plaintiff to hold that his ancestors had title and been in the possession and enjoyment of the second item of the suit properties by asserting title to the same and in such view of the matter, when there is absolutely no proof on the part of the plaintiff for sustaining his claim of title to the second item of the plaint schedule properties either pointing to his title or the possession with reference to the same, the Courts below are found to be justified in negating the reliefs sought for by the plaintiff as regards the said item. No interference is warranted with the abovesaid determination of the Courts below declining the reliefs sought for by the plaintiff in respect of the item 2 of the plaint schedule properties.

14.Per contra, as found by the Courts below, the defendants are found to have acquired title to the item 2 of the plaint schedule properties by way of the sale deeds projected by them and therefore, it is seen that item 2 of the plaint schedule properties is in their possession and enjoyment as pointed out and reflected in the materials projected by the defendants with reference to the same.

15.According to the plaintiff, the item 3 of the plaint schedule properties belongs to him ancestrally. However, even with reference to the said case, the plaintiff has not placed any material and he has admitted that he has not placed any



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document to sustain his claim of title and possession to the third item of the plaint schedule properties. On the other hand, he would further admit that the third item is in the possession and enjoyment of the first defendant in entirety. In addition to that, he has also admitted that the third item originally belonged to Kattaiyan, Subramania pillai, Navab and the same had been acquired by Abdul Rahman and the first defendant had acquired the same from Abdul Rahman. Therefore, the plaintiff has admitted that the third item of the plaint schedule properties had been acquired only by the first defendant and when there is no material on the part of the plaintiff evidencing his claim of title, possession and enjoyment of the third item of the suit properties in any manner, the Courts below are found to be justified in non suiting the plaintiff even as regards the third item of the plaint schedule properties.

16. In the light of the abovesaid discussions, the plaintiff having failed to establish his title, possession and enjoyment of the plaint schedule properties, as abovenoted, the Courts below are justified in dismissing the plaintiff's suit and in such view of the matter, when the dismissal of the plaintiff's suit by the Courts below is found to have been done on the proper appreciation of the materials placed on record, both oral and documentary, by giving acceptable reasonings and conclusions, in such view of the matter, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are, accordingly, answered against the plaintiff and in favour of the defendants.

17. In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

- 1.The Subordinate Judge, Kallakurichi.
- 2.The II Additional District Munsif incharge
I Additional District Munsif Court, Kallakurichi.
- 3.The Section Officer,
V.R. Section, High Court, Madras.

+lcc to Mr.R.Muralidharan, Advocate sr.40006

+lcc to M/s.Sarvabhauman Associates, Advocate sr.40493

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sai(co)
nr 15/10/2019