

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.02.2019

PRONOUNCED ON: 26.02.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.779 of 2006
and
C.M.P.No.8795 of 2006
and
V.C.M.P.No.354 of 2006

Nandagopal ..Appellant/Respondent/Defendant

Vs.

P.Ramalingam ...Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 31.12.2004 in A.S.No.20 of 2004 on the file of the Court of I Additional Subordinate Judge at Villupuram reversing the judgement and decree dated 04.04.2003 in O.S.No.127 of 2001 on the file of the Court of II Additional District Munsif at Thirukovilur.

For Appellant : M/s.R.T.Shyamala

For Respondent: No appearance
Set exparte vide order dated 11.2.2019

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 31.12.2004 passed in A.S.No.20 of 2004 on the file of the I Additional Subordinate Court, Villupuram, reversing the judgment and decree dated 04.04.2003 passed in O.S.No.127 of 2001 on the file of the II Additional District Munsif Court, Thirukovilur.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration, possession and recovery of arrears of rent and mense profits.

4.The case of the plaintiff in brief is that the suit property described in plaint A schedule originally belonged to one Subramaniya Mudhaliar and after his demise, his wife Sarasammal and his children had alienated the abovesaid property to the plaintiff for a valid consideration by way of a sale deed dated 14.09.1983 along with the other items of the properties and the plaint A schedule property has been described as the 5th item in the abovesaid sale deed and since then, it is only the plaintiff, who has been in the possession and enjoyment of the plaint A schedule property and by way of his long, continuous possession and enjoyment, he has also prescribed title to the plaint A schedule property by way of adverse possession and the plaint B schedule property is a portion of plaint A schedule property, wherein a thatched shed had been put up and the plaintiff has been enjoying the same by paying taxes etc., and the defendant had been inducted as a tenant in respect of the plaint B schedule property during January 1989 on a monthly rent of Rs.50/- and the defendant has been in the possession and enjoyment of the plaint B schedule property only as a lessee and paid rent only up to July 1996 and thereafter committed default in the payment of rent and it is also pleaded that the suit laid by the defendant in O.S.No.440 of 1996 for bare injunction has been dismissed. The plaintiff had issued a notice to the defendant asking him to surrender the possession of the plaint B schedule property and the defendant sent a reply containing false allegations, by setting up the title of the suit property on one Ekambaram Mudhaliar and thereby denied the plaintiff's title to the same and hence the suit.

5.The case of the defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts and that the plaint A schedule property is not owned by Subramaniya Mudhaliar as purforth in the plaint and Sarasammal, wife of Subramaniya Mudhaliar and his children had not alienated the plaint A schedule property to the plaintiff by way of the sale deed dated 14.09.1983 and the abovesaid sale deed is not valid with reference to the plaint A schedule property. The plaintiff is entitled to obtain the sale deed only in respect of the properties allotted to Subramaniya Mudhaliar in the partition held between Subramaniya Mudhaliar and his brother and also putforth the case that plaint B schedule property originally belonged to Viswanatha Mudhaliar and after the death of Viswanatha Mudhaliar, his son Ekambaram Mudhaliar acquired title to the same and conveyed the same to the defendant by way of a registered sale deed dated 03.04.2000 and contended that the lease arrangement pleaded by the plaintiff with reference to the plaint B schedule property is false and prayed for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A 20 were marked. On the side of the defendant, D.Ws.1 to 4 were examined. Exs.B1 to B10 were marked. Exs.C1 to C3 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit. On appeal, the first appellate court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and granted the reliefs in favour of the plaintiff in respect of the plaint B schedule property as prayed for. Aggrieved over the same, the defendant has come forward with the second appeal.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- (i) Whether the suit as laid is maintainable in law without terminating the alleged lease in favour of the defendant without issuing notice under Section 106 of T.P.Act?
- (ii) When the first appellate court did not give any finding regarding the termination of the lease under Sec.106 of the T.P.Act, whether the suit can be decreed for recovery of possession?

9. According to the plaintiff, the plaint B schedule property forms part of the plaint A schedule property. Further according to the plaintiff, the plaint A schedule property and the other properties originally belonged to one Subramaniya Mudhaliar. However, the abovesaid case of the plaintiff is being disputed by the defendant. The defendant has taken the plea that the case of the plaintiff that the plaint A schedule property belonged to one Subrmaniya Mudhaliar is false and according to the defendant, in the partition held between Subramaniya Mudhaliar and his brother with reference to the properties owned by them, the plaint A schedule property is not allotted to Subramaniya Mudhaliar and therefore put forth the case that the claim of the plaintiff that Subramaniya Mudhaliar had title to the plaint A schedule property is false. Further according to the plaintiff, after the demise of Subramaniya Mudhaliar, his wife Sarasammal and his children had alienated the plaint A schedule property in his favour by way of a registered sale deed dated 14.09.1983. The copy of the sale deed has been marked as Ex.A2. It is pleaded by the plaintiff that

the defendant was inducted as a tenant in the B schedule property on a monthly rent and the abovesaid case of tenancy put forth by the plaintiff as regards the plaint B schedule property is being seriously challenged by the defendant. According to the defendant, the plaint B schedule property belonged to one Viswanatha Mudhaliar and after his death, his son Ekambaram Mudhaliar alienated the plaint B schedule property in his favour by way of a registered sale deed dated 03.04.2000, which has been marked as Ex.B3.

10. Inasmuch as the defendant has disputed the claim of the plaintiff that the plaint A schedule property originally belonged to one Subramaniya Mudhaliar and furthermore, when the plaintiff claims title to the plaint A schedule property as well as the plaint B schedule property, which according to the plaintiff forms part of the plaint A schedule property, by way of a sale deed dated 14.09.1983 marked as Ex.A2, executed by the legal heirs of Subramaniya Mudhaliar and when according to the defendant, the legal heirs of Subramaniya Mudhaliar are not entitled to convey the plaint A schedule property to the plaintiff by way of Ex.A2 sale deed validly, in such view of the matter, as rightly determined by the Courts below, at the foremost, the plaintiff has to establish that the plaint A schedule property originally belonged to one Subramaniya Mudhaliar as put forth by him. Though the plaintiff would claim that the plaint A schedule property originally belonged to Subramaniya Mudhaliar, however as regards as to how Subramaniya Mudhaliar had acquired the plaint A schedule property, there is no clear case on the part of the plaintiff either in the plaint or during the course of his evidence. The plaintiff examined as P.W.1, during the course of his evidence, has admitted that he does not know whether the plaint A schedule property had been allotted to Subramaniya Mudhaliar in the partition and that he does not have the custody of the original title deed of the plaint A schedule property and also admitted that the plaint A schedule property is shown to be lying to the south of Krishnasamy Udaiyar's property as described in Ex.A2 and thus it is seen that the plaintiff is unaware as to how Subramaniya Mudhaliar had acquired title to the plaint A schedule property. Sarasammal, the vendor of the plaintiff examined as P.W.2, during the course of her evidence has also admitted that she does not know whether Subramaniya Mudhaliar had acquired title to the plaint A schedule property by way of a partition and also admitted that while mortgaging property to one Ganesan, she had not seen any parent title deed and based on her assumption, the abovesaid mortgage deed has been executed and she had not executed the abovesaid mortgage deed based on any documents. Furthermore, P.W.2 during the course of her evidence has clearly admitted that she does not have the power or authority to convey the suit property and also admitted that she has not enjoyed the

suit property at any point of time. In such view of the matter, when P.Ws 1 and 2 examined on behalf of the plaintiff are unable to throw a clear picture to establish as to how Subramaniya Mudhaliar had acquired title to the plaint A schedule property and as rightly put forth by the defendant, it is seen that only by way of a partition, it is found that Subramaniya Mudhaliar had been granted title to certain items of the properties and the copy of the partition deed effected between Subramaniya Mudhaliar and his brother Loganatha Mudhaliar has been marked as Ex.B2. On a perusal of Ex.B2, it is found that the properties comprised in A schedule thereto had been allotted to Subramaniya Mudhaliar and the properties described in B schedule thereto had been allotted to Loganatha Mudhaliar. In A schedule properties, of the three items described therein, two items are found to be located to the west of the river and therefore, it is seen that the first item alone is situated to the east of river and accordingly on a perusal of the description of the abovesaid item of the properties, it is seen that in village natham survey No.89/3 H1, Subramaniya Mudhaliar had been allotted the property lying to the east of river, south of the vacant site belonging to Krishnasamy Udaiyar, west of the property belonging to Kuppusamy Asarry and others and to the north of the site belonging to Karpagavalli ammal and the abovesaid property measures east-west 42 ft and north-south 42 ft with the tiled house located therein and the other appurtenants. Thus, it is found that by way of Ex.B2 partition deed Subramaniya Mudhaliar had been alienated only the property within the abovesaid boundaries measuring east-west 42 ft, north-south 42 ft and on the other hand, the plaint A schedule property is shown to be lying in specific boundaries measuring an extent of east-west 42ft, north-south 50 ft and with reference to the abovesaid discrepancy, there is no clarification or explanation offered by the plaintiff. Furthermore, there is no material placed on the part of the plaintiff to evidence that Subramaniya Mudhaliar during his lifetime had been in the possession and enjoyment of the plaint A schedule property as described in the plaint. However, it is found that his wife Sarasammal had mortgaged the property to one Subburaman Udaiyar and the copy of the abovesaid mortgage deed had come to be marked as Ex.A14. On a perusal of Ex.A14, it is found that two items of properties had been mortgaged by Sarasammal [P.W.2] and the first property is shown to be measuring east-west 42 ft and north-south 42 ft and the other property mortgaged thereunder is shown to be measuring east-west 42 ft and north-south 50 ft within the specific boundaries and when as per Ex.B2 partition deed, Subramaniya Mudhaliar had been allotted only the property measuring east-west 42 ft and north-south 42 ft within the specific boundaries as above adverted to, it has not been explained by the plaintiff or P.W2 as to how P.W.2 Sarasammal would be entitled to mortgage the

plaint A schedule property by way of Ex.A14 mortgage deed and with reference to the same, there is no proper explanation put forth on the part of the side of the either the plaintiff P.W.1 or P.W.2 Sarasammal. It is further noted that P.W.2 Sarasammal had mortgaged the properties to one Ganesa Mudhaliar by way of a mortgage deed, the copy of which has been marked as Ex.A1 and even thereunder, two items of properties as described in Ex.A14, had been mortgaged by P.W.2 and likewise, it has not been explained as to how without any authority Sarasammal had mortgaged the property measuring east-west 42 ft, north-south 50 ft by way of Ex.A1 mortgage deed. As rightly determined by the trial court, inasmuch as, P.W.1 had failed to discharge the mortgage debt under Ex.A1 deed. Poorani Ammal, W/o, Ganesa Mudhaliar had levied the civil action against Sarasammal and others in O.S.No.357 of 1980 and thereby the mortgage deed had come to be discharged by P.W.2, which could be gathered from the suit register extract of the abovesaid suit marked as Ex.A15. For discharging the abovesaid mortgage debt, it is found that P.W.2 and others had effected the deed of Bokiya under Ex.A16 in favour of the plaintiff and thereunder the property owned by Krishnasamy Mudhaliar by way of the partition deed above adverted to measuring east-west 42 ft, north-south 42 ft had been mortgaged and thereafter, it is found that the plaintiff had acquired the suit property from P.W.2 and others by way of Ex.A2 sale deed. It is thus noted that without any authority or entitlement, it is found that P.W.2 Sarasammal had been dealing with the plaint A schedule property by way of mortgaging the same as above noted, particularly when her husband Subramaniya Mudhaliar is found to have been allotted by way of Ex.A2 partition deed only the property measuring east-west 42 ft, north-south 42 ft in the suit survey number within the specific boundaries and in such view of the matter, the claim of the plaintiff that the plaint A schedule property as described in the plaint originally belonged to Subramaniya Mudhaliar and enjoyed by him and his legal heirs as such cannot be readily accepted.

11. On a perusal of Ex.A2 sale deed, it is seen that by way of the abovesaid transaction, five items had been alienated to the plaintiff by P.W.2 and her children and of them, it is found that the first item of the property conveyed therein corresponds to the property allotted to Subramaniya Mudhaliar by way of Ex.A2 partition deed and on the other hand the 5th item of the property described therein corresponds to the plaint A schedule property, however when the plaint A schedule property has not been established to have been owned and enjoyed by Subramaniya Mudhaliar as above discussed, it is found that P.W.2, Sarasammal and her children would not be competent to convey the plaint A schedule property to the plaintiff by way of Ex.A2 sale transaction and furthermore, as rightly pointed out

by the trial court, when the first item of the properties covered under Ex.A2 is shown to be located to the south of Krishnasamy Udaiyar's property and on the other hand as regards the 5th item of the properties covered therein, when it is described as located to be lying to the south of the first item of the property covered thereunder and the south boundary is shown as the property belonging to Sarasammal [P.W.2] as rightly determined by the trial court, the first item of the suit properties is found to be completely different from the 5th item of the properties involved in Ex.A2 and thus it is seen that without any entitlement, Sarasammal and others had conveyed the plaint A schedule property to the plaintiff and in such view of the matter, as rightly determined by the trial court, by way of Ex.A2 sale deed, plaintiff would not be entitled to claim a valid title in respect of the same.

12. As abovenoted, once the plaintiff has failed to establish that Subramaniya Mudhaliar had title to the plaint A schedule property and enjoyed by him as described in the plaint, his further case that his wife Sarasammal and children had been dealing with the plaint A schedule property by way of the transactions covered under Ex.A14, A16, A1 and A2 goes out and when there is no material placed on the part of the plaintiff to evidence that either Subramaniya Mudhaliar or his legal heirs had been in possession and enjoyment of the plaint A schedule property as the valid title holders, the trial court is fully justified in declining the reliefs sought for by the plaintiff by holding that the plaintiff has failed to establish his vendors' claim of title to the plaint A schedule property.

13. The defendant claims title to the plaint B schedule property from Ekambara Mudhaliar under the sale deed dated 03.04.2000 marked as Ex.B3. It is found that the plaintiff has levied the suit against Ekambara Mudhaliar and others for permanent injunction in O.S.No.364 of 1991 and the same could be gathered from the copy of the plaint in the abovesaid suit is marked as Ex.A10. The copy of the judgment passed in the abovesaid suit is marked as Ex.A17 and the decree copy is marked as Ex.A12. On a perusal of the abovesaid documents in toto, it is found that, inasmuch as, the defendant in the above suit, failed to contest the plaintiff's case, it is found that the suit laid by the plaintiff for bare injunction has been decreed. As rightly determined by the trial court, as regards the title of the plaint A schedule property, the same had not been gone into the abovesaid suit and in such view of the matter, the abovesaid suit would not in any manner enure to the benefit of the plaintiff for claiming a valid title to the suit property by way of Ex.A2.

14. The defendant appears to have laid the suit against the plaintiff in O.S.No.440 of 1996 and as could be seen from the property involved in the abovesaid suit, it is found to be comprised in survey No.93/3. Therefore, it is evident that the plaint A schedule property is not invalid in the abovesaid suit. Accordingly, the notice issued by the defendant prior to the same and exhibited in the matter, as rightly determined by the trial court, is not relating to the plaint A schedule property. It is found that Ekamabara Mudhaliar had issued a notice to the defendant by way of Ex.A18 and the defendant has sent a reply to the same marked as Ex.A20. In the said reply notice, the defendant has put forth the case that he is not a tenant under Ekambaram Mudhaliar and claimed to be a tenant under the plaintiff and however as rightly determined by the trial court, when the plaintiff has failed to establish that the property described in Ex.A18 and the plaint B schedule property are one and the same, hence the abovesaid document would not be useful to sustain the plaintiff's case.

15. The defendant's claim that the suit property belong to Ekambara Mudhaliar, however when the document projected by the defendant marked as Ex.B1, with reference to the same, show that only the property comprised in survey No.93/3 is involved thereunder and in such view of the matter, when the defendant has failed to co-relate the plaint B schedule property with the property comprised in survey No.93/3, in such view of the matter, the abovesaid document would be of no use to either sustain the defence version or the plaintiff's case.

16. It is further noted that one Kuppan had sent a notice marked as Ex.B7 challenging the sale deed of the plaintiff marked as Ex.A2 and considering the same, the Sub Registrar, Thirukovilur had directed Kuppan to seek the remedies open to him in a Court of law, hence it is seen that the above document would be of no use to determine the issues involved in the matter as such. The plaintiff has projected a patta document marked as Ex.B3 for claiming title to the abovesaid A schedule property, however when patta cannot be construed as a document of title, as rightly determined by the trial court, on the basis of Ex.A3 patta, the plaintiff cannot be held to be the valid owner of the plaint A schedule property. When the first item of the properties covered under Ex.A2 show that the house comprised therein has become dilapidated, as rightly determined by the trial court, the tax receipts put forth by the plaintiff marked as Ex.A4 and A5 would not be the sole basis for holding that the plaintiff owns the plaint B schedule property by way of the same and when the plaintiff has failed to establish that the abovesaid tax receipts pertain to the house property given

in the plaint B schedule, no safe reliance could be placed upon the abovesaid documents for upholding the plaintiff's claim of title to the plaint A schedule property or B schedule property.

17. Though the plaintiff would claim title to the plaint A schedule property on the plea of adverse possession, however considering the documents projected by the plaintiff and also the litigation preferred in connection with the same in O.S.No.364 of 1991, in all, it is found that the plaintiff has failed to establish the long and continuous possession and enjoyment of the plaint A schedule property openly, continuously and uninterruptedly with animus attitude by exercising title upon himself successfully to the knowledge of one and all including the true owner beyond the statutory period, in such view of the matter, the adverse title claim putforth by the plaintiff has been rightly declined by the trial court and no interference is called for with reference to the same.

18. When the plaintiff has failed to establish that he has acquired a valid title to the plaint A schedule property and consequently, when the plaintiff has failed to establish his claim of title to the plaint B schedule property, his further plea that there is a landlord-tenant relationship between him and the defendant as regards the plaint B schedule property falls to the ground and therefore it is evident that the plaintiff would not be entitled to claim the recovery of possession of the plaint B schedule property from the defendant.

19. In the light of the above discussions, the plaintiff having failed to establish that the plaint A schedule property and the plaint B schedule property forming part of the plaint A schedule property belonged to Subramaniya Mudhaliar and his vendors, in such view of the matter and furthermore when the plaint A schedule property is found to be not included in the partition deed marked as Ex.B2, in such view of the matter, it is seen that the plaintiff has failed to establish his title, right and interest in the plaint A schedule property and the first appellate court without considering the above aspects of the matter involved in the lis in the right perspective by considering the materials placed on record, both oral and documentary, in the right perspective, erroneously dislodged and disturbed the valid and correct findings of the trial court with reference to the same and in such view of the matter, the judgment and decree of the first appellate court upholding the plaintiff's case, being found to be perverse and illogical, are liable to be set aside. The plaintiff having failed to establish his ownership, title to the plaint A schedule property, the question of the issuance of quit notice to the defendant for claiming the recovery of the same does not arise and in such view of the matter, it has to be held that the plaintiff is not

entitled to recover the possession of the suit property i.e, the plaint B schedule property from the defendant and the substantial questions of law involved/formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

20.In the light of the above discussions, the judgment and Decree dated 31.12.2004 passed in A.S.No.20 of 2004 on the file of the I Additional Subordinate Court, Villupuram are set aside and the judgment and decree dated 04.04.2003 passed in O.S.No.127 of 2001 on the file of the II Additional District Munsif Court, Thirukovilur are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The I Additional Subordinate Judge,
I Additional Subordinate Court,
Villupuram.
2. The II Additional District Munsif,
Thirukovilur.

Copy to

The Section Officer,
VR Section, High Court, Chennai.

+1 cc to M/s.R.T.Shyamala, Advocate, S.R.No.17278

+1 cc to M/s.R.Ravisekaran, Advocate, S.R.No.17435

judgment made in
S.A.No.779 of 2006
and
C.M.P.No.8795 of 2006
and
V.C.M.P.No.354 of 2006

PM(CO)
SSM(23/10/2019)