

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.11.2019

PRONOUNCED ON : 18.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.423 of 2003

and

CMP.Nos.8549 of 2003 and
17055 of 2018

1. Rajavelu Padagachi (died)
S/o.Duraisami (case title of Appellant is accepted vide
CMP.16545/99 dated 1.11.99
2. R.Devanathan
3. R.Ramalingam
4. R.Marimuthu (died)
5. R.Padmanabhan
6. R.Murugan
7. R.Rajalakshmi
8. R.Pavadai
9. Rajangam
10. Selvi Sivamani (minor)
11. Selvi Jivarathinam [(minor) -died]
12. Selvan Devasudan (minor) order dated 27.6.03

.... Appellants

[(Cause title of appellant is
accepted vide CMP.No.16545/99 dated 01.11.99)
(Appellants 9 to 12 are brought on record as
legal representatives of the deceased 4th appellant
and 9th appellant is appointed as guardian of
minor appellants 10 to 12 made in
CMP.Nos.5247 & 5248/2003)].

(Appellants 4 and 9 are legal heirs of the
deceased 11th appellant viz., Selvi Jivarathinam
as per the memo submitted on 31.10.2018
vide order of court dated 31.10.2018
made in SA.No.423 of 2003)]

Vs.

Rajendran

... Respondent

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the judgment and decree passed in A.S.No.38 of 1995
dated 04.08.1997 on the file of Sub-Judge, Cuddalore, set
aside the judgment and decree dated 23.12.1994, passed by the
Principal District Munsif, Cuddalore in O.S.No.869 of 1993.

For Appellants : Mr.T.P.Kathiravan

For Respondent : Mr.T.S.Baskaran

JUDGMENT

This second appeal was originally filed by the defendant, against the judgment and decree passed by the Sub-Judge, Cuddalore in A.S.No.38 of 1995 dated 04.08.1997. Since during pendency of the Second Appeal he died, his legal representatives have been impleaded as appellants 2 to 12.

2. The respondent herein had filed a suit in O.S.No.869 of 1993 on the file of the Principal District Munsif, Cuddalore, to declare his title over the suit property and for delivery of possession and for future mesne profits. The learned Principal District Munsif, Cuddalore by the judgment dated 23.12.1994 had dismissed the suit with costs. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.38 of 1995 on the file of the Sub Judge, Cuddalore. The learned Sub Judge, Cuddalore by the judgment dated 04.08.1997 had allowed the said appeal and set aside the judgment and decree passed by the trial Court and decreed the suit as prayed for with costs. Further, he directed the defendant to deliver the vacant possession of the suit property to the plaintiff within two months. In respect of mesne profits, he directed for separate enquiry. Feeling Aggrieved, the defendant has filed the present Second Appeal. During pendency of the second appeal, the sole appellant/defendant died and hence his legal representatives have been impleaded as appellants 2 to 12.

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

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

The suit property originally belonged to one Gopal Padayachi. After his death, his wife and his son Palanisamy inherited the suit property. The said Palanisamy was in possession and enjoyment of the suit property by paying kist, etc. While so, the defendant claiming some false title, trespassed into the suit property in the year 1977. Hence, the said Palanisamy filed a suit for declaration and recovery of possession in O.S.No.441 of 1981 on the file of the District Munsif, Cuddalore. The said suit was decreed and thereafter the said Palanisamy took possession of the suit property through Court on 19.07.1985. While so, the plaintiff had purchased the suit property from the said Palanisamy on 16.04.1993 under a registered sale deed for a sum of Rs.18,000/-. He took delivery and started enjoying the suit property. Suddenly on 18.06.1993, the defendant trespassed into the suit property and took away the possession and hence

the plaintiff was constrained to file the suit for declaration and delivery of possession and mesne profits.

5. The averments made in the written statement filed by the defendant are in brief as follows:

It is false to say that Palanisamy is entitled to the suit property. It is also false to say that he has taken possession through court on 19.07.1985. The alleged delivery is not true and valid. The sale deed dated 16.04.1993 will not confer any title to the plaintiff. It is false to say that the plaintiff took possession of the suit property, in pursuance of the aforesaid sale deed. It is also false to say that on 18.06.1993, the defendant trespassed in to the suit property. The plaintiff has suppressed the fact that his vendor Palanisamy had filed a suit in O.S.No.441 of 1981 on the file of the District Munsif, Cuddalore and got the decree. As against the said decree and judgment, the defendant had filed an appeal in A.S.No.156 of 1984 on the file of the Sub-Judge, Cuddalore. The learned Sub-Judge, Cuddalore had set aside the judgment and decree passed by the trial court and dismissed the suit with regard to "B" schedule property. The defendant had purchased the property under sale deeds dated 24.09.1977 and 12.08.1977. The total extent of land purchased by the defendant is 7.47 acres. It includes an extent of 1.33 acres in S.No.227/8 and 4.48 acres in S.No.227/8. The description of property as given in the plaint is quite wrong. The new S.No.108/4 corresponding to old S.No.221/8 is comprised in Patta No.241 stands in the name of the defendant. The plaintiff is not at all entitled to any portion comprised in S.No.108/4. The plaintiff has purposely given the new survey number to put forward a false claim to the property. The plaintiff has no title to the suit property. The description of the property given in the plaint is misleading. Therefore, the defendant prayed to dismiss the suit.

6. The averments made in the additional written statement are in brief as follows:

The suit is barred by res judicata in view of the decree in A.S.No.156 of 84 wherein the sale deeds in favour of the defendants have been upheld. Further, the description of property and the boundaries given in the plaint are vague and misleading. The plaintiff has not established the identity of the property and therefore, the defendant prayed to dismiss the suit.

7. The averments made in the reply statement are in brief as follows:

In the previous suit ie., in O.S.No.541 of 1981, the suit was decreed in respect of both 'A' and 'B' schedule properties, but, the Appellate Court had reversed the findings of the trial court and dismissed the suit in respect of suit 'B' schedule property alone and therefore, the plaintiff's vendor Palanisamy took delivery of the suit 'A' schedule property through court. So there is no question of res

judicata.

8. Based on the aforesaid pleadings, the learned Principal District Munsif, Cuddalore, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and he also examined two more witnesses as P.W.2 and P.W.3. He marked Exs.A1 to A3 as exhibits on his side. On the side of the defendant, the defendant examined himself as D.W.1 and one more witness was examined as D.W.2. He marked Exs.B1 to B14 as exhibits.

9. The learned District Munsif, Cuddalore, after considering the materials placed before her, found that the boundaries given for the suit property in the present suit and the boundaries mentioned in earlier suit in O.S.No.441 of 1981 are not tallied. She further found that the plaintiff failed to prove that the corresponding old S.No. for the new S.No.108/4 is S.No.221/8. She further found that the plaintiff failed to prove that his vendor took possession through court. Accordingly, she dismissed the suit with costs.

10. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.38 of 1995 on the file of the Sub-Judge, Cuddalore. The learned Sub-Judge, Cuddalore, had allowed the said appeal and set aside the judgment and decree passed by the trial court and decreed the suit as prayed for with costs. He granted two weeks time for handing over the possession of the suit property. He further ordered separate enquiry for mesne profits. Feeling aggrieved, the defendant has filed the present appeal.

11. This Court at the time of admitting the second appeal has formulated the following substantial question of law:

" Whether the first appellate court erred in law and misdirected itself in reversing the judgment of the trial court without reference to the appropriate documents of purchase, without reference to the boundaries and without reference to possession?"

12. Heard Mr.T.P.Kathiravan, learned counsel for the appellants and Mr.T.S.Baskaran, learned counsel for the respondent.

13. Substantial Question of Law:

The learned counsel for the appellants has submitted that the first appellant had purchased the suit properties and other properties under Ex.B1 dated 12.08.1977 and Ex.B2 dated 24.09.1977, whereas, the plaintiff had purchased the property from his vendor only on 28.04.1984

(Ex.A.1). He further submitted that the plaintiff's vendor viz., Palanisamy had already filed a suit in O.S.No.441 of 1981 on the file of the Principal District Munsif, Cuddalore, for the relief of declaration and delivery of possession. The trial court had decreed the suit as prayed for. As against the same, the defendant had filed an appeal in A.S.No.156 of 1984 and the Appellate Court had allowed the said appeal partly and set aside the judgment and decree in respect of 'B' schedule property and thereby confirmed the title of the defendant. He further submitted that the plaintiff's vendor failed to prove that he took possession of the suit property through Court and hence the alleged taking of possession is false. He further submitted that the plaintiff had purchased the suit property under Ex.A.3 and took possession is also false. He further submitted that there is no evidence that the plaintiff's vendor himself had taken possession of the suit property and that being so, the contention of the plaintiff that he took possession from his vendor Palanisamy in pursuance of Ex.A.3 Sale deed is also not correct. He further submitted that the description of the property given in the plaint and in the earlier suit are totally different and as such, the plaintiff cannot rely upon the judgment and decree passed in the previous suit and appeal. He further submitted that the plaintiff failed to prove that the corresponding new S.No.221/8 is S.No.108/4. He further submitted that taking into consideration of the aforesaid facts and evidence in a proper perspective, the trial court had rightly dismissed the suit, but in the said well considered judgment and decree, the First Appellate Court had unnecessarily interfered and reversed the findings of the trial court and decreed the suit as prayed for. Therefore, he prayed to allow the second appeal and set aside the judgment and decree passed by the First Appellate Court and dismiss the suit.

14. Per Contra, the learned counsel for the respondent/plaintiff has submitted that the plaintiff's vendor Palanisamy had already filed a suit in O.S.No.441 of 1981 on the file of the Principal District Munsif, Cuddalore, against the defendant herein for the relief of declaration and recovery of possession and that the trial court had decreed the suit as prayed for. As against the same, the defendant herein had filed an appeal in A.S.No.156 of 1984 on the file of the Sub-Judge, Cuddalore. The learned Sub-Judge, Cuddalore, had partly allowed the said appeal and set aside the judgment and decree passed in respect of suit 'B' schedule property, but confirmed the judgment and decree passed by the trial court in respect of suit "A" schedule property. He further submitted that in pursuance of the said decree, Palanisamy filed an execution petition and took possession of the suit property and thereafter he sold the property to the present plaintiff and handed over the possession to him. He further submitted that when the plaintiff was starting to enjoy the property, the defendant trespassed into the suit property and took possession of the suit property forcibly and hence, he

was constrained to file the present suit. He further submitted that in O.S.No.441 of 1991, the defendant herein had claimed an entire extent of 5.60 cents which is situated in new S.No.221/8 including the suit property by virtue of sale deeds dated 12.08.1977 and 24.09.1977 and after considering the said sale deeds, the trial court had decreed the suit and the appellate court also had confirmed the judgment and decree in respect of suit 'A' schedule property and the suit 'A' schedule property is the subject matter in the present suit and therefore, the findings in the previous suit will not operate as res judicata. He further submitted that since the defendant had lost his case in the previous round of litigation, it is not open to him to agitate the same claim in the present suit. He further submitted that in pursuance of the decree passed by the First Appellate court in A.S.No.38 of 1995, the plaintiff had filed an execution petition and took delivery of possession on 08.12.2001 and therefore he prayed to dismiss the second appeal and confirm the judgment and decree passed by the First Appellate Court.

15. Admittedly, the plaintiff's vendor Palanisamy had filed a suit in O.S.No.441 of 1981 on the file of the Principal District Munsif, Cuddalore, for the relief of declaration and delivery of possession of the suit properties therein. It is seen from Ex.B.12 (Certified Copy of the decree in O.S.No.441 of 1981), in that suit, the suit properties were described in two schedules viz., 'A' and 'B'. It is stated in schedule 'A' that the property which is situated in RS.No.221/8 of Thiruvendipuram Village, Cuddalore Taluk in which the total extent is 5.60 acres, out of which two acres with specific boundaries viz., south of hill, north of plaintiff's land; east of Pandurangan's land and west of plaintiffs land. In 'B' schedule four items mentioned as follows:-

- 1) R.S.No.221/4 - 80 cents;
- 2) R.S.No.221/5 - 42 cents;
- 3) R.S.No.221/6 - 44 cents
- 4) R.S.No.221/8 - 80 cents out of 5.60 acres.

Though the trial court decreed the suit in O.S.No.441 of 1981 in entirety, the appellate court partly allowed the appeal and set aside the judgment and decree passed by the trial court in respect of 'B' schedule property and dismissed the suit in respect of 'B' schedule properties alone. In so far as 'A' schedule property is concerned, the Appellate court dismissed the appeal and confirmed the judgment and decree passed by the trial court. Ex.A2 would show that in pursuance of the decree passed by the appellate court in A.S.No.156 of 1984, the plaintiff's vendor viz., Palanisamy had filed an execution Petition and took possession of the suit property on 19.07.1985 through court and only thereafter on 16.04.1993, the said Palanisamy had sold the suit property to the present plaintiff under Ex.A.3 Sale deed.

16. The extent and the survey number which are mentioned in decree passed in earlier suit i.e., in O.S.No.441 of 1981 in respect of 'A' schedule property are tallied with Ex.A.3 Sale deed and description of the property given in the present suit. The boundaries on southern side and eastern side also tallied. Boundaries on the western side and northern side alone differed. In the previous suit, the boundaries for the suit 'A' schedule property on the northern and western side were given as plaintiff's lands, whereas in the present suit, the aforesaid boundaries were mentioned as one Saradambal's land. It is seen from the judgment passed in O.S.No.441 of 1981 (Ex.A1), the said Saradambal is the first wife of Palanisamy's father Gopal Padayachi. Ex.A1 also shows that the said Palanisamy claimed the suit property based on the settlement deed executed by his father Gopal Padayachi and that the said settlement deed was marked as Ex.A2 in S.No.No.441 of 1981. In the said settlement deed itself on the northern and western side, it is mentioned as Saradhambal's land. So, the same boundaries given in Ex.A3 sale deed and also in the present suit. Therefore, this court is of the view that both the properties are one and the same.

17. It is also to be pointed out that though the defendant has stated in his written statement that the description of property not properly given, he has not disputed the fact that the property mentioned in the earlier suit ('A' schedule property) is not same in the present suit and therefore taking into consideration of the aforesaid facts, the first Appellate Court has rightly held that there is no discrepancy in description of the property. The first appellate court has held that the property which was described in 'A' schedule in O.S.No.441 of 1981 is the same in the present suit also.

18. The defendant himself had admitted in his written statement that New S.No.108/4 corresponding to old S.No.221/8 is comprised in Patta No.241 stands in his name. So, it is clear that he admitted that new S.No.108/4 is corresponding to old S.No.221/8 and that being so, the trial court should not have held that the plaintiff failed to prove that new S.No for old S.No.221/8 is 108/4. Further, the vendor of the plaintiff viz., Palanisamy himself deposed before the Court as D.W.3 and he has categorically stated that the property which is described in plaint schedule 441 of 1981 is the same property which is mentioned in the present plaint schedule. Therefore, there is no discrepancy in the description of the suit property.

19. A perusal of the judgments passed in O.S.No.441 of 1981 and A.S.No.156 of 1984 would clearly show that the defendant herein had set up title over the suit property by virtue of Ex.B.1 and B.2 sale deeds, but both the Courts concurrently held that the plaintiff's vendor Palanisamy has got title over the suit 'A' schedule property which is

mentioned in O.S.No.441 of 1981 and also held that he is entitled to delivery of possession. As against the said decree, the defendant herein had not filed any second appeal. So, the judgment and decree passed by the appellate court in A.S.No.156 of 1984 has become final. Therefore, the defendant once again cannot take a plea that he purchased the property under Ex.B.1 and B2 and hence he is the absolute owner of the entire properties situated in old S.No.221/8. It is also to be pointed out that Ex.A.2 would show that already the said Palanisamy had filed execution petition and took delivery of possession of the suit property on 19.07.1985. Challenging the said order, the defendant herein had not filed any revision or appeal. Therefore, it is to be presumed that the possession was already handed over to the plaintiff's vendor Palanisamy through court.

20. Ex.A3 would show that on 16.04.1993, the said Palanisamy had sold the suit property to the plaintiff. In the said document also it is clearly stated that the possession was handed over to the plaintiff. According to the plaintiff after some time, the defendant had trespassed in to the suit property and took possession forcibly. Though the defendant had filed kist receipts to show that he has been in possession and enjoyment of suit property, it is the admitted case of the plaintiff that the defendant is in possession and that the suit itself for delivery of possession and therefore merely because the defendant had filed revenue records to show that he is in possession will not confer any title for the defendant. The trial court without taking into consideration of the aforesaid facts had erroneously dismissed the plaintiff's suit but the first appellate court had rightly interfered with the findings of the trial court and set aside the judgment and decree passed by the trial court. Further, the learned counsel for the respondent has submitted that in pursuance of the decree passed by the first appellate court during pendency of the second appeal, the plaintiff has taken possession of the property through court on 08.12.2001.

21. During pendency of this second appeal, the appellants had filed CMP.No.17055 of 2018 under Order 41 Rule 27 of CPC seeking permission of this Court to produce Patta, Chitta and Adangal Extract and Encumbrance certificate. According to the appellants, the said documents are necessary to prove their possession. As already pointed out that it is the admitted case of the plaintiff that the defendant is in possession of the suit property. Therefore, merely because the revenue records stand in the name of the defendant that would not confer any title to the defendant. Therefore, those documents are not relevant for deciding the case. Accordingly, the said petition is liable to be dismissed.

22. As already pointed out that the trial court failed to appreciate the evidence in a proper perspective. The first appellate court has rightly interfered with the findings of

the trial court and set aside the judgment and decree passed by the trial court and decreed the suit as prayed for. In the said factual findings this court cannot interfere. Accordingly the substantial question of law is answered against the appellants.

23. In the result, the second appeal is dismissed, confirming the judgment and decree passed by the first appellate court. CMP.17055 of 2018 is also dismissed. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs. Consequently, the connected CMP.No.8549 of 2003 is closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

Vv

To

1. The Subordinate Judge,
Cuddalore.
2. The Principal District Munsif,
Cuddalore.

Copy To : The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.Mr.T.P.Kathiravan, Advocate SR.No.95885

+1cc to Mr.Mr.T.S.Baskaran, Advocate SR.No.95330

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S.A.No.423 of 2003
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17055 of 2018

SJ (CO)
GMY (21/08/2020)