

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :31.01.2019

Pronounced on :15.02.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.664 of 2003

1.A.Palani

... Appellant/ Appellant /Plaintiff

Vs.

1.Ezhumalai

..1st Defendant

2.Panchali

.. 2nd Defendant

3.Sivakumar

4.Anbumani

5.Pushparaj

6.Manonmani

7.Sivagami

8.Latha

9.Priya

... Respondents/ Respondents

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the Additional District Court, Tindivanam, in A.S.No.92 of 2002 dated 05.02.2003 confirming the judgment and decree of the Additional District Munsif Court, Tindivanam, in O.S.No.942 of 1987 dated 23.12.1993.

For Appellant : Mr.S.Krishnasamy

For R1 : Mr.V.Babu

For R2, RR4 to 9 : No appearance

For R3 : Not ready in notice

JUDGMENT

The plaintiff in O.S.No.942 of 1987 on the file of the Additional District Munsif Court, Tindivanam, is the appellant herein.

2.O.S.No.942 of 1987 had been filed by the plaintiff, Palani against two defendants namely, Mannatha Kounder and his brother Elumalai, seeking a judgment and decree for declaration of title and permanent injunction with respect to the suit property. By judgment dated 23.12.1993, the learned Additional District Munsif, Tindivanam, dismissed the suit.

3.Challenging that judgment, the plaintiff then filed A.S.No.92 of 2002 before the Additional District Court, Tindivanam. By judgment and decree dated 05.02.2003, the learned Additional District Judge, Tindivanam, also dismissed the appeal.

4.Challenging the judgment in A.S.No.92 of 2002, the plaintiff filed the present Second Appeal. The Second Appeal had been admitted on 30.04.2003, on the following three substantial questions of law:

"1.Whether the lower courts erred in law to hold that the appellant has got title and possession over the suit property by accepting the sale deed - Ex.A1 dated 09.07.1975?

2.Whether the lower courts erred in law by accepting Ex.B10 sale deed dated 13.05.1976 in favour of the first defendant?

3.Whether the lower courts failed to hold in law that the appellant has got adverse possession and prescription over the suit property"

O.S.No.942 of 1987 (Additional District Munsif Court, Tindivanam):-

5.The plaintiff, Palani had filed the suit against two brothers, Mannatha Kounder and Elumalai, seeking declaration of title and permanent injunction with respect to the suit property. The suit property was land measuring 0.15 cents out of a larger extent of 0.30 cents in

S.No.32/2, Pamboondi Village, Tindivanam Taluk, Villupuram District. According to the plaintiff, he was the exclusive owner of the suit property and he was in possession. The property belonged to one Balaraman. The plaintiff had purchased the property from Balaraman and his minor son Sasikumar, by a registered sale deed dated 09.07.1975. The plaintiff's vendor had previously mortgaged a part of the suit property and other properties to one Raja son of Saminathan, by a registered usufructuary mortgage deed dated 20.12.1968. Raja was in possession of the mortgaged properties including the suit property. Out of the sale consideration of Rs.600/-, the plaintiff had paid Rs.450/- to his vendors. He had earmarked the balance of Rs.150/- to discharge the usufructuary mortgage. It was also claimed that he paid the amount to mortgagee Raja. The plaintiff claimed that he was put in possession of the suit property and other properties on 09.07.1975. He discharged the mortgage deed on 12.07.1975. The mortgagee also made an endorsement of discharge in the original mortgage deed. The plaintiff was also granted patta No.55. He also claimed to be paying kist receipts. He also claimed title through adverse possession. The defendants owned properties adjacent to the suit property. However, they challenged the title of the plaintiff. They also attempted to enter into the property. Consequently, the suit had been filed seeking declaration of title and permanent injunction.

6.The first defendant did not file written statement and was set exparte.

7.The second defendant filed a written statement, denying the averments of the plaintiff. It was specifically stated that the plaintiff has no right or title over the suit property. It was also denied that the plaintiff was in possession of the suit property for over 30 years. It was stated that the property originally belonged to Balaraman who had mortgaged the suit property to Vellaiya Kounder through a registered mortgage deed dated 05.09.1960. It was also stated that Balaraman had sold the suit property and other properties to Vellaiya Kounder, by a registered sale deed dated 22.08.1966. Vellaya Kounder's wife, his sons and daughter then sold the property to Ramaiya Kounder in the year 1972. Ramaiya Kounder sold the property to the first defendant by a registered sale deed dated 17.05.1976. It had been claimed that first defendant purchased the property as a joint family manager of himself and the second defendant. The defendants claimed to be in possession of the suit property. There was a partition and the property was

allotted to the second defendant. It was claimed that the second defendant was in possession. It was also therefore claimed that the suit should be dismissed.

8. On the basis of the above pleadings, the learned Additional District Munsif, Tindivanam, framed the following issues for trial:

1. Whether the plaintiff was entitled to the suit property?
2. Whether the plaintiff had purchased the suit property from Balaraman?
3. Whether the sale deed in favour of the plaintiff was a true and valid document?
4. Whether the plaintiff was in enjoyment of the suit property?
5. Whether the plaintiff had prescribed title by continuous possession?
6. Whether the sale deed in favour of the first defendant was a true and valid document?
7. Whether the first defendant and his ancestors had been in enjoyment of the suit property?
8. Whether the suit property had been partitioned and allotted to the second defendant?
9. To what relief is the plaintiff entitled to?

9. During trial, the plaintiff, A. Palani examined himself as PW1. He also examined Balaraman, Raja, Annamalai and Munusamy as PW2, PW3, PW4 and PW5. The second defendant examined himself as DW1. The first defendant examined himself as DW2. The defendants also examined Thanappan and Krishnan as DW3 and DW4. The plaintiff marked Exs. A1 to A14. Ex. A1 was the sale deed in the name of the plaintiff dated 09.07.1975. Ex. A2 was the mortgage deed dated 20.12.1968. Ex. A3 was the endorsement for discharge of the mortgage. Exs. A4 to A14 were the tax receipts. Ex. A14 was the notice for re-survey. The defendants marked Exs. B1 to B12. Ex. B1 was the mortgage deed in the name of Vellaiya Kounder dated 05.09.1960. Ex. B2 was the sale deed in favour of Vellaiya Kounder dated 22.08.1962. Exs. B3 to B8 were the tax receipts in the name of Elumalai. Ex. B9 was the sale

deed in favour of Ramaiya Kounder dated 03.07.1972. Ex.B10 was the sale deed in favour of the first defendant dated 17.05.1976. Ex.B11 was the sale deed in favour of Anjalaiammal executed by Subban dated 27.12.1951. Ex.B12 was the mortgage deed in favour of Vellaiya Kounder executed by Balaraman.

10. On the basis of the oral and documentary evidence, by judgment dated 23.12.1993, the learned Additional District Munsif, Tindivanam, found that the sale deed in favour of Vellaiya Kounder in Ex.B2 dated 22.08.1962 was a true and valid document. It was also found that PW2, Balaraman had admitted mortgaging the property in favour of Vellaiya Kounder by a registered document dated 05.09.1960. It was also found that the sale deed in favour of Ramaiya Kounder in Ex.B9 dated 03.07.1972 was also a true and valid document. This finding was based on the evidence of DW4 Krishnan who was the attesting witness. Thereafter, the sale deed in favour of the first defendant executed on 17.05.1976 under Ex.B10 by Ramaiya Kounder was also found to be a true and valid document. It was found that the property thus conveyed was 15 cents out of 30 cents in S.No.32/2. The first defendant had also, to substantiate his evidence, examined PW2, PW3 and PW4. On the other hand, it was found with respect to the sale deed in favour of the plaintiff that since PW2 Balaraman had admitted that he had executed sale deed on 22.08.1962 for an extent of 15 cents, he could not have executed the sale deed in favour of the plaintiff. It was also found that PW2 and PW3 had given contrary evidence with respect to discharge of mortgage. In Ex.A1, sale deed it was found that apart from other properties, the suit property had been mentioned. There were also discrepancies in the evidence adduced by the witnesses of the plaintiff. It was also found that in Ex.A2, the extent of land mentioned was 7½ cents in S.No.32/2. No explanation had been given as to how this land extended to 15 cents subsequently. Therefore, it was found that the sale deed in favour of the plaintiff cannot be accepted. Holding as above, the learned Additional District Munsif, Tindivanam, dismissed the suit.

A.S.No.92 of 2002 (Additional District Court, Tindivanam):-

11. Challenging that judgment, the plaintiff then filed A.S.No.92 of 2002. Pending the appeal the first respondent/first defendant Mannatha Gounder died and his legal representatives were brought on record as third to tenth respondents. The learned Additional District Judge, Tindivanam, framed necessary points for consideration. By judgment dated 05.02.2003, the finding on facts of the trial were upheld. It was found that the document in favour of the defendants had been established through witnesses.

However, the sale deed executed by Balaraman in favour of the plaintiff was found to be not valid and true. It was found that the property had been mortgaged prior to 1975 to Raja. It was therefore observed that though from 1968 - 1975 the said Raja should have been in possession and enjoyment of the property, no document had been produced to prove such possession. It was specifically found that the plaintiff had not proved his title to the property. It had also been found that he had also not established possession. It was specifically found that therefore, the plaintiff cannot be granted relief of declaration of title and injunction. Therefore the appeal was dismissed.

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12.The unsuccessful plaintiff in both the courts below had filed the present Second Appeal. The Second Appeal had been admitted on 30.04.2003, on the following three substantial questions of law:

"1.Whether the lower courts erred in law to hold that the appellant has got title and possession over the suit property by accepting the sale deed - Ex.A1 dated 09.07.1975?

2.Whether the lower courts erred in law by accepting Ex.B10 sale deed dated 13.05.1976 in favour of the first defendant?

3.Whether the lower courts failed to hold in law that the appellant has got adverse possession and prescription over the suit property"

13.For the sake of convenience, the parties would be referred as plaintiff and defendants.

14.With respect to the first substantial question of law, it must be mentioned that both the courts below had negatived Ex.A1 dated 09.07.1975. Consequently, the first substantial question of law had been wrongly framed. At any rate, Ex.A1 had been disbelieved by both the courts below by stating that the executant of the sale deed had no right or title over the suit property since he had already conveyed the suit property in favour of Vellaiya Kounder.

Consequently, no right can be conveyed to the plaintiff. Therefore, both the courts below were correct in rejecting Ex.A1 dated 09.07.1975.

15.With respect to the second substantial question of law, it is seen that, as a fact, both the courts below have accepted the case of the defendants that Balaraman who was examined as PW2 had admitted having mortgaged the property in favour of Vellaiya Kounder and subsequently, also conveying the property to Vellaiya Kounder. In turn Vellaiya Kounder had sold the property to Ramaiya Kounder, who then sold the property to the first defendant by Ex.B10 dated 13.05.1976. Since the chain of title had been established, I hold that both the courts were correct in upholding the sale deed Ex.B10 dated 13.05.1976.

16.With the respect to the third substantial question of law, I hold that the plaintiff cannot seek title through adverse possession. Adverse possession can be raised by the defendants to negative the claim of a plaintiff. But, declaration of title cannot be granted on the basis of pleadings of adverse possession. Consequently, both the courts below are correct in negating the case of the plaintiff who claimed title through adverse possession.

17.In view of all the above facts, I hold that there is no merits in the Second Appeal. The Second Appeal has to be dismissed with costs. Accordingly, the Second Appeal is dismissed with costs. The judgment and decree of both the courts below are confirmed.

Sd/-
Assistant Registrar(CS)

//True Copy//सत्यमेव जयते
Sub Assistant Registrar

smv

To,

- 1.The Additional District Munsif Court, Tindivanam.
- 2.The Additional District Judge, Tindivanam.
- 3.The Section officer

VR Section, Madras High Court

+1cc to Mr.Venkateswaran , Advocate SR.No. 14226

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