

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.01.2019

PRONOUNCED ON : 24.01.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.2115 of 2004

1.Nadigar Subramanian (deceased) ... Appellant/2nd Defendant
2.Prema
3.Gaja
4.Malar
5.Anjula

(Appellants 2 to 5 are brought on record as
legal representatives of the deceased
sole appellant vide order of Court
dated 18.08.2006 made in C.M.P.No.16292/05)

...Appellants

Vs

1.S.Vijayan
2.Minor S.Mohan
3.Minor S.Durai
4.Minor S.Selvan
5.Suseela
6.Sarojammal
7.Kasi
8.Thanikachalam
9.Settu
10.Palani

(Respondents 2 to 4
represented by mother & guardian first Respondent
S.Vijaya)

... Respondents

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.74 of 1996 on the file of the learned Subordinate Judge, Arni dated 11.03.2004 dismissing the appeal and confirming the judgment and decree in O.S.No.629 of 1984 on the file of the learned Principal District Munsif, Arini, Tiruvannamalai District datd 13.11.1996.

For Appellants	:	Mr.P.Satheesh Kumar
For Respondents 1 to 4	:	Ms.V.Srimathi
For Respondents 6 & 9	:	Exparte
For Respondents 5,7,8 & 10	:	No Appearance

JUDGMENT

The second defendant in the suit is the appellant in this second appeal. Pending appeal, the appellant died and therefore, his legal representatives were brought on record as appellants 2 to 5.

2.Initially, the suit was laid by one Subramanian and on his demise, his legal representatives were brought on record and they are the respondents 1 to 5 herein. The suit was filed for the relief of declaration, permanent injunction and recovery of possession. According to the plaintiffs, the suit property is a vacant site which was purchased by Subramanian/plaintiff on 13.07.1979 from its owner Subramanya Udayar. While purchasing the property, a portion of the property was occupied by the third defendant - Kasi Mudaliar, Rajagopal Udayar and one Adhilakshmi. The plaintiff requested them to vacate and hand over the possession to him. He also issued a notice to that effect, but did not proceed further to recover the possession. Later, Adhilakshmi died. After the demise of Adhilakshmi, her relative, Sarojammal is occupying the hut and enjoying the same. The third defendant Kasi Mudaliar is not causing any disturbance to the peaceful possession and enjoyment of the plaintiff's property. Whereas, the first defendant and the second defendant are trying to put up permanent superstructure in the suit property, by removing the thatched hut. Therefore, the plaintiff seeks the relief of declaration in respect of a portion marked as 'HJKCDEFGH' and permanent injunction in respect of a portion marked as 'ABCKJHGA' in the plan annexed to the plaint.

3.In the written statement filed by the second defendant and adopted by the first defendant, the averments made in the plaint were denied. According to the defendants 1 and 2, the disputed portion of the land and other properties were initially enjoyed by one Adhilakshmi for several years. She had put up a thatched hut, planted drumstick tree and enjoyed the property for more than 40 years. She was in possession and enjoyment of the property of a larger extent of the property including the suit property for more than 40 years, ousting the right of others including the plaintiff. Adhilakshmi, never entered into rental agreement with anybody. The disputed portion of the property is on the highways road margin, classified as 'Government poromboke'. Adhilakshmi sold the suit schedule property to one

Sarojammal and handed over the possession to Sarojammal. In turn, Sarojammal sold the property to the second defendant. Thus, the second defendant has got the possession of the property and enjoying the same. He has removed the compound wall put up by Adhilakshmi and using the property as cattle shelter. Second defendant is paying tax to the Municipality. In the additional written statement, the second defendant has reiterated that he and his predecessor in title are enjoying the property for more than 40 years and therefore, he has perfected title over the suit property even by adverse possession.

4. In the written statement filed by the eighth defendant, it is contended that the fourth defendant who is the father of the 8th defendant constructed two shops in the year 1950 bearing Door No.24 and 24A, Arunagiri road and from that day onwards, the shops were enjoyed by his father and through a registered Will, his father bequeathed these two shops to him. Without any hindrance, the eighth defendant and his father were continuously enjoying the shops bearing Door No.24 and 24A Arunagiri road for more than 12 years and therefore, they have perfected title. Questioning the alleged cause of action to file the suit, this defendant has prayed the suit has to be dismissed with costs.

5. The trial Court, after considering the documentary evidence relied by the respective parties, has accepted the case of the plaintiff that this is first plaintiff has purchased 3 cents of land in S.No.65 Arni Town vide Ex.A.2 and E.A.3. At that time, in a portion of the land, Adhilakshmi, the third defendant and fourth defendant were occupying. Since, the third defendant was the father in law of the plaintiff, he did not enter into any formal agreement with him. Whereas, with Adhilakshmi and fourth defendant, he has entered into an rental agreement vide Ex.A.13 and A.14 on condition to vacate the premises as and when demanded by the plaintiff. Subsequently, they failed to vacate the premises so, he issued notice through Lawyer which was received by Adhilakshmi and fourth defendant.

6. Considering Exs.A.8 to A.12 - tax receipts extract and Ex.A.7 - Survey Adangal copy in respect of T.S.No.65, the trial Court has held that the plaintiff is paying tax for the property bearing Door Nos.23 and 24. As far as the documents relied by the defendants, particularly, the house tax receipts issued in the name of Adhilakshmi, the trial Court has found that there is a correction in Door No in Exs.B.1 to B.22 issued in the name of Adhilakshmi. The Court has pointed out that D.No.22 has been altered into 23. Further, the trial Court has also negatived the plea of the defendants by pointing out that the defendants claim right over the property through the alleged sale deed executed by Sarojammal. The title for Sarojammal is traced to the alleged

sale deed executed by Adhilakshmi. But, the defendants have not produced the original sale deed alleged to have been executed by Adhilakshmi in favour of Sarojammal.

7.The trial Court has disbelieved the case of the defendants that they entered into a agreement of sale with Sarojammal on 25.05.1979 and after the suit, the sale deed was executed on 02.06.1986. When the defendants contend that Adhilakshmi was in occupation of Door No.23 and the tax was assessed by Municipality for the said property, Exs.B.1 to B.22 are in respect of Door No.22 and later, altered as D.No.23. To prove that, the tax receipt extracts produced by the defendants in the name of Adhilakshmi has been tampered by altering the door number, the plaintiffs have marked Exs.24 to 28 which are tax receipts extract for Town S.No.65, Door No.23, in which, the assessee name is mentioned as 'Trustee Arunagiri Chathiram'. Therefore, the trial Court has held that the documents relied by the defendants to show that they are in possession of the suit property through Adhilakshmi not being proved and the sale deed executed by Sarojammal in favour of the second defendant is not proved.

8.For the said reasons, the trial Court allowed the suit as prayed for by the plaintiff. Aggrieved by the decree and judgment passed in favour of the plaintiff, the second defendant has preferred an appeal in A.S.No.74 of 1996. The other defendants were shows as respondents.

9.The First Appellate Court, after re-appreciating the evidence and the Commissioner's report filed along with the sketch has held that under Exs.A.13 and A.14, the plaintiff has proved that Adhilakshmi along with the third and fourth defendants were tenant under the plaintiff's predecessor in title. If the defendants denies the rental agreement executed by Adhilakshmi, the burden is on them to prove that the agreement was not executed by Adhilakshmi which the the defendants have failed to establish.

10.Further, the First Appellate Court has also pointed out that the defendants who are claiming right over the property through the sale deed executed by Sarojammal has not proved how the Sarojammal got the property from Adhilakshmi. Therefore, considering the materials placed before the Court, the First Appellate Court has dismissed the appeal confirming the judgment of the trial Court.

11.Aggrieved by the concurrent finding, the second defendant has preferred this second appeal. This Court considering the legal issues raised by the appellant, has formulated the following substantial question of law:-

"a)Whether the lower appellate court is right in holding that Ex.A.1 settlement patta is a document of title and that the purchase of the suit property by the respondents under Ex.A.2 and A.3 are valid documents ?

b)Whether the finding of the lower appellate court that Ex.B.33 is not valid document ?

c)Whether the lower appellate court is right in holding that though the appellant is occupying road poromboke and is also paying "jz;ljjPu;it" penal assessment under Exs B.39 to 41, the appellant is liable to be evicted since he is obstructing the way to the respondent, when no such prayer was sought for in the relief ?"

12.The learned counsel for the appellants referring Ex.As.13 and A.16, which are the agreement executed by Adhilakshmi in favour of Subramanya Udyar and the postal acknowledgment card for the notice received by Adhilakshmi would submit that comparing the thumb impressions found in these two documents (Ex.A.13 and A.16) made by Adhilakshmi will disprove the case of the plaintiff that Adhilakshmi was only a tenant under the plaintiff.

13.When this point was raised before the First Appellate Court, the First Appellate Court has rightly pointed out that if the signature found in the document produced by the plaintiff is disputed by the defendants, he should have taken necessary steps to get the opinion of the Expert to disprove the same. Having failed to do before the trial Court, the learned counsel wants the Court to compare the thumb impression found in the agreement Ex.A.13 and in the postal acknowledgment Ex.A.16. No two thumb impression of the same person will differ. But to examine the thumb impression, Expertise is required and it cannot be done by the Court through naked eye.

14.The learned counsel for the appellants emphasise the Court to compare the thumb impression found in Ex.13 and 16 which is not permissible under law or possible for the Court to do so, without adequate expertise. If really, the first appellant was intended to disprove the rental agreement - Ex.A.13 executed by Adhilakshmi, he should have made attempt to sending the same to expert opinion to be compared with an admitted thumb impression of Adhilakshmi. Having fails to do so, when Ex.A.13 came to the knowledge of first appellant herein, the reply notice issued in the name of Adhilakshmi denying the

execution of the rental agreement, sent through Lawyer will not carry any evidentiary value to disbelieve the case of the plaintiff in respect of Ex.A.13. Furthermore, the plaintiff seeks for the relief of declaration and injunction in respect of specific portion of the property.

15. Contrarily, the documents relied by the defendants prove to be in respect of Door No.22 but corrected as Door No.23 in order to make a claim over the property, upon which, the plaintiff has possession and enjoyment. On comparison of the tax register extract produced by the plaintiff and the defendants, the tax assessment number for Adhilakshmi for the property is 4092 and it is for Door No.22 whereas, in Exs.B.1 to B.22 which are relied by the defendants/appellants, though the assessment number is shown as 4092 the door number has been patently altered from 22 to 23. It is clearly in respect of Door No.22 and the tax assessment No.4092 issued in the name of Adhilakshmi. So, it is patently clear that taking advantage of tax receipts and demand notice issued to Adhilakshmi, for Door No.22, the appellants herein try to make out a case as if Adhilakshmi was in possession and enjoyment of Door No.23 and from her, Sarojammal got the property and from Sarojammal, the second defendant had purchased the property under Ex.B.33.

16. The correction made in the tax receipts extract Exs.B.1 to B.22 and Ex.B.32 alleged sale agreement by Sarojammal in favour of second defendant on 25.05.1979 and the sale deed Ex.B.33 dated 02.06.1986 executed by Sarojammal in favour of the plaintiff clearly show that Ex.B.32 alleged to have been executed by Sarojammal claiming right through the Adhilakshmi itself, has no base. Whereas, after laying the suit, the second defendant has created Ex.B.33 as if Sarojammal sold the property to the second defendant. When the plaintiff has clearly identified the property for which the relief sought for, through sale deed and tax receipts, the second defendant who has denied the title of the plaintiff and claims possession over the suit property has not only miserably failed to prove his case but also he had been exposed for producing fabricated document. Therefore, when an assignment by the Government is made for the first time by way of settlement patta, it has every trappings of the title deed unlike subsequent document based on mutation of revenue records.

17. Therefore, the reliance on Ex.A.1 settlement patta by the Courts below and acceptance of Ex.A.2 and Ex.A.3 based on Ex.A.1 is perfectly in accordance with law and no error in it. Likewise, the rejection of Ex.B.33 which is alleged to have been executed by Sarojammal in favour of the second defendant when the second defendant could not establish how his vendor (Sarojammal) got the title over the property to alienate the

property mentioned in Ex.B.33. The First Appellate Court has rightly rejected the said document as unreliable.

18.The First Appellate Court after appreciating the documents and evidence has pointed out that the documents relied by the appellant/second defendant indicates that he is occupying the road poromboke which does not fall in the suit property and the portion marked in the plaint sketch is the property purchased by the plaintiff and in their possession which the defendants trying to encroach upon. Exs.B.39 to B.41 are the notices issued by the Municipality demanding penal charges for unauthorisedly occupying the government land. The said demand notices are in respect of Town Survey No.67. Even in these demand notices, this Court finds that the survey number and sub division though mentioned as E.17, T.S.No.67, it has been corrected as E.18 T.S.No.67 in Exs.B.39 & 40. Therefore, the substantial questions of law formulated in this second appeal are answered against the appellants.

19.In the result, the second appeal is dismissed and the judgment and decree passed by the trial Court and confirmed by the First Appellate Court is hereby confirmed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Munsif,
Arini, Tiruvannamalai District.

2.The Subordinate Judge,
Arni.

+1cc to Mr.P.Satheeskumar, Advocate Sr.5766
+1cc to Mr.V.Raghavachari, Advocate Sr.5762

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sj[co]
srg 25/03/2019