



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.01.2019	Pronounced on: 21.01.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Second Appeal No.239 of 2004

1. Srinivasan,
Son of Venkatachala Reddiar,
 2. Krishnasamy,
Son of Venkatachala Reddiar,
 3. Venugopal,
Son of Venkatachala Reddiar,
 4. Periyammal,
wife of Venkatachala Reddiar,
Petitioners 1 to 4 are residing at
Elambalur Village,
Perambalur Taluk.
 5. Mahalakshmi,
Wife of Ramalingam,
Perambalur District.
 6. Saroja,
Wife of Duraisamy,
Navalur Village,
Perambalur Taluk.
- ... Appellants/Defendants

/versus/

Natarajan,
Son of Chinnasamy,
Elambalur Village,
Perambalur Taluk.

... Respondent/Plaintiff

PRAYER: This Second Appeal has been filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Additional District Judge-cum-Chief Judicial Magistrate Court at Perambalur, dated 12.06.2002 in A.S.No.59 of 2002, confirming the judgment and decree of the District Munsif Court at Perambalur, dated 28.01.1994 in O.S.No.311 of 1985.

For Appellants : Mr.P.Dinesh Kumar
for M/s.Sarvabhuman Associates

For Respondent : Mr.S.K.Rakhunathan

J U D G M E N T

The appellants herein are the defendants in the suit.

2. The case of the plaintiff is that the suit schedule property was purchased by him from one Bangaruammal on 07.06.1985 for consideration. His vendor Bangaruammal got the property from her husband Arunachala Reddiar who was allotted the suit schedule property under a compromise decree passed in O.S.No.683 of 1930. The first defendant who was the owner of the land on the northern side of the suit property attempted to buy the suit property from Bangaruammal, but failed. Therefore, after plaintiff purchased the land, the defendant with an intention to grab the suit property, attempt to disturb the peaceful possession of the plaintiff. Hence, initially suit for permanent injunction was laid against the defendants. Pending suit, the defendants have encroached the suit property by 5'6" (5 ½ feet) south of the suit property which was vacant and had put up construction. Hence, suit prayer amended for declaration, mandatory injunction to remove the construction and deliver the vacant possession.

3. Venkatachala Reddiar The first defendant, (deceased pending suit) in his written statement contended that the plaintiff never been in possession of the property nor he got title of the property through Bangaruammal. While admitting the partition suit in O.S.No.683 of 1930 between Viruthachala Reddiar and his two sons Arunachala Reddiar and Venkatachala Reddiar and the compromise decree passed therein, deny the plaint averments that under a compromise decree northern side of the suit property was allotted to Arunachala Reddiar and he was in enjoyment. According to the defendant, Arunchala Reddiar gave up his right in the suit property and allowed the first defendant to enjoy the same absolutely. Thus first defendant has become the absolute owner of the suit property and the equal moiety lying on the North of suit property. The first defendant has constructed a house in the entire suit property and residing in it. With full knowledge of Arunachala Reddiar, he is in possession and enjoyment of the suit property, paying tax to the Panchayat. Baraguammal the estranged wife of Arunachala Reddiar had no connection whatsoever with her husband or his property. The title to the suit property is vested with the first defendant. Plaintiff and his family members are fully aware of the same. When the mother of the plaintiff purchased the

property in the year 1950, the land of the defendants has been shown as its boundary. After the demise of their mother when the plaintiff and his brother Krishnasamy Reddiar partition their house, the plaintiff was allotted the portion lying east of the suit property. When the plaintiff's brother Krishnasamy Reddiar requested the first defendant to sell the suit property, the first defendant refused to sell the suit property. Therefore, Krishnasamy Reddiar got a deed registered in his name by impersonating Venkatachala Reddiar/First defendant. When the first defendant came to know about this, he filed a suit for declaration and injunction against Krishnasamy Reddiar. The said suit in O.S.No.117 of 1976 was allowed. The appeal preferred by the Krishnasamy Reddiar A.S.No.162 of 1977 dismissed with modification. In the said suit, the possession and title of the first defendant in respect of the suit property was upheld. After the suit O.S.No.117 of 1976 reached finality, the present suit has been set up by Krishnasamy Reddiar through his brother (the plaintiff) as if, the plaintiff has derived title from Baraguammal wife of Arunachala Reddiar. This suit is 2nd round of litigation instigated by Krishnasamy Reddiar in respect of the property which is in peaceful and continuous possession of the defendants for more than 40 years.

4. In the additional written statement the defendant has pleaded that Arunachala Reddiar died before 1956. He has relinquished his right during his lifetime. Therefore, his widow Bangaruammal has no right to alienate the suit property. As a consequence, the sale deed dated 07.06.1985, executed by Bangaruammal through which the plaintiff claim title is not valid.

5. In the reply, the plaintiff has contended that he was not a party to the suit in O.S.No.117 of 1976. Therefore, the decree will not bind them. He has also denied the alleged relinquishment of right by Arunachala in favour of the defendant.

6. The trial Court based on the pleadings has framed the following issues.

- (i). Whether the plaintiff is in possession of the suit property.
- (ii). Whether the sale deed dated 07.06.1985 is valid.
- (iii). Whether the plaintiff is entitled for permanent injunction.
- (iv). What relief the plaintiff is entitled.

7. The plaintiff and the first defendant have mounted the witness box to put-forth their respective case. 3 documents by the plaintiffs and 10 documents by the defendants were marked. Besides the Commissioner's report and sketch were

marked as Ex.C1 and Ex.C.2.

8. The trial Court declared the title in favour of the plaintiff and held that the plaintiff is entitled for possession and mandatory injunction. On appeal preferred by the defendants, the Lower Appellate Court confirmed the judgment and decree of the trial Court and dismissed the appeal. The Lower Appellate Court has held that under the compromise decree passed in O.S.No.683 of 1930, the suit property was admittedly allotted to Arunachala Reddiar. On the demise of Arunachala Reddiar his wife Baragruammal has inherited the suit properties and had alienated it to the plaintiff. For the first time, during trial, the defendants has raised a plea that due to some difficulty in dividing the property allotted in the compromise decree, a subsequent suit O.S.No. 323 of 1943 was filed by the brothers and in the said suit property was allotted to venkatachala Reddiar. Further, in Ex.B1, the decree passed in O.S.No.323 of 1943 though the defendant claims that the 8th item in the decree is the property, the description does not correlates. Therefore the claim of the defendants that they derived title over the suit property through the compromise decree Ex.B.1 passed in the subsequent suit O.S.No.323 of 1943 does not carry merit.

9. The Courts below held that the suit property originally belongs to Viruthachala Reddiar. It was allotted to his son Arunachala Reddiar under the compromise decree passed in the suit O.S.No.683 of 1930. As the legally wedded wife of the Arunachala Reddiar, Bangaruammal has inherited the suit property. The plaintiff who has purchased the suit property from Bangaruammal is entitled for relief of declaration of title, mandatory injunction and recovery of possession.

10. Aggrieved by the concurrent judgment of the Courts below, Second Appeal has been preferred by the defendants raising the following Substantial Questions of law.

1. Are not the Courts below committed an error in rejecting Ex.B.1 on the ground that there is no pleading in the written statement?

2. Whether in law, the judgment and decree of the Courts below on the basis of placing the burden on defendant in a suit for declaration and recovery of possession is sustainable?

3. Whether in law, the judgment and decree in O.S.No.117 of 1976 marked as Exs.B8 & B9 will establish that the title to the property is only with the appellant?

11. Ex.B.1 is the suit register extract pertaining to O.S.No.323 of 1943. It is contended by the defendants that though originally the suit property was allotted to Arunachala Reddiar under the previous compromise decree passed in O.S.No.683 of 1930, the same has been modified under the subsequent suit and compromise decree passed thereon.

12. It is contended by the learned Counsel appearing for the appellants that the suit property is shown as item 8 in the Ex.B1. The said contention has been rejected by the Courts below for the reason that the suit property is described as southern half measuring East-West 21 feet 3 inches, North-West 12 feet 9 inches from out of larger extent of vacant site measuring East-West 21 feet 3 inches North-South 25 feet 6 inches in S.F.No.159/1, Elambalur Village. Whereas, in Ex.B1 8th item of the property is just mentioned as East-West 22 feet by South-North 15 feet vacant site in the above village. Contrarily in Ex.A2 the compromise decree passed in O.S.No.683 of 1930, the suit property is mentioned in item No.22-B which describes as vacant site East-West 18 feet, South-West 14 feet situated south of Perumal Kovil Street, West of Chinnaasamy Chettiar land, North-West of Nallappa Reddiar land, East of Perumal Reddiar land. Under the compromise deed passed in O.S.No.683 of 1930 dated 08.01.1934, this property along with other properties has been allotted to Arunachala Reddiar.

13. Contra to the description of property in Ex.B.1 relied by the defendants/Appellants herein, the description of the property in the sale deed Ex.A.1 relied upon by the plaintiff tracing the title of their vendor, through the compromise decree passed in O.S.No.683 of 1930 dated 08.01.1934 probablises the case of the plaintiff. Further, the plaintiff has also proved the fact that the earlier attempt made by the brother of the defendant was nullified through decree passed in O.S.NO.117 of 1976. Ex.B.8 and Ex.B.9 the judgment and decree passed in O.S.No.117 of 1976 reveals that Krishnasamy Reddiar who is the brother of first defendant has set-up the title for himself in respect of the suit property and failed in his attempt.

14. The defendants rely upon the release deed Ex.B.6 alleged to have executed by Bangaruammal the vendor of the plaintiff. Examination of Ex.B.6 also does not convey any specific right particularly in respect of the suit property. The recital of the release deed Ex.B.6 says that the two decrees and six pro-notes are made over in favour of Meenammal and her son Ponnusamy Reddiar by Bangaruammal. In this release deed dated 18.01.1952 Bangaruammal wife of Arunachalam Reddiar admits that she is estranged wife of Arunachala Reddiar and she gives up all her right and claims in the property of Arunachala

Reddiar through the made over document by specifying two decree in favour of the Arunachala Reddiar and six pro-notes.

15. Ex.B.1 suit register extract, item 8 is without specification of survey number or boundaries. Ex.B.6 is not clear about the right conveyed through this deed. An omnibus release of right in the name of made over of decrees and pro-notes has to be rejected out right for bereft of details. Further the defendants have introduced the document not through pleadings but, during the trial. This Court could find that both the parties traced the title only through Court decrees and not from any other title document. The plaintiff rely on the sale deed executed by Bangarammal who derives title through Arunachala Reddiar, who got the property under the compromise decree Ex.A.2. The defendants rely upon Ex.B.1 and Ex.B.6. Both Ex.B.1 and release deed Ex.B.6 which are relied by the defendant, as pointed out is ambiguous, uncertain and lack specific.

16. In the light of the above fact, Ex.B.8 and Ex.B.9 the judgment and decree passed in O.S.No.117 of 1976 gains significance. The possession and prima facie title of the suit property with the plaintiff even before 1976 would be easily inferred from the pleadings, judgment and decree in O.S.No.117 of 1976. In the earlier suit in O.S.No.117 of 1976 Krishnasamy Reddiar has set-up a title for himself based on the document alleged to have executed by one Venkatachala Reddiar son of Arunachala Reddiar. It has been proved in the Court of law that Arunachala Reddiar had no son by name Venkatachala Reddiar.

17. The specific case of the plaintiff is that they derived title under Ex.A.1 dated 07.06.1985 from their vendor Bangaruammal wife of Arunachala Reddiar. The contra case of the defendant is that Arunachala Reddiar though got the property under the compromise decree passed in O.S.No.683 of 1930, same was altered by subsequent decree passed in O.S.No.117 of 1976. Whatever right Bangaruammal had in her husband's property was released under Ex.B.6. Therefore, the transfer of title under Ex.A.1 on 07.06.1985 is only a sham and nominal document. The evidence relied by the respective parties more probablises the plaintiff case and not the defendants case.

18. The Courts below have rightly pointed out that while the plaintiff has cogently traced the title from the compromise decree Ex.A.2 and sale deed Ex.A.1, the defendants failed to prove their title over the suit property based on the modified compromise decree passed in O.S.No.323 of 1943 (Ex.B.1) and the subsequent release deed Ex.B.6. The Courts below have rightly appreciated their respective title deeds for the sake of declaration and the Commissioners' report for the sake of

possession and physical features. In such circumstances, the grounds raised by the appellants herein challenging the finding of the Courts below does not find any substance in law to interfere.

19. In the result, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

bsm

To,

- 1.The District Munsif Court, Perambalur.
 - 2.The Additional District Judge-cum-Chief Judicial Magistrate Court, Perambalur.
 3. The Section Officer, VR Section, Madras High Court.
- +1cc to Mr.SK.Rakhunathan, Advocate SR.No.5203

KAN (CO)
GMY (13/03/2019)

Second Appeal No.239 of 2004

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