



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2019

PRONOUNCED ON : 08.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.259 of 2004

Alamelu Ammal

... Appellant/Plaintiff

Vs.

1.Mari @ Ozhuvakathar,
Salapoga, Gramaka Colony,
Kancheepuram.

2.Pommagiri

3.Ramaiya Chettiar

4. Vairavan

5.Arunachalam

6.S.Manu Gandhi Ammal

7.Santhana Lakshmi

8.S.Yamuna Devi

9.S.Rathanavelu

10.S.Jayavelu

...Respondents/Defendants 2
to 6/LRs of the 1st Defendant

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 11.11.2000 passed in A.S.No.6 of 1996 on the file of the Subordinate Court, Kancheepuram, confirming the judgment and decree dated 28.08.1995 passed in O.S.No.151 of 1988 on the file of the Additional District Munsif Court, Kancheepuram.

For Appellant : Mr.R.Chakkaravarthy

For Respondent : No appearance
Nos.1 & 2 set exparte vide order
dated 27.03.2019

For Respondent : Dismissed vide order
Nos. 3 to 5 17.12.2009

For Respondent : Mr.R.Agilesh
Nos.6 to 10

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 11.11.2000 passed in A.S.No.6 of 1996 on the file of the Subordinate Court, Kancheepuram, confirming the judgment and decree dated 28.08.1995 passed in O.S.No.151 of 1980 on the



file of the Additional District Munsif Court, Kancheepuram.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

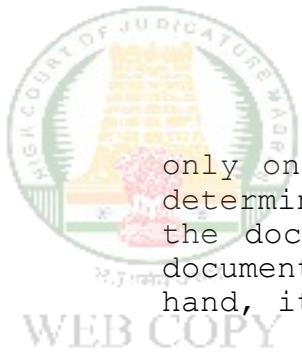
3. Suffice to state that the plaintiff has levied the suit against the defendants for seeking the reliefs of declaration and permanent injunction in respect of the suit property.

4. The plaintiff claims title to the suit property based on the sale deed executed by the defendants 4 to 6 in her favour on 21.01.1988 marked as Ex.A1.

5. Per contra, the first defendant claims title to the suit property based on Ex.B1 sale transaction dated 05.09.1987 said to have been executed by the defendants 4 to 6 in his favour in respect of the suit property. Thus, it is found that the contesting parties claim title to the suit property based on the sale deeds executed in their favour by the erstwhile owners viz., the defendants 4 to 6.

6. Though it is put forth on the part of the plaintiff that one Ramanatha Chettiar had already conveyed the suit property in her favour on 01.09.1986, the entitlement of Ramanatha Chettiar to convey the suit property in favour of the plaintiff has not been established and furthermore, the abovesaid sale transaction has also not been buttressed by the plaintiff by producing the sale deed said to have been executed by Ramanatha Chettiar in favour of the plaintiff on 01.09.1986. Therefore, the claim of the plaintiff that she has become entitled to obtain the suit property from the defendants 4 to 6, as such, cannot be readily countenanced.

7. That the defendants 4 to 6 are entitled to convey the suit property is not in dispute between the contesting parties viz., the plaintiff and the first defendant. It has been admitted by the plaintiff that the first defendant's sale deed has been registered in the Forenoon of 21.01.1988. As rightly determined by the Courts below, though the above sale deed had been written on 05.09.1987, the executants of the said sale deed viz., the defendants 4 to 6 had only signed in the said document on 21.01.1988 and therefore, the sale transaction having been completed by the executants on 21.01.1988 and in such view of the matter, though the abovesaid sale deed proceeds as if the same had been written on 05.09.1987, as the executants had completed the sale transaction by putting their signature in the said sale deed only on 21.01.1988, which fact has also been admitted by the fourth defendant examined as DW2 that he had signed the document marked as Ex.B1, accordingly, it is found that the sale deed Ex.B1 is found to have been actually executed



only on 21.01.1988 and not on 05.09.1987. Therefore, as rightly determined by the Courts below, the delay in the registration of the document cannot have any application, as such, as the said document had not been executed on 05.09.1987 and on the other hand, it has been executed only on 21.01.1988.

8.As above noted, the plaintiff has clearly admitted in her evidence that Ex.B1 had been registered in the Forenoon of 21.01.1988. As could be seen from the entries contained in Ex.A1 sale deed projected by the plaintiff for claiming title to the suit property, it had come to be registered only in the Afternoon of 21.01.1988 between 3.00 to 4.00 p.m. Accordingly, the document Ex.B1 having come to be executed on 21.01.1988 and having been registered on the same date during the Forenoon by the defendants 4 to 6 and the said execution and registration had not been denied by the fourth defendant examined as DW2 and only thereafter, when as above noted, Ex.A1 sale deed had come to be executed and registered in favour of the plaintiff, in such view of the matter, when during the Forenoon of 21.01.1988 itself, the title to the suit property had been conveyed by the defendants 4 to 6 in favour of the first defendant and thereafter, they cease to have right in the suit property and in such view of the matter, the claim of the plaintiff that he had derived title to the suit property by way of Ex.A1 sale transaction from the defendants 4 to 6, as such, cannot be countenanced as per law, because, at the time, when Ex.A1 sale transaction had been executed and registered in favour of the plaintiff, the defendants 4 to 6 had no right to convey the same in favour of the plaintiff and in such view of the matter, the plaintiff is found to have acquired the property from the persons, who had no title to the suit property at the relevant point of time. On that premise, it is found that the Courts below had correctly determined that it is only Ex.B1, which will have legal precedence to Ex.A1 and in such view of the matter, the plaintiff cannot be allowed to claim title to the suit property based on Ex.A1 sale transaction.

9.From the materials available on record and as determined by the Courts below, it is found that over a period of time, the parties have been in dispute with reference to the suit property and therefore, it is noted that the suit property has not been cultivated, as such, and the same could also be evident from the report of the commissioner marked in the proceedings and as could be seen there from, only a small portion is found under cultivation and the remaining portion of the suit property remained not in use and fallow and in such view of the matter, the claim of the plaintiff that the suit property has been in her possession and enjoyment and that, she has cultivated the same cannot be believed and furthermore, when the plaintiff has not established her title deed to be having the legal sanctity,



to say that she had been delivered the possession of the suit property pursuant to the same, as such, cannot be believed and accepted. The abovesaid facts had been rightly determined by the Courts below and no interference is called for with reference to the same.

10. Though the defendants 4 to 6 put forth the defence that they had signed the sale deed Ex.B1 sale transaction without reading the contents thereof and thereby, they had not conveyed the suit property to the plaintiff, however, as rightly determined by the Courts below, when from the materials placed on record, if really, as now put forth by the defendants 4 to 6, the first defendant had deceived them in obtaining Ex.B1 sale deed from them fraudulently and when according to the defendants 4 to 6, they had come to know of the said position much anterior in time, if their present defence is true, at this point of time, they would have endeavoured and taken necessary legal steps against the defendants in challenging the sale transaction Ex.B1 in the manner known to law. On the other hand, as could be seen from the recitals contained in Ex.B1, it is found that the defendants had executed the said document without any protest and in such view of the matter, the Courts below are right in holding that the defendants 4 to 6 have come forward with false theory that the first defendant had fraudulently obtained the sale transaction Ex.B1 from them and that they had only conveyed the suit property in favour of the plaintiff and the abovesaid defence version of the defendants 4 to 6 had been rightly rejected by the Courts below, and no interference is called for with reference to the same.

11. In the light of the abovesaid discussions, the Courts below had analysed the materials placed on record, both oral and documentary and assessed them correctly, both factual and legal wise and rightly determined that the plaintiff has failed to establish her claim of title, possession and enjoyment of the suit property and in such view of the matter, no interference is called for in the judgment and decree of the Courts below in dismissing the plaintiff's suit. In view of the aforesaid reasons, no substantial question of law is found to be involved in the second appeal. Accordingly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar



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To

- 1.The Subordinate Court, Kancheepuram.
- 2.The Additional District Munsif Court, Kancheepuram.
- 3.The Section Officer, V.R.Section, High Court, Madras.

+2 CCS to Mr.T. Dhanasekaran, Advocate sr 34405.

S.A.No.259 of 2004

AK(CO)
SP(14/08/2019)