

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA
S.A.No.228 and 299 of 2010

In both second appeals

1. Shanthi
2. Bhuvaneswari
3. Anandan
4. Kumar
5. Ravi
6. Kannan
7. Ramesh (deceased)

(cause title accepted vide order of court
dated 15.02.2010 made in M.P.No.1/2010 in
SA.SR.86804/2009 and 86805/2009)

.. Appellants/ Appellants/Plaintiffs

Vs.

Manimuthu Nadar

.. Respondent / Respondent/ defendant

PRAYER IN S.A.228 OF 2010: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 31.10.2008 passed in A.S.No.18/2007 by the Subordinate Judge, Poonamallee upholding the decree and judgment dated 22.09.2006 passed in O.S.No.409 of 1996 by the District Munsif cum Judicial Magistrate, Ambattur.

PRAYER IN S.A.229 OF 2010: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 31.10.2008 passed in A.S.No.30/2007 by the Subordinate Judge, Poonamallee upholding the decree and judgment dated 22.09.2006 passed in O.S.No.376 of 2003 by the District Munsif cum Judicial Magistrate, Ambattur.

For Appellants: Dr.G.Krishnamurthy (in both appeals)

For Respondent: Mr.V.Lakshminarayanan
for Mr.V.Raghavachari (in both appeals)

COMMON JUDGMENT

The appellants are the plaintiffs in O.S.No.409 of 1996 on the file of the District Munsif cum Judicial Magistrate, Ambattur and appellants in A.S.No.18 of 2007 on the file of the Subordinate Judge, Poonamallee. They are also the defendants in O.S.No.376 of 2003 on the file of the

District Munsif cum Judicial Magistrate, Ambattur and appellants in A.S.No.30 of 2007 on the file of the Subordinate Judge, Poonamallee.

2. For the sake of convenience, the parties are referred to as appellants/ plaintiffs and respondent/defendant.

3. The appellants/plaintiffs filed the suit in O.S.No.409 of 1996 before the District Munsif cum Judicial Magistrate, Ambattur for declaration of their title to the suit property and for recovery of possession of the suit property from the defendant.

4. The case of the appellants in O.S.No.409 of 1996 in nutshell:

The suit property is a portion of house site bearing plot No.84A and 84B in S.No.239/1 of Padikuppam Village, Saidapet Taluk, Chengalpattu District measuring 750 sq.ft. The suit property was assigned by the Government vide order of assignment dated 23.04.1882 (Ex.A1) in favour of one G.Ganesan, the husband of the first plaintiff and father of the plaintiffs 2 to 7. Ever since the date of assignment, he was in possession and enjoyment of the suit property by putting up a thatched hut till the year 1990 as evidenced by a house tax receipt Ex.A2. Thereafter he orally permitted the defendant to occupy the suit property for carrying on his business. Subsequently, Ganasen died during the year 1991 leaving behind him the plaintiffs to succeed his estate. After the death of the husband of the first plaintiff, the first plaintiff along with her children, left the suit village in search of her livelihood and was away from the suit property for two years. The defendant taking advantage of her absence, put up a permanent structure in the suit property. Though the plaintiffs demanded the defendant to hand over possession of the suit property, the defendant did not pay heed to the request made by the plaintiffs. Therefore, the plaintiffs issued a lawyers notice dated 24.06.1995, a copy of which is marked as Ex.A3. The defendant received the said notice and sent a reply dated 11.07.1995 (Ex.A4), which according to the plaintiffs contained false allegations. Therefore, the plaintiffs filed a suit for declaration of their title to the suit property and also for recovery of vacant possession of the suit property from the defendant.

5. The defendant filed another suit in O.S.No.376 of 2003 before the same court seeking for a relief of permanent injunction restraining the plaintiffs in O.S.No.409 of 1996 from interfering with his peaceful possession and enjoyment of the suit property.

6. The case of the defendants in O.S.No.376 of 2003 is that he purchased the suit property from G.Ganesan through

a sale deed dated 14.03.1994 (Ex.B1) for a sale consideration of Rs.2,450/- and also constructed a house in the suit property. His further contention is that the plaintiffs in O.S.No.409 of 1996 are attempting to interfere with his peaceful possession and enjoyment of the suit property and also preventing the defendant from putting up a compound wall on the eastern side of the his premises. Therefore, he filed the suit for a permanent injunction restraining the defendants (plaintiffs in O.S.No.409 of 1996) from interfering with his peaceful possession and enjoyment of the suit property. The plaintiffs and the defendant filed their respective written statements in O.S.No.376 of 2003 and O.S.No.409 of 1996.

7. Since the subject matter, parties and issues involved in both the suits are one and the same, the learned Principal District Munsif cum Judicial Magistrate, Ambattur tried both the suits jointly and the evidence was recorded in common in O.S.No.409 of 1996. The learned Principal District Munsif cum Judicial Magistrate also framed necessary issues in both the suits and after full contest, dismissed the suit in O.S.No.409 of 1996 filed by the appellants/plaintiffs and decreed the suit filed by the respondent/ defendant in O.S.No.376 of 2003, vide his decree and judgment dated 22.09.2006. Aggrieved over the same, the appellants/plaintiffs filed A.S.No.18/2007 and 30/2007 before the Subordinate Judge, Poonamallee. The learned Subordinate Judge after analysing the evidence on record, dismissed both the appeals and upheld the findings recorded by the trial court. Now the present second appeals are filed by the appellants/ plaintiffs.

8. While admitting both the second appeals, the following substantial questions of law were framed.

(i) Whether the courts below are right in placing reliance upon Ex.B1, which is an unregistered sale deed?

(ii) Whether the courts below are right in rendering observation that the alleged violation of the conditions in the assignment patta issued to the husband of the first appellant, would give rights to the defendant?

9. The appellants/plaintiffs in order to establish their title over the suit property, relied on an order of assignment dated 23.04.1882 issued by the Special Tahsildar, Saidapet Taluk. A perusal of Ex.A1 shows that an area measuring 0.04 cents in S.No.239/1 of Padi Village was assigned in favour of one G.Ganesan. The plot number of the property assigned in favour of G.Ganasan is indicated as 84A and 84B.

10. In the assignment order, there is a specific condition, which directs the assignee to use the property assigned in his favour only for the purpose of constructing a house and that the assignee should construct a house within a period of 6 months from the date of assignment. The

contention of the appellants/plaintiffs is that late G.Ganesan had put up a thatched hut and was residing in the suit property till the year 1990. On the contrary, the contention of the respondent/defendant is that G.Ganesan had executed an unregistered sale deed dated 14.03.1994 (Ex.B1) and also handed over possession of the suit property to him.

11. Dr.G.Krishnamoorthy, learned counsel appearing for the appellants/plaintiffs contended that though the respondent/defendant was permitted to occupy 750 sq.ft. of the suit property out of 0.04 cents in the suit survey number, he took advantage of the death of G.Ganesan and put up a permanent structure in the suit property. His further contention is that the respondent/defendant cannot claim any right over the suit property since the sale deed allegedly executed by Ganasen in his favour is not registered.

12. Per contra, Mr.V.Lakshminarayanan, learned counsel appearing for the respondent contended that the defendant has not filed his suit in O.S.No.396/2003 for declaration of title and that it was filed only for a permanent injunction restraining the appellants/plaintiffs from interfering with his peaceful possession and enjoyment of the suit property. His further contention is that even as per the admissions made by the appellants/ plaintiffs, the respondent/ defendant was handed over possession of the suit property by late G.Ganesan.

13. A perusal of the documents adduced on the side of the respondent/defendant show that the respondent/ defendant has been in possession and enjoyment of the suit property since 1986. The appellants/plaintiffs did not adduce sufficient evidence to show that the occupation of the respondent/ defendant is only permissive one as alleged by them. As per Ex.A1, the assignee should construct a house in the suit property within a period of six months from the date of assignment and should also follow all the conditions imposed there on scrupulously and the failure on the part of the assignee would result in cancellation of the assignment.

14. In the instant case, the respondent/ defendant has pressed into service an unregistered sale deed dated 14.03.1994 (Ex.B1) executed by G.Ganesan in his favour. The sale consideration is indicated as Rs.2,450/- in the sale agreement. As per Section 54 of the Transfer of Property Act, if the value of an immovable property is more than Rs.100/-, the transfer should be made by a registered instrument or by delivery of the property. The delivery of tangible immovable property takes place when the seller places the buyer in possession of the property. In the instant case, since the value of the suit property is more than Rs.100/-, the sale made by an unregistered instrument cannot be said to be a valid one. However, the defendant after paying stamp duty penalty, had marked this unregistered sale deed as Ex.B1 and

the appellants/plaintiffs did not seem to have raised any objection at the time of marking Ex.B1, before the trial court. The specific contention of the defendant is that the suit property was delivered to him by late G. Ganasen, after executing Ex.B1. As already observed, the defendant has filed several documents to show that he has been in possession of the suit property since 1986.

15. Both the courts below had concurrently held that since late G.Ganesan, who is the assignee of the property did not comply with the conditions imposed in Ex.A1, the appellants/plaintiffs cannot claim exclusive title over the suit property merely based on Ex.A1.

16. Admittedly, the suit property is a village natham (Government land) and the assignee did not exercise his right over the suit property and this would amount to relinquishment of rights. The possession by the respondent/defendant is admitted by the appellants/plaintiffs and in fact the appellants/plaintiffs sought for a relief of recovery of possession from the respondent/defendant. Though the respondent/defendant cannot claim any title over the suit property based on Ex.B1, the appellants/plaintiffs cannot seek for recovery of possession from the respondent/defendant, based on the assignment order Ex.A1. Both the courts below have analysed the oral and documentary evidence adduced on both sides in the proper perspective and in fact there is no substantial question of law involved in these appeals. In the facts and circumstance of the case, I do not see any reason to interfere with the concurrent findings recorded by the courts below and hence, both the second appeals are liable to be dismissed.

17. In the result,

(i) The second appeals in S.A.No.228/2010 and S.A.No.229/2010 are dismissed. No costs.

(ii) The decree and judgment dated 31.10.2008 passed in A.S.No.18/2007 and A.S.No.30/2007 by the Subordinate Judge, Poonamallee and the decree and judgment dated 22.09.2006 passed in O.S.No.409/1996 and O.S.No.376/2003 by the District Munsif cum Judicial Magistrate, Ambattur are upheld.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Poonamallee.

2. The District Munsif cum Judicial Magistrate, Ambattur.

S.A.No.228 and 229 of 2010