IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
03~04~2019	15~04~2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

S.A.No.425 of 2010

1. Arunachalam
2. Manoharan
3. Sekar
4. Sivakami
5. Karpagam
6. Palani
7. Veeramani
8. Vijayakumar
9. Panneer Selvam
10. Navaneetham
11. Devaki
12. Gopal
13. Alamelu ... Appellants/Defendants

Versus

1. Viswanathan
2. Indirani
3. Visalakshi @ Vijayalakshmi ... Respondents/Plaintiffs 2 to 4

Second Appeal filed under Section 100 C.P.C. against the judgment and decree of the Additional Sub Judge, Thiruvannamalai in A.S.No.10 of 2008 dated 18.12.2009 reversing the Judgment and Decree of the Principal District Munsif, Thiruvannamalai in O.S.No.431 of 1991 dated 27.02.2007.

For Appellants .. Mr.R.Rajarajan
for M/s.G.Rajan

For Respondents .. Mr.R.Siddharth
for Mr.T.R.Rajaraman

JUDGMENT

Aggrieved over the decree and judgment of the First Appellate Court reversing the decree and judgment of the trial court the Defendants are filed the present Second Appeal.

2. The brief facts leading to file this Second Appeal is as under:

2.a An extent of 1.10 acres in S.No.59/1 marked as 'A' Schedule property originally belonged to one Vellai Gounder and Muthusamy Gounder. One Varadarajulu Naidu has purchased the 'B' Schedule property in court auction sale in O.S.No.267 of 1939. The said Varadarajulu Naidu has sold the above 'B' schedule property to the First Plaintiff and to his brothers Ponnusamy and Chinnasamy. Eversince the date of such purchase, the purchasers were in possession of the property, as they are also acquired title by their continuous possession. 'C' Schedule property was purchased by the plaintiff from one Muthusamy Gounder. The plaintiff has constructed the house in the property shown as 'E' Schedule property which is part and parcel of 'B' and 'C' schedule property.

2(b) The Defendants 1 to 4 were in possession of the 'B' Schedule Property. Patta in S.No.59/1A was issued in the name of the First Plaintiff for an extent of 0.41.5 hectare. Similarly S.No.55/1B was sub-divided and patta was issued in the name of Gopal Gounder. The First Plaintiff and his brothers were divided the property in the year 1950, by which 'E' Schedule property was allotted to First Plaintiff. Ramasamy was allotted S.No.65/1 and Murthy was allotted S.No.65/19. The above said Ramasamy and Murthy were jointly allotted S.No.65/14. That Chinnasamy was allotted S.No.65/12 and 65/15 which was more fully shown in the 'F' Schedule. First Plaintiff was allotted to S.No.65/42; 4th Defendant was allotted S.No.65/21. One Gopal was alloted S.No.65/13 and Ponnan and Pachaiyappan were jointly allotted S.No.65/32, which is in the 'F' Schedule. All the plaintiffs are in possession and enjoyment of the property. The Defendants who have no manner and right or title or interest over the `E` Schedule property. Hence filed suit for declaration and injunction.

3. The Second Defendant in his written statement contended that there is no property in 'E' schedule property and boundaries also not given in the 'E' schedule property. Originally, one Paramachi Ammal wife fo Chinnathu Gounder, the grand mother of the defendant was given a property in settlement deed dated 25.05.1925. In the above settlement 17 cents with specific boundaries in S.No.59/1 out of 1.10 acres was given to her. This Defendant and other Defendants are in exclusive possession and enjoyment of the above property.

4. 10th Defendant has filed written statement contending that the Plaintiff is not entitled to declaration according to them the Deed dated 25.05.1925 is not settlement deed. In fact that is a registered deed of sale executed in favour of Paramachiammal and Pachaiammal by one Vellaiyan and Muthusamy. Eversince the date of sale they are in possession of the property in an extent of 0.17 acres with specific boundaries. Therefore, the Plaintiff cannot claim any title over above property based on the sale deed dated 29.1.1946 and 22.5.1947. 0.17 cents were in possession of Paramachiammal and Pachaiammal. This defendant is grand son of Pachaiammal and grand grand son of Paramachiammal. Therefore, he is entitled to 17 cents. The defendants are in possession of the above property. Hence, prayed for dismissal of the suit.

5. The trial Court has framed the following two issues:

1. Whether the document dated 25.06.1925 is true and valid?

2. Whether the suit is bad for non-joinder of necessary parties?

3. In Survey No.59/1 out of 1.10 acres whether the Plaintiffs are entitled to 17 cents on the southern side.

4. Whether the Plaintiff is entitled to relief as prayed for?

5. Such other relief if any?

6. In the trial P.Ws.1 and 2 were examined and Exs.A.1 to A.21 marked. On the side of the Defendants D.Ws.1 and 2 were examined and Exs.B1 and B2 were marked. Commissioner's Report and Sketch were marked as Exs.C.1 and C.3. On the basis of the evidence and materials the trial Court dismissed the Suit. The First Appellate Court allowed the appeal, as against which the present Second Appeal has been filed by the Defendants.

7. After hearing the parties this Court has framed the following substantial questions of law at the time of argument:

1. Is not the first appellate court wrong in placing the burden on the shoulder of appellants/defendants in the suit for declaration of title by the respondents/plaintiffs?

2. Whether the Appellate Court is correct in decreeing the suit as prayed for when the identity of 'E' Schedule property on the basis of the document of title?

3. Is not the first appellate court wrong in decreeing the suit when in the given circumstances of the case the plaintiff ought to have given the proper description and boundaries as mandated under Order VII Rule 3 CPC?

8. The learned counsel appearing for the Appellant contended that under Ex.B1 document 17 cents was sold in the year 1925. Therefore on the date of alleged court auction sale, Judgment Debtor did not have title to the entire 1.10 acres. At the most the above document conveyed titled only to 93 cents. The First Appellate Court has not considered these facts. The suit is filed for declaration of title and injunction. When the plaintiff has failed to establish their title to the entire property and the title deed did not convey title to the entire property, they cannot claim declaration. The First Appellate Court merely on the basis of the patta and revenue records has granted decree which is not according to law. When the 17 cents have already sold as per Ex.B.1 in the year 1925, the Plaintiff claiming right on the basis of the court auction sale in the year 1944 in respect of 93 cents not maintainable in fact Ex.A.1 and Ex.A.2 one of the boundaries shown as defendants property. Hence, it is the contention of the learned counsel that the First Appellate Court has not analysed the facts properly.

9. It is the contention for the counsel appearing for the respondents, though 1925 document was pressed into service show that 17 cents was already purchased. They have not even taken possession of the property, the above document have not been acted upon. No evidence was brought on record that the defendants had control over the above property from the year 1923 till 1972. When the possession for more than 12 years or so not shown in the above property, they lost their title under Ex.B.1. Whereas the Plaintiff has established their possession and also the title. They have purchased the property in auction sale and revenue records and other documents in their name. No evidence whatsoever adduced by the defendants to show that they have ever in possession of the property. The First Appellate Court has analysed the entire aspect and rightly found that the Plaintiff is entitled to succeed in respect of 'E' Schedule property. Hence prayed for dismissal of the suit.

10. The main dispute with regard to the 'E' Schedule property, it is the contention of the plaintiff that 'E'

Schedule property is also part and parcel of the sale under Ex.A.1 and Ex.A.2. Ex.A.1 sale certificate makes it clear that 0.97 acres were purchased in Court auction out of 1.10 acres. Ex.A.2 makes it clear that in pursuance of the same, possession was handed over to the auction purchaser. The said auction purchaser under Ex.A3 has sold the property to the Plaintiff and his brothers. It is the contention of the plaintiff, after that they have partitioned the property and 'E' schedule property in the possession of the Plaintiff in the year 1947 and constructed a house.

11. Though it is the contention of the defendants that in auction purchase under Ex.A.1 the title would have been conveyed only to 93 cents, not more than that. Since Ex.B.1 is of the year 1925 wherein the original owner has sold 17 cents in favour of one Pachaiammal and Paramachiammal on 25.06.1925. It is curious to note that under Ex.A.4, 6 cents have sold by the original vendor in favour of the plaintiff. Though Ex.B.1 document dated 25.6.1925 indicate that 17 cents have already sold, the plaintiff did not get any title in subsequent sale deeds in respect of entire 1.10 acres. Though prima facie such contention is acceptable, but the fact remains that the second defendant did not even know the nature of the document executed in favour of the Pachaimmal and Paramachiammal. According to him it is only a gift. Whereas the 10th defendant has taken a stand that it is only outright sale. Whether the document is acted upon and possession has taken up by the said Pachaiammal and Paramachi Ammal there is no evidence available on record.

12. In the year 1947 under Ex.A.4 the original owner again sold 6 cents, despite the fact that he has executed the document in the year 1925. Above fact also makes it clear that the above deeds are not acted upon in the name of Pachaiammal and Paramachiammal. First Appellate Court has considered these aspects. Further, D.W.1 in his evidence also admitted that house situated only in Survey No.59/1. From Ex.A.1 and Ex.A.4 the plaintiff become entitled 1.03 acres. Thereafter patta has also changed in his name. Revenue Records also mutated from the very beginning. When the Commissioner also visited, that First Appellate court found that the First Defendant has not filed any document to show that they are in possession of the building. The revenue records all stand in the name of the plaintiff. The Defendants also admitted that patta has granted in favour of the Plaintiff, however, land belonged to them.

13. The First Appellate Court, in fact, analysed the entire documents and also considered the evidence of the P.W.1 and found that out of 1.10 acres the defendants were enjoying only 7 cents alone not more than that. 'E' Schedule property was continuously in possession of the plaintiff from the very

beginning and Exs.A.5 to A.18 house tax receipts also related to the building situated in Survey No.59/1. The defendants also in their evidence admitted that the house is situated in Survey No.59/1 and not anywhere. Considering the all the documents and Commissioner's Report, the First Appellate Court has factually found that the plaintiffs are in possession of 'E' Schedule property from the date of their purchase under Exs.A.1 and A.2 and held that the defendants are in possession only 7 cents out of 1.10 acres and not 17 cents as claimed by them. Though, Ex.D.1 shows that the title in respect of 17 cents is already diverted in the year 1955 whether the documents have been acted upon or the beneficiary enjoyed the property absolutely there is no scrap of paper whatsoever filed by the defendants. The First Appellate Court factually discussed all the documents and found that the plaintiff is entitled to decree and judgment.

14. No doubt the burden is always on the plaintiff who seeks declaration. When the plaintiff established his continuous possession and title to the property, burden shifts on the defendant to show that in fact the 17 cents which is subject matter of Ex.B.1 was never in possession of the Plaintiffs. The very fact that no documents were filed to show that the beneficiaries under Ex.B.1 was originally enjoying the property clearly indicate that the rights if any under Ex.B.1 already extinguished by passage of time. The Vendor under Ex.A.4 has exercised his right and sold 6 cents all these facts clearly probabalise the plaintiffs case than the defendants case.

15. Further, already stated that Ex.A.2 dated 19.10.1944 clearly shows 97 cents has given possession in favour of the plaintiff. Thereafter Ex.A.4 another 6 cents were sold by the Vendor. Absolutely there is no evidence available on record to show that the documents Ex.B.1 was acted upon, the beneficiary of such document took possession of the property. When the vendor of the Ex.A.4 executed sale deed dated 22.5.1947 to contend that he had no title to convey the property absolutely there is no evidence. Even assuming that under Ex.A.4 only defective title has been conveyed and the person conveying the title has not title at the relevant point of time, the fact remains that based on the above imperfect sale deed the parties exercised their right and proved their possession all these years. The Plaintiff has not only claimed the right on the basis of the Exs.A.1 and A.4 and also continuous long possession. The revenue records, patta, pass book are also stand in the name of the Plaintiff and the property has been sub-divided, sale deeds Exs.A.3 and A.4 also in their favour. Patta in respect of 'E' Schedule property also issued in the name of the Plaintiff are also marked under Ex.A.19 and Ex.A.20.

16. Similarly, there was no objection for the handing over of possession to the court auction purchaser by any of the parties who are claiming right under Ex.B.1. All these facts clearly prove that the plaintiffs are continuously in the possession of the property from the year 1946 eversince their purchase. Similarly, the admission of D.W.1 also taken note by the First Appellate Court that house is situated only in the Survey No.51/9. The plaintiff has proved the possession of the house by producing house tax receipts. No other documents whatsoever filed by the defendant. Hence, when the First Appellate Court factually arrived a finding based on the document, this Court is of the view that such finding does not require any interference. In fact the First Appellate Court has not placed the burden on the defendants, the Plaintiffs have established their case, then the First Appellate Court shifted the burden on the defendants. Similarly, merely because the description of the properties not been set out in the Schedule, the same cannot be a ground for non-suit the plaintiff, when the identity of property has been established not only by the Commissioner Report but also admission of the parties. Accordingly substantial questions of law are answered against the Appellant and the Appeal is dismissed.

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

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

ggs.

To

1. The Additional Subordinate Judge, Thiruvannamalai

2. The Principal District Munsif, Thiruvannamalai.

+1cc to Mr.G.Rajan, Advocate SR.No.37443

S.A.No.425 of 2010

VD(CO)
GMY(18/10/2019)