

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :13.02.2019

PRONOUNCED ON:28.02.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1130 of 2005

T.Muniappan ... Appellant / Defendant

Vs.

Radhammal ... Respondent / Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.13 of 2003 on the file of the Subordinate Judge, Tiruppattur, Vellore District dated 29.06.2004 in reversing the judgment and decree in O.S.No.790 of 1993 on the file of the District Munsif Court, Tirupattur, Vellore District, dated 29.08.2002.

For Appellant : Ms.V.Srimathi

For Respondent : Mr.A.Sundaravadhanam
for Mr.D.Balachandran

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 29.06.2004 passed in A.S.No.13 of 2003 on the file of the Subordinate Court, Thiruppathur reversing the judgment and decree dated 29.08.2002 passed in O.S.No.790 of 1993 on the file of the District Munsif Court, Thiruppathur.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for permanent injunction.

4. The case of the plaintiff in brief is that suit property belonged to the 3rd defendant ancestrally and he had sold the same in favour of the plaintiff by way of a sale deed dated 19.03.1993 and since then, it is only the plaintiff, who

has been in the possession and enjoyment of the suit property by paying Kists etc., to the Government and the plaintiff has also spent a considerable amount in improving the suit property and the defendants demanded the sale of the suit property from the plaintiff at a very low price, but the plaintiff refused and aggrieved over the same, the defendant without any right or authority started interfering with her possession and enjoyment of the suit property and hence, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5.The case of the first defendant in brief is that the suit property originally belonged to R.Muniappan and challenged the case of the plaintiff that she had purchased the suit property from R.Muniappan by virtue of the sale deed dated 19.03.1963 and enjoying the same by paying Kists, improving the same etc., and also denied the case of the plaintiff that the first defendant demanded the plaintiff to sell the suit property to him for a low price and on the refusal of the same, the first defendant attempted to interfere with her possession and enjoyment and on the other hand, put forth the case that, it is only the first defendant, who had purchased the suit property from R.Muniyappan, by virtue of a sale deed dated 10.06.1993 and enjoying the same and accordingly, pleaded that the plaintiff has no cause of action to institute the suit and the suit is liable to be dismissed.

6. Based on the appreciation of the materials placed on record, both oral and documentary, the trial court was pleased to dismiss the plaintiff's suit, but, the first appellate court, set aside the judgment and decree of the trial court and decreed the suit in favour of the plaintiff as prayed for. Impugning the same, the second appeal has been preferred.

7. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

1.Whether the document under Ex.A1 could be relied upon for any purpose, when it is unregistered and the executant of the document had not been examined to establish its credibility?

2.Whether the lower appellate court is right in relying upon Ex.A1 as proof of possession of the plaintiff and whether the judgments relied upon by it are not inapplicable to the facts of the case?

3.Whether the suit as framed is maintainable in view of the judgment of the Madras High Court in 2001 1 Law weekly Page 724?

8. The plaintiff claims the ownership of the suit property by virtue of a sale deed dated 19.03.1993 marked as Ex.A1. Per contra, the first defendant claims title to the suit property by virtue of a registered sale deed dated 10.06.1993 marked as Ex.B1. On a perusal of Ex.A1 sale deed projected by the plaintiff, it is seen that it is an unregistered document. For the purpose of admitting the document in evidence, it is found that on the plaintiff paying the stamp duty and penalty with reference to the same, the said document has come to be admitted on behalf of the plaintiff and thus it is clear that the document of title projected by the plaintiff for claiming ownership to the suit property is an unregistered one. In such view of the matter, as rightly determined by the trial court, though the plaintiff had been allowed to pay the stamp duty and penalty in respect of the abovesaid document for the purpose of admitting the same in evidence, other than that, the abovesaid document could not be relied upon for any purpose, particularly for giving effect to the terms of the said document. Now it is seen that the first appellate court has relied upon the abovesaid document for accepting the case of the plaintiff that he is in the possession and enjoyment of the suit property by virtue of the terms contained therein. In this connection, the first appellate court has relied upon the proviso to Section 49 of the Registration Act and on that footing held that though Ex.A1 is an unregistered document, inasmuch as the stamp duty and penalty had been paid by the plaintiff, the said document could be relied upon for the collateral purpose of establishing the possession of the suit property by the plaintiff by virtue of the same and on that footing, upheld the plaintiff's case. According to the first appellate court, inasmuch as Ex.A1 document recites that pursuant to the same, the plaintiff has been put in the possession and enjoyment of the suit property, for evidencing the same and treating the abovesaid purpose is a collateral one, it had endeavored to rely upon the same by drawing strength under the proviso to section 49 of the Registration Act. However, as rightly put forth by the defendants' counsel when E.A1 is found to be an unregistered document and the stamp duty and penalty had been allowed to be paid by the plaintiff only for the purpose of admitting the same in evidence, the plaintiff cannot be allowed to rely upon the said document for the purpose of establishing his possession and enjoyment of the suit property, particularly according to the plaintiff's case when by way of the said document only she had been put in the possession of the suit property. The first appellate court has endeavored to uphold the terms of the abovesaid document i.e., the plaintiff being put in the possession and enjoyment of the suit property pursuant to the same, when the abovesaid purpose is found to be the main object / purpose of conveying the suit property under the said document, in such view of the matter, as rightly put forth by

the defendants' counsel, the acceptance of the abovesaid document by the first appellate court in favour of the plaintiff for the purpose of establishing his proof of possession and enjoyment of the suit property .ie., for giving effect to the terms of the sale deed Ex.A1, in my considered opinion, the said purpose could not be termed as a collateral transaction effected in terms of the abovesaid instrument and in such view of the matter, as rightly determined by the trial court, when the plaintiff claims possession and enjoyment of the suit property only on the strength of Ex.A1 sale deed and when Ex.A1 sale deed is not registered as per law and when other than Ex.A1 sale transaction, the plaintiff has not claimed the possession and enjoyment of the suit property and in such view of the matter, the acceptance of Ex.A1 by the first appellate court in favour of the plaintiff for proving the possession and enjoyment cannot at all be considered as one for collateral transaction and on the other hand, it is seen that by way of relying upon Ex.A1 sale transaction, the first appellate court is found to have accepted and given effect to the terms of the unregistered document, which is prohibited under section 49 of the Registration Act and when Section 49 prohibits the reliance of the abovesaid document affecting any immovable property comprised therein or prohibits the reception of the abovesaid evidence for any transaction affecting the said property or conferring such power unless the same is registered, in such view of the matter, the reliance upon the abovesaid document by the first appellate court for a collateral purpose however, having proceeded to rely upon the same only for enabling the plaintiff to establish his claim of the legal possession and enjoyment of the immovable property comprised therein and when the same has been squarely barred by the provisions contained in section 49 of the Registration Act, the first appellate court is found to have erred in relying upon the said document for accepting the plaintiff's possession and enjoyment of the suit property.

9. Now according to the plaintiff, he has been in the possession and enjoyment of the suit property by way of paying Kists and also made improvements in the suit property and in this connection, the plaintiff relies upon the patta document marked as Ex.A2. On a perusal of Ex.A2 patta, it is found to be issued in respect of the extent of 0.44.0 ares of land in the suit survey number and on the other hand, when the suit property is found to be only consisting of 4 cents of land in the abovesaid survey number and furthermore, when Ex.A2 patta has not been established as to when the same had come to be issued in favour of the plaintiff, particularly, the same not bearing any date of issuance in a clear manner and when the same is found to have been issued on 11.02.1998 as could be seen from the endorsement found on the last page of the said document, the

same having been issued after the institution of the suit, the same would serve no purpose to establish the legal possession and enjoyment of the suit property by the plaintiff. Ex.A3 Kists receipt is found to be issued in the name of one Krishnan for the fasli 1402 in respect of the land comprised in patta No.215. It is seen that the name of the plaintiff and the suit survey number has been inserted in the abovesaid document in a different ink and with reference to the abovesaid interpolation, no explanation is offered by the plaintiff and in such view of the matter, no reliance could be placed upon the document for upholding the plaintiff's claim of the possession and enjoyment of the suit property. The chitta extract projected by the plaintiff for patta No.926 as Ex.A4 is found to have been issued after the institution of the suit and that too for the entitlement in respect of 0.44.0 ares of land in the suit survey number and therefore the abovesaid document would also serve no purpose to establish the legal possession and enjoyment of the suit property by the plaintiff. The Kist receipts marked as Exs.A5 and A6 are also found to have come into existence after the institution of the suit and therefore the same would not serve any purpose to uphold the plaintiff's claim of possession and enjoyment of the suit property following Ex.A1 sale transaction. Other than the abovesaid documents, there is no other material placed on the part of the plaintiff to establish his valid possession and enjoyment of the suit property.

10. The defendant claims title, possession and enjoyment of the suit property based on Ex.B1 sale transaction. However, as rightly found by the Courts below, Ex.B1 sale transaction is not shown to be pertaining to the suit property, in particular, the suit village and in such view of the matter, no interference is called for with reference to the rejection of the abovesaid document by the courts below relied upon by the defendant for claiming the title, possession and enjoyment of the suit property. But on that score, the plaintiff's case cannot be upheld straightaway.

11. The plaintiff having come forward with the suit claiming the legal possession and enjoyment of the suit property based on Ex.A1 sale deed and when Ex.A1 sale deed is found to be not registered as per law and when the defendant has challenged the claim of the plaintiff's title, possession and enjoyment of the suit property in toto, as rightly put forth, the plaintiff should have endeavored to seek the relief of declaration of title to the suit property as per law by placing acceptable proof and the consequent possession and enjoyment of the same.

12. In this connection, the decision relied upon by the defendant's counsel reported AIR 2008 SCC 2033 [Ananthula Sudhakar Vs. P.Buchi Reddy (Dead) By L.Rs and Others] is taken into consideration.

13. In the light of the above discussions, when the endeavor of the first appellate court in relying upon Ex.A1, unregistered sale deed for the purpose of giving effect to the terms of the said instrument on the premise that it is only for the collateral purpose and on the other hand, when the same is found to be barred under the provisions contained in section 49 of the Registration Act and the abovesaid purpose cannot at all be considered as a collateral purpose in any manner and when the plaintiff has failed to establish his legal possession and enjoyment of the suit property and the documents projected by the plaintiff do not lend support with reference to the abovesaid case and when the plaintiff has failed to seek the relief of declaration despite the stout denial of her title to the suit property in toto, in all, it is found that the judgment and decree of the first appellate court upholding the plaintiff's case are found to be based upon an erroneous appreciation of the materials placed on record by the plaintiff, both oral and documentary, as well as not in consonance with the provisions of law in relation to the same and accordingly it is seen that the reasonings and conclusions of the first appellate court for upholding the plaintiff's case, being found to be perverse, illogical and irrational, resultantly, the same cannot be allowed to sustain in the eyes of law and liable to be set aside.

14. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

15. For the reasons aforestated, the judgment and decree dated 29.06.2004 passed in A.S.No.13 of 2003 on the file of the Subordinate Court, Thiruppathur are set aside and the judgment and decree dated 29.08.2002 passed in O.S.No.790 of 1993 on the file of the District Munsif Court, Thiruppathur are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Subordinate Court,
Tiruppattur,
Vellore District.
2. The District Munsif,
District Munsif Court,
Tirupattur,
Vellore District.

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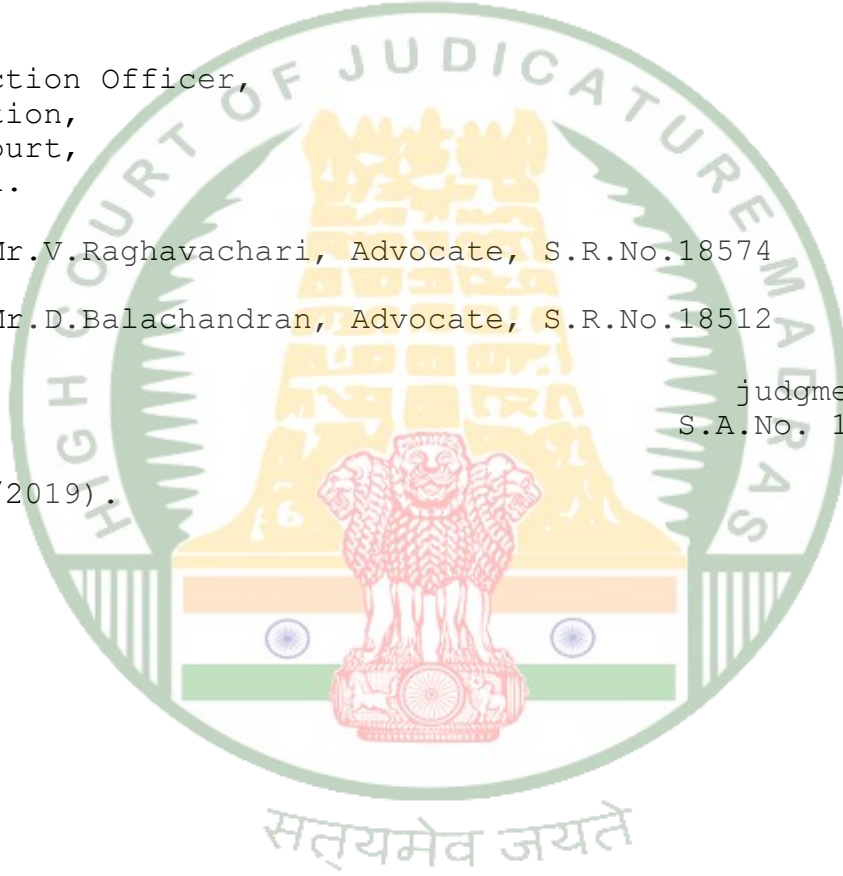
The Section Officer,
VR Section,
High Court,
Chennai.

+1 cc to Mr.V.Raghavachari, Advocate, S.R.No.18574

+1 cc to Mr.D.Balachandran, Advocate, S.R.No.18512

judgment made in
S.A.No. 1130 of 2005

CNR (CO)
SSM(20/05/2019).



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