

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2019

PRONOUNCED ON : 10.04.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1161 of 2005

and

C.M.P.Nos.1417 of 2010 & 338 of 2015

Madrasathul Illah-ia
Ooomer Road, Ambur-a
Religious Institution
rep. by its president

...Appellant/
Respondent/Plaintiff

Vs.

1.Ranganathan
2.Rajendran @ Sisu
3.Rajendran

...Respondents/
Appellant/Defendant

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.29 of 2004 on the file of the Sub Court, Tirupattur, dated 14.06.2005 in reversing the judgment and decree in O.S.No.60 of 1996 on the file of the Principal District Munsif, Ambur, dated 10.06.2004.

For Appellant : Mrs.V.Srimathi

For Respondents : Mr.S.V.Jayaraman, Senior counsel
for M/s.K.R.A.Muthukrishnan

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 14.06.2005 passed A.S.No.29 of 2004 on the file of the Subordinate Court, Tirupattur, reversing the judgment and decree dated 10.06.2004 passed in O.S.No.60 of 1996 on the file of the Principal District Munsif Court, Ambur.

2. The second appeal has been admitted on the following substantial questions of law.

"1. Whether the lower appellate court is right in relying upon Ex.B1, when the vendor in respect of the property had lost title in favour of the appellants' vendor under Ex.A1?

2.Whether Exs.A1 to A3 could be impeached on account of non-production of the originals?

3.Whether the examination of witness is required to establish Exs.A1 to A3 when they are registered instruments of sale and over 30 years old?

4.Whether the lower appellate court is right in holding that the plaintiff is not a registered institution and its president has not right to file a suit?

5. Whether the transfer made in favour of 5th respondent is not hit by doctrine of lispendens?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

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

5. Suffice to state that the suit has been laid by the plaintiff against the defendants for the reliefs of declaration and possession. The plaintiff claims title to the suit property based on the sale deed dated 20.08.1971 said to have been executed in its favour by Abdul Jabar Sahib. Only the certified copy of the abovesaid sale deed has been marked as Ex.A3. According to the plaintiff, the suit property originally belonged to Aleema Bi and others and Aleema Bi and others alienated the suit property to Mohamed Sherif Sahib by way of a sale deed dated 20.03.1940 and the certified copy of the said sale deed has been marked as Ex.A1. It is further pleaded on the part of the plaintiff that Mohamed Sherif Sahib had alienated the suit property in favour of Abdul Jabar Sahib by way of a sale deed dated 22.09.1947 and the certified copy of the abovesaid sale deed has been marked as Ex.A2. Thus it is found that the plaintiff claims entitlement or title to the suit property based on the abovesaid three sale deeds marked as Exs.A1 to A3.

6. The defendants, in toto, disputed the claim of title put forth by the plaintiff in respect of the suit property. According to the defendants, the original owners Aleema Bi and others alienated the suit property in favour of the first defendant by way of a sale deed dated 13.12.1980, which document has come to be marked as Ex.B1 and it is further pleaded on the part of the defendants that after the first defendant had acquired title to the suit property by way of Ex.B1 sale transaction and enjoying the same, it is put forth that she had alienated the suit property in favour of the fifth defendant by way of a sale deed 22.12.1987, which document has come to be marked as Ex.B3 and thence from, it is only the fifth defendant, who has been in the possession and enjoyment of the suit property by putting up the super structure thereon and enjoying the same by paying tax, service charges, etc., and accordingly contended that the plaintiff is not entitled to the suit property in any manner, particularly, the plaintiff is not entitled to claim title to the suit property based on the sale transactions marked as Exs.A1 to A3 and furthermore, the defendants have also resisted the plaintiff's suit contending that the plaintiff being a religious trust / institution, all the trustees of the plaintiff's trust should be impleaded as parties to the suit and therefore, the suit laid by the plaintiff is not maintainable as such and, on that ground also, sought for the dismissal of the plaintiff's suit.

7. Based on the materials placed on record by the respective parties and the submissions made, the trial court was pleased to accept the plaintiff's case. However, the first appellate court rejected the plaintiff's case and impugning the same, the present second appeal has been preferred by the plaintiff.

8. Inasmuch as the defendants have, in toto, challenged the claim of title to the suit property put forth by the plaintiff and as projected in the plaint, it is for the plaintiff to establish that it has acquired a valid title to the suit property by way of Ex.A3 sale deed in particular, which, according to the plaintiff, is the title deed under which the plaintiff has acquired title to the suit property. From the materials placed on record, it is found that the parties are not in issue that Aleema Bi and others are the original owners of the suit property. Now, according to the plaintiff, Aleema Bi and others alienated the suit property to one Mohamed Sherif Sahib on 20.03.1940 by way of Ex.A1 sale transaction. The same has been totally challenged by the defendants. It is the further case of the plaintiff that Mohamed Sherif Sahib had alienated the suit property in favour of Abdul Jabar Sahib by way of Ex.A2 sale transaction, which plea has also been totally challenged by the defendants. As above seen, the plaintiff claims title to the suit property stating that it has purchased

the same from Abdul Jabar Sahib by way of Ex.A3 sale deed, which sale transaction has also been challenged in toto on the part of the defendants.

9.No doubt, at the time of marking Exs.A1 to A3, the certified copies of the sale deeds, the defendants have not put forth any objection as such but on that score alone, it cannot be held that the defendants have admitted the entitlement of the executants of the respective documents to convey the property covered therein to the purchasers under the same respectively. When the defendants have totally disputed that Aleema Bi and others had not alienated the suit property in favour of Mohamed Sherif Sahib by way of Ex.A1 sale transaction and on the other hand, they had executed the sale deed in respect of the suit property only in favour of the first defendant on 13.12.1980 by way of Ex.B1 sale transaction and when the original sale deed dated 13.12.1980 has been projected by the defendants and, on the other hand, when only the certified copy of the sale deed dated 20.03.1940 has been projected by the plaintiff as Ex.A1, in such view of the matter, the plaintiff should have endeavoured to sustain its case by examining its previous predecessors in interest for upholding its claim of title to the suit property as put forth by it. The plaintiff should have endeavored to examine the original owners of the suit property, namely, Aleema Bi and others or Mohamed Sherif Sahib, who is said to have obtained the suit property from Aleema Bi and others by way of Ex.A1 sale transaction and further the plaintiff should have also endeavoured to examine either Mohamed Sherif Sahib or Abdul Jabar Sahib to establish the truth and validity of the sale transactions marked as Exs.A1 to A3 for proving the entitlement of her predecessors in title to have acquired a valid title to the suit property as projected by it. As rightly determined by the first appellate court, it is not the case of the plaintiff that its predecessors in interest are not available for aducing evidence in support of its case. In such view of the matter, when the defendants are, in toto, impugning the title of the plaintiff as well as the title of the plaintiff's predecessors in interest in respect of the suit property and furthermore, when the plaintiff has not placed any document evidencing that either its predecessors in interest or the plaintiff as such, had been in the possession and enjoyment of the suit property as the lawful owners thereof and other than marking the certified copies of the sale transactions as Exs.A1 to A3, there is absolutely no material placed on the part of the plaintiff to establish either its or its predecessors in interest possession and enjoyment of the suit property following Exs.A1 to A3 sale transactions and when no proper and convincing reasons had been adduced on the part of the plaintiff as to why it had not endeavored to place the original sale transactions marked as Exs.A1 to A3, in such view of the matter, the first

appellate court is found to be justified in raising the suspicion in the plaintiff's case with regard to its entitlement to the suit property as put forth by it.

10. As above noted, the defendants put forth the defence that it is only the first defendant who had acquired a valid title to the suit property from Aleema Bi and others under Ex.B1 sale transaction on 13.12.1980. On the other hand, the plaintiff would state that Aleema Bi and others had alienated the suit property in favour of Mohamed Sherif Sahib on 20.03.1940 itself under Ex.A1. In such view of the matter, as rightly pointed by the first appellate court, endeavour should have been made by the plaintiff to summon the records available in the registrar's office concerning Ex.A1 sale transaction and further endeavour should have been made to subject the signatures / LTI of the executants of Ex.A1 and the signatures / LTI of the executants of Ex.B1 sale transaction for elucidating whether the same executants had executed both Ex.A1 as well as Ex.B1 sale transactions as now sought to be claimed by the plaintiff. It is mainly put forth by the plaintiff that after Aleema Bi and others had alienated the suit property by way of Ex.A1 sale transaction in favour of Mohamed Sherif Sahib, they had no entitlement to convey the suit property in favour of the first defendant under Ex.B1 sale transaction. The plaintiff having come forward with the suit seeking the relief of declaration and possession, should establish its case by placing reliable and convincing materials and when they have not even endeavored to place the original sale transactions under Ex.A1 to A3 and when no reason has been adduced on their part as to why the original sale deeds had not been exhibited and as abovenoted when no document has been placed by the plaintiff in any manner to evidence that the plaintiff or its predecessors in interest had been in the possession and enjoyment of the suit property at any point of time and when according to the defendants Aleema Bi and others had been in the possession and enjoyment of the suit property till the alienation made by them in favour of the first defendant in Ex.B1, in all, as rightly determined by the first appellate court, the plaintiff has miserably failed to establish its valid claim of title to the suit property as projected by it and the same cannot be accepted merely on the documents marked as Ex.A1 to A3 on the part of the plaintiff. Atleast, the plaintiff should have endeavoured to produce its original title deed dated 20.08.1971 and endeavored to examine its vendors for sustaining his entitlement to convey the suit property in favour of the plaintiff and in such view of the matter, I do not find any reason to interfere with the determination of the first appellate court for disbelieving the plaintiff's claim of title to the suit property only based on Exs.A1 to A3.

11. The plaintiff cannot be allowed to rely upon Section 90 of the Indian Evidence Act for raising the presumption as regards the truth and validity of Exs.A1 to A3 sale transactions. As correctly determined by the first appellate Court, Exs.A1 to A3 sale transactions being only the certified copies of the documents and not the original documents as such, the presumption under Section 90 of the Indian Evidence Act could not be raised with reference to the same and the first appellate court has rightly followed the decision of the Apex Court, in this connection, referred to in its judgment. Furthermore, the presumption that could be raised under Section 90 of the Indian Evidence Act could only, at the best, be made as regards the signatures of the executants of the documents and the attestation of the said documents by the attestors concerned and under Section 90 of the Indian Evidence Act, no presumption could be raised, as such, as regards the truth and validity of the said documents and when as abovenoted, the defendants have challenged the truth and validity of the sale transactions under Exs.A1 to A3 projected by the plaintiff for sustaining its title to the suit property, in all, it is found that the presumption relied upon by the plaintiff under Section 90 of the Indian Evidence Act would be of no avail to sustain their case and the same had been rightly considered and rejected by the first appellate court and no interference is called for with reference to the same.

12. The suit has been originally laid by the plaintiff described itself as the religious institution represented by its trustees, subsequently, it has been amended as being represented by its president. Be that as it may, as could be seen from the evidence placed in the matter, the title deed of the suit property marked as Ex.A3 had been acquired by the plaintiff's trust on behalf of its trustees. Accordingly, the plaintiff's trust, being a private trust / religious institution represented by its trustees, accordingly, the trust, as such, not being a legal entity and the suit on behalf of the trust should have been laid by all the trustees and the suit having not been laid by the trustees of the plaintiff, on the other hand, only by its president and when the president is not shown to be entitled to lay the suit on behalf of the plaintiff and there is also no material on the part of the plaintiff to establish that its president, as such, obtained the prior sanction of the trustees to lay the suit and the plaintiff also not having come forward to place the trust deed or the other documents governing the trust / religious institution to show as to who are all the trustees, whether the said trustees have empowered the president to lay the suit and when the rules governing the plaintiff's institution / trust having not been placed for consideration and as determined by the first appellate court, when the plaintiff has not endeavored to

institute the suit after obtaining necessary permission from the court as provided under law and when it is found that the suit laid by the plaintiff's trust / institution is not legally sustainable without impleading all the trustees as parties to the suit or without placing any material to evidence that the trustees of the plaintiff had empowered its president, as such, to lay the suit on behalf of the plaintiff and accordingly following the principles of law outlined in the decision reported in 2017 (1) CTC 56 (V.Chandrasekaran and two others vs. Venkatanaicker Trust, rep. by its Manager Thiru. E.V.K. Elangovan and two others) as well as the decision reported in (2019) 1 MLJ 301 (Ayapadi Chavadi Dharmam, Private Family Trust, represented by its present Manager Selvanathan vs. Habibunnisa and others) and as rightly determined by the first appellate court, the frame of the said suit is found to be not legally sustainable particularly without obtaining the necessary sanction from the court with reference to the same as per law.

13. The plaintiff's counsel contended that the defendants have not endeavoured to establish their title to the suit property by examining the vendors concerned and on that footing the plaintiff's case should be acceded to. The plaintiff having come forward with the suit seeking the reliefs of declaration and possession and when the plaintiff's suit is being totally challenged by the defendants, even assuming for the sake of arguments that the defendants have not established their title, on that ground alone, we cannot accept the plaintiff's case ipse dixit, particularly, in the absence of any evidence pointing to the entitlement of the plaintiff to the suit property as prayed for. In such view of the matter, the weakness of the defence version cannot be the ground or the basis for the plaintiff to claim title to the suit property as such and therefore, the abovesaid argument does not merit acceptance in any manner.

14. Inasmuch as the plaintiff has failed to establish its claim of title to the suit property in any manner, in such view of the matter, whether the sale transaction in favour of the fifth defendant in respect of the suit property is hit by the doctrine of lis pendens or not, in my considered opinion, is not required to be considered as such, for determining the points involved in the matter.

15. The plaintiff's counsel in support of her contentions, placed reliance upon the decisions reported in

1. (2004) 8 Supreme Court Cases 270 (Cement Corpn. Of India Ltd., vs. Purya and others).

2. (1964) 2 SCR 673 : AIR 1963 SC 1633 (Madamanchi Ramappa and another vs. Muthaluru Bojjappa)
3. MANU/TN/8886/2007 (M.Ramasamy and Company rep. by its partner M.Ramasamy vs. The Javadhu Hills, Hill Tribes, Large sized Multi Purpose Co-operative Society Ltd.)
4. 2013 (3) MWN (Civil) 211 (Ramalingam and others vs. Palaniyandi Mudaliar (died) and others)
5. L.P.A.No.92 of 1946 (Nallani Chakravarthulu Andalamma Vs. P.Natasem Pillai and another)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

16. In the light of the above said discussions, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff.

17. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connection miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bga
To

1. The Subordinate Judge,
Subordinate Court, Tirupattur.
2. The Principal District Munsif, Ambur.

Copy to
The Section Officer,
V.R.Section, High Court, Madras

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.34959
+1cc to M/s.K.R.A.Muthukrishnan, Advocate, S.R.No.35523

S.A.No.1161 of 2005

MR(CO)
CS/18/10/2019