

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2019

PRONOUNCED ON : 20.03.2019

CORAM :

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1209 of 2005

and

C.M.P.No.224 of 2015

Rajasekaran ...Appellant/Appellant/4th Defendant

Vs.

Renganathan ...Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 13.09.2004 in A.S.No.88 of 2003 on the file of the Additional Subordinate Court, Vridhachalam, confirming the judgment and decree dated 10.06.2003 in O.S.No.42 of 2001 on the file of the II Additional District Munsif Court, Vridhachalam.

For Appellant : Mr.T.Chezhan
for Mrs.R.Meenal

For Respondent: Mr.L.Palanimuthu
for Mrs.A.L.Gandhimathi

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 13.09.2004 passed in A.S.No.88 of 2003 on the file of the Additional Subordinate Court, Vridhachalam, confirming the judgment and decree dated 10.06.2003 passed in O.S.No.42 of 2001 on the file of the II Additional District Munsif Court, Vridhachalam.

2. The parties are referred to as per their rankings in the trial court for the sake of convenience.

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

"(1) Whether in Law the Courts below are right in failing to see that under Section 48 of the Transfer of Property Act and Section 47 of the Indian Registration

Act, the appellant had the right of priority and that title vested with him?

(2) Whether in Law the Courts below are right in overlooking that on the date of Ex.A1 sale in favour of the respondent, the vendor had no title and that he could not have conveyed any right to the respondent?"

4. 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.

5. The suit has been laid by the plaintiff for the reliefs of declaration and permanent injunction or in the alternative for the recovery of the possession. The plaintiff claims title to the suit property based on the sale deed dated 27.01.2001 executed by the second defendant in his favour. It is not in dispute that the suit property originally belonged to the second defendant. Accordingly, based on the sale deed executed by the second defendant in his favour as above noted which has come to be marked as Ex-A1, the plaintiff claims the title to the suit property and to establish that the suit property is free from encumbrance and that he has verified the Encumbrance Certificate pertaining to the same, the plaintiff has produced the Encumbrance Certificate, marked as Ex-A2.

6. Opposing the claim of the plaintiff to the suit property, the fourth defendant put forth a rival claim of title to the suit property, on the footing that the second defendant had executed a mortgage deed in favour of the fourth defendant on 03.09.1993 for the purpose of discharging the jewel loan and unable to redeem the mortgage, according to the fourth defendant, the second defendant had conveyed the suit property and other properties in his favour by way of a sale deed dated 16.09.1998 and delivered the possession of the same and since then, it is only the fourth defendant who has been in the possession and enjoyment of the suit property. However the abovesaid sale deed had not been registered and the second defendant has assured to register the sale deed after the partition in the family, thereafter, according to the fourth defendant on 21.12.2000, the second defendant had executed the sale deed in respect of the suit property and other properties in his favour and the same was registered on 19.04.2001 and thereby it is contended that it is only the fourth defendant who has a valid title to the suit property and enjoying the same and therefore, the plaintiff is not entitled to seek the reliefs as prayed for.

7. The Courts below on an appreciation of the materials placed on record, finding that it is only the plaintiff who has a valid title to the suit property and not the fourth defendant,

accordingly, decreed the suit in favour of the plaintiff granting the reliefs of declaration and permanent injunction as claimed by him. Impugning the same, the present second appeal has been laid.

8. The only point that arises for consideration in this second appeal is which sale deed executed by the second defendant, the original owner of the suit property, is valid, whether the sale deed in favour of the plaintiff dated 27.01.2001 marked as Ex-A1 would prevail or whether the sale deed in favour of the fourth defendant dated 21.12.2000 would prevail. It is seen that when admittedly the second defendant is accepted to be the original owner of the suit property, he is entitled to convey the same to anyone as he desires. Accordingly, the plaintiff claims title to the suit property based on Ex-A1, the registered sale deed dated 27.01.2001 and the same is found to be registered on the date of the execution of the same. It is thus found that it has come into the force on the date of the execution of the same i.e., on 27.01.2001. According to the fourth defendant, even prior to the same i.e., on 21.12.2000 itself, the second defendant had conveyed the suit property to him by way of Ex-B2 sale deed and though the abovesaid sale transaction had come to be registered on 19.04.2001, according to him, in the light of the provisions contained in Section 48 of the Transfer of Property Act and Section 47 of the Indian Registration Act, his sale deed would prevail and take effect from the date of the execution of the sale deed i.e., 21.12.2000 and therefore, according to him on the date of Ex-A1 sale transaction, inasmuch as the second defendant has no entitlement or competency to convey the suit property in favour of the plaintiff, it is stated that Ex-A1 sale transaction is not a valid sale transaction and not binding upon the fourth defendant and hence, the plaintiff's suit should fail.

9. No doubt, the fourth defendant claims that the second defendant had executed the sale deed in his favour on 21.12.2000 itself. If that be so, it does not stand to reason as to why the abovesaid sale transaction has not been registered on the date of execution. It is found that the said deed was registered only on 19.04.2001. It is contended by the fourth defendant that the said document having come to be registered, as per Section 47 of the Indian Registration Act, the date of registration would revert back to the date of execution. For sustaining the abovesaid case, it is for the fourth defendant to establish that the second defendant had executed the sale deed in his favour on 21.12.2000 itself in respect of the suit property. Though the fourth defendant would also claim that the second defendant had executed the sale deed in his favour in respect of the suit property on 16.09.1998, the said document has not seen the light

of the day. No reason has been adduced with reference to the same. Furthermore, the fourth defendant would claim that the second defendant had executed a mortgage deed in his favour in respect of the suit property on 03.09.1993 and the said mortgage deed has come to be marked as Ex-B1. However on a perusal of the recitals contained in Ex-B1, it does not state that the possession of the suit property had been delivered to the fourth defendant on the date of the mortgage. Be that as it may, now according to the fourth defendant, his sale transaction would prevail as the same had been executed on 21.12.2000. However, as rightly determined by the Courts below, even before the sale deed marked as Ex-B2 has come to be registered on 19.04.2001, the second defendant has conveyed the suit property in favour of the plaintiff marked as Ex-A1 on 27.01.2001. In such view of the matter, it is for the second defendant to establish that his sale transaction Ex-B2 is a valid one. When Ex-B2 does not state anything as regards the plea of partition put forth by the fourth defendant as the ground for not registering the document on the date of execution and on the other hand, when Ex-B2 sale transaction recites to convey the suit property in favour of the fourth defendant absolutely conferring full ownership on him, in such view of the matter, the case projected by the fourth defendant that inasmuch as the second defendant had assured to execute the sale deed after the partition in the family, the sale deed had come to be registered on 19.04.2001, as such, cannot be countenanced and it is seen that the abovesaid cause, some how or the other, has been falsely projected, for explaining the delay in the registration of the said document. Furthermore, there is no acceptable evidence on the part of the fourth defendant that the second defendant had indeed executed Ex-B2 sale transaction on 21.12.2000. In this connection, the witness examined on behalf of the fourth defendant examined as DW2 would claim that the stamp papers for Ex-B2 was purchased on the date of the execution. However, as rightly determined by the Courts below, on a perusal of the stamp papers of Ex-B2 sale transaction, they are found to have been purchased on 29.11.2000 and not on 21.12.2000. The abovesaid inconsistency has not been explained. Furthermore, DW2 would claim that the consideration recited in Ex-B2 was passed on the date of execution of the sale deed. However, on a perusal of the terms contained in the Ex-B2 sale transaction, it recites as if sale consideration has been already received by the second defendant. With reference to the abovesaid contradiction, no proper explanation is provided by the fourth defendant. As abovenoted, the fourth defendant has claimed that even prior to Ex-B2 sale transaction, the second defendant had conveyed the suit property in his favour in the year 1998 itself. However, the said document has not been produced for one reason or the other.

10. As regards the claim of the fourth defendant that

pursuant to the sale transaction Ex-B2, he had been handed over the suit property, there is no acceptable and reliable materials placed on his part pointing to the same. Though the fourth defendant would claim that he had been delivered the property pursuant to the sale deed dated 16.09.1998 executed in his favour by the second defendant, to point out the same, there is absolutely no material projected. Particularly when the abovesaid sale deed itself has not been produced, his case that he had been delivered the possession and enjoyment of the suit property pursuant to the said sale deed, as such, does not merit acceptance. To evidence his claim of the possession, the fourth defendant has produced the patta document marked as Ex-B3, the chitta extract marked as Ex-B4, kists receipts marked as Exs-B5 and B6. As rightly pointed out by the Courts below, when the documents marked as Exs-B3 and B4 are found to have come into existence after the institution of the suit, the same would serve no purpose in upholding the claim of the possession of the suit property putforth by the fourth defendant based on Ex-B2 sale deed. As per Ex-B3 patta, the patta number is reflected as 716. However, the kists receipts marked as Exs-B5 and B6 are not found to be paid in respect of the patta No.716. Therefore, it is highly doubtful whether Exs-B5 and B6 pertain to the suit property as such. The same had been considered by the Courts below in all aspects and rightly refused to take the above documents into consideration for upholding the defence projected by the fourth defendant.

11. In the light of the abovesaid discussions, when the fourth defendant has failed to establish that the second defendant/original owner had conveyed the suit property in his favour on 16.09.1998 and thereafter on 21.12.2000 and when no specific and acceptable reason has been offered by him as to why the sale transaction Ex-B2 has not been registered on the date of execution and had come to be registered only much later i.e., on 19.04.2001 and failed to establish that he has obtained the possession of the suit property pursuant to Ex-B2 sale transaction and enjoying the same and on the other hand when it is seen that the second defendant has validly conveyed the suit property in favour of the plaintiff by way of Ex-A2 sale transaction and in such view of the matter, the plaintiff establishing that he has a valid claim of title to the suit property and enjoying the same as the legal owner thereof, in all, it is seen that it is only the plaintiff who has a valid title to the suit property and not the fourth defendant and the fourth defendant is found to have projected a false plea one way or the other and come forward with fabricated records to sustain the false claim of title to the suit property and the Courts below have rightly rejected the same based on the right appreciation of the materials placed on record in the matter. No interference is called for to the judgment and decree of the

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

For the reasons aforesaid, the second appeal is found to be devoid of merits and accordingly the same is dismissed with costs. Connected miscellaneous petition, if any, is closed.

nsd

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

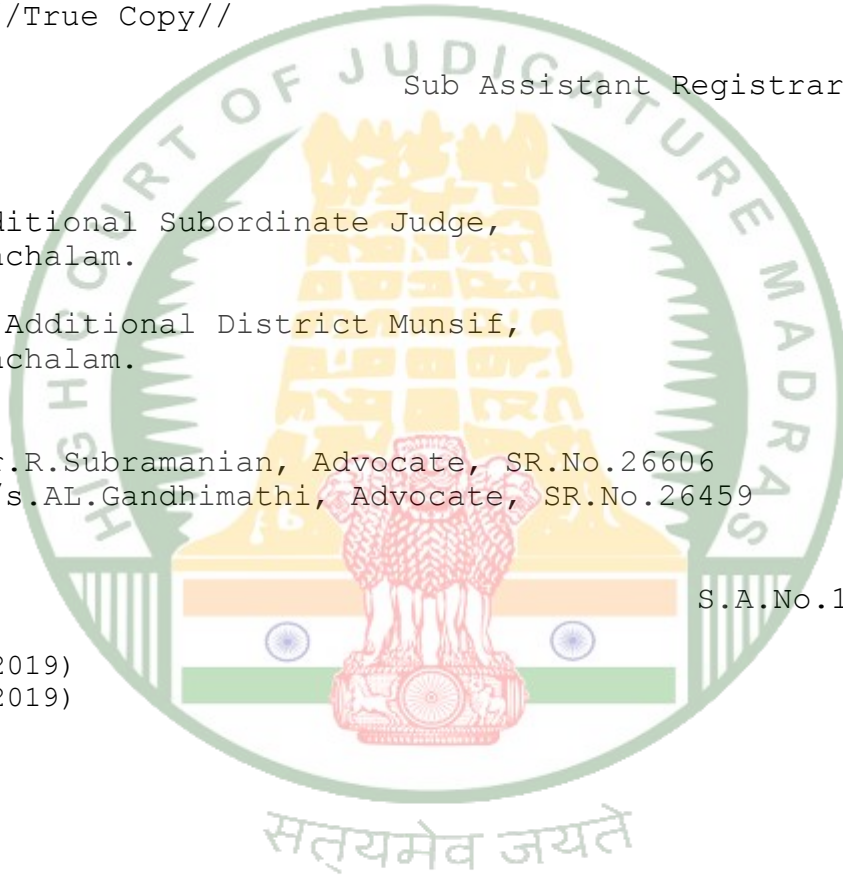
To

1. The Additional Subordinate Judge,
Vridhachalam.
2. The II Additional District Munsif,
Vridhachalam.

+1cc to Mr.R.Subramanian, Advocate, SR.No.26606
+1cc to M/s.AL.Gandhimathi, Advocate, SR.No.26459

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