

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 13.02.2019
PRONOUNCED ON : 27.02.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.1214 of 2005
and
C.M.P. No.16750 of 2005

Gnanambal

...Appellant/Defendant

Vs.

M.P.Prakash

...Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.98 of 2004 on the file of Additional Sub Court, Chengleput dated 28.06.2005 in confirming the judgment and decree dated 01.12.2004 in O.S.No.424 of 1996 on the file of District Munsif Court, Chengleput.

For Appellant : Mr.R.Bharath Kumar

For Respondents : Mrs.G.Nalini

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.06.2005 passed in A.S.No.98 of 2004, on the file of the Additional Subordinate Court, Chengalpet, confirming the judgment and decree dated 01.12.2004 passed in O.S.No.424 of 1996 on the file of the District Munsif Court, Chengalpet.

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

- "a) Is the learned Additional Subordinate Judge correct in decreeing the suit having found that the appellant's title deed Ex.B1 is true and valid and prior in point of time.
- b) When Ex.B1 is a valid document having been executed in 1994 and the plaintiff claiming under a subsequent document, is the learned Additional Subordinate judge correct in declaring the title of the plaintiff?

c) When it is settled principle of law that the plaintiff has to stand or fall on his own case, is the learned Additional Subordinate judge correct in decreeing the suit picking holes in the defendant's case?

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. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. Suffice to state that the plaintiff has laid the suit against the defendant for the reliefs of declaration and permanent injunction. The plaintiff claims title to the suit properties based on the sale deeds dated 03.04.1996, 15.04.1996 and 25.02.1996 said to have been executed by the owners of the suit properties and according to the plaintiff, his vendors had acquired the title to the suit properties based on the joint patta executed in their names and on that basis, they had executed the sale deeds in his favour and with reference to the remaining extent of the suit properties, according to the plaintiff, he had entered into a sale agreement with his vendors and paid the sale consideration and however, till date the sale deed had not been executed by them with reference to the same and on that footing claiming that the suit properties are in his possession and enjoyment and he had been enjoying the same by paying kists, etc., and putforth the case that the defendant without any entitlement or authority, attempted to interfere with his possession, it is pleaded by the plaintiff that he has been, therefore, necessitated to lay the suit for appropriate reliefs against the defendant.

6. The defendant has resisted the plaintiff's suit contending that the plaintiff has no title, possession and enjoyment of the suit properties and also putforth the case that the plaintiff's vendors also do not have any title, possession and enjoyment of the suit properties and in specific pleaded that on the basis of the joint patta said to have been issued in favour of the plaintiff's vendors, they are not competent to alienate the suit properties in favour of the plaintiff by way of the sale deeds putforth in the plaint and according to the defendant, the suit properties belonged to 17 joint pattadarars and they had alienated the same in favour of the defendant by way of the sale deed dated 14.11.1994 and since then it is only the defendant who has been in the possession and enjoyment of

the suit properties and accordingly prayed for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case P.Ws.1 to 5 were examined and Exs.A1 to A20 were marked. On the side of the defendant, D.Ws.1 and 2 were examined and Exs.B1 to B5 were marked.

8. The courts below on a consideration of the oral and documentary evidence adduced by the respective parties, were pleased to accept the plaintiff's case and accordingly, granted the reliefs prayed by him. Impugning the same, the present second appeal has been laid by the defendant.

9. As per the case of the plaintiff's, the suit properties originally belonged to 12 persons and they had been issued the joint patta in respect of the same and based on the said joint patta, they had alienated the suit properties in favour of the plaintiff by way of the sale deeds marked as Exs.A1 to A3 and with reference to the remaining extent of the suit properties, according to the plaintiff, he had paid the sale consideration to his vendors on the basis of the sale agreement and on that footing claimed that he is in the possession and enjoyment of the suit properties and inasmuch as the defendant without any authority attempted to interfere with his possession, he has come forward with the suit for the appropriate reliefs.

10. The defendant has, in toto, refuted the plaintiff's as well as the plaintiff's vendors claim of title, possession and enjoyment as put forth in the plaint and in specific, challenged the ownership of the plaintiff's vendors in respect of the suit properties and accordingly contended that the alleged joint patta in the name of the plaintiff's vendors, would not confer any title whatsoever in respect of the suit properties and therefore, on the basis of the sale deeds executed by them, the plaintiff would not be entitled to claim the title and possession of the suit properties and on the other hand, the defendant had set out the rival claim to the suit properties based upon the sale deed executed in her favour dated 14.11.1994 by her vendors and claimed to be in the possession and enjoyment of the suit properties.

11. Inasmuch as the plaintiff has come forward with the suit for the reliefs of declaration and permanent injunction, at the foremost, the plaintiff has to establish that his vendors had a valid title to the suit properties and they are competent to convey the same in his favour by way of Exs.A1 to A3 sale transactions. As regards the extent of 22 cents in the suit properties, it has not been established by the plaintiff that he has validly acquired the same from his alleged vendors. As per

Exs.A1 to A3, it is seen that the plaintiff is found to have acquired three items of the suit properties and the plaintiff examined as P.W.1, has specifically admitted that, only based upon the joint patta in the name of his vendors, he had obtained the abovesaid sale deeds from them in respect of the three items shown in the plaint schedule measuring 50 cents, 28 cents and 20 cents in the suit survey number. The plaintiff has also admitted during the course of his evidence that his vendors had not entrusted any document to him and also further admitted that there is no document in favour of his vendors in respect of the suit properties. It is thus seen that other than the joint patta in the name of his vendors, there is absolutely no plea or proof on the part of the plaintiff as to how his vendors had acquired title to the suit properties. The same joint patta documents had come to be marked by the plaintiff as Exs.A4, A7, A8 to A13. As rightly put forth by the defendant's counsel, when the patta documents cannot be construed as the document of title and when the plaintiff has filed to establish as to how his vendors had acquired the title to the suit properties and other than the joint patta projected by the plaintiff as abovestated in the name of his vendors, when the plaintiff is unable to substantiate as to how his vendors had acquired title to the suit properties, in my considered opinion, the vendors cannot be held to be competent to convey the suit properties in favour of the plaintiff on the basis of the joint patta issued in their names. It has not been established by the plaintiff that the joint patta in the name of the plaintiff's vendors had been issued in their favour as per law after issuing notice to one and all concerned and in such view of the matter, the abovesaid joint patta documents projected by the plaintiff in the name of his vendors cannot be construed as a valid document of title enabling them to convey a valid title to the plaintiff by way of Exs.A1 to A3 sale deeds.

12. In this connection, one of the vendors of the plaintiff has been examined as P.W.2. P.W.2, during the course of evidence, has claimed that in the suit survey number, he owned 10 cents of land ancestrally. For the same, he relied only upon the joint patta as abovestated. During the course of cross examination he has admitted that only during the UDR scheme, he had been issued the joint patta and admitted that there is no document with reference to the 10 cents of land owned by him in the name of his father or his grand father and admitted that other than the joint patta, there is no other document and further admitted that there is no separate patta issued in his favour in respect of 10 cents land in the suit survey number and not endeavoured to place the chitta and adangal extracts and the other documents of possession evidencing that he and his predecessors had been in the possession and enjoyment the said 10 cents of land in the suit survey number. Such being the

evidence of P.W.2, one of the vendors of the plaintiff, as rightly put forth by the defendant's counsel, based on the joint patta projected by him we cannot safely conclude that he validly owned 10 cents of land in the suit survey number ancestrally as put forth by him sans any material pointing to his title, possession and enjoyment of the said 10 cents of land prior to the issuance of the joint patta.

13. The other vendor examined on behalf of the plaintiff as P.W.3, would also claim that he owned 10 cents in the suit survey number and the same belonged to him ancestrally. With reference to the same, he would also rely upon the joint patta abovesaid. He has also admitted in respect of the 10 cents of land owned by him, there is no document standing in the name of his father, grand father, etc., and there are no documents pertaining to the possession and he cannot produce the revenue documents in connection with the same and accepted that he has no kist receipts in his name with reference to the 10 cents of land owned by him and also admitted that no separate patta had been issued in his favour as regards the 10 cents of land owned by him in the suit survey number. It is thus found that based upon the joint patta issued under the UDR scheme, P.W.3 also claimed to be owning 10 cents of land and claimed to have alienated the same to the plaintiff. However, when the patta projected by the plaintiff or P.W.3 in respect of the abovesaid claim cannot be the basis for upholding his claim or title to the same, the courts below are found to have erred in accepting the plaintiff's case based upon the evidence of P.Ws.2 and 3 as well as P.W.1, the plaintiff.

14. P.Ws.4 and 5 are the witnesses who have been examined by the plaintiff for the purpose of establishing his claim of possession and enjoyment of the suit properties. However, when the plaintiff has failed to establish his claim of possession and enjoyment of the suit properties by placing any revenue documents such as chitta, adangal extracts and kists receipts and other than Ex.A5 receipt, there is no other receipt projected by the plaintiff evidencing his claim of possession and enjoyment of the suit properties and the receipts marked as Exs.A17 and A18 having come into existence after the institution of the suit, in such view of the matter, it is found that there is absolutely no valid material placed on the part of the plaintiff to establish his legal claim of title, possession and enjoyment of the suit properties or his vendors' claim of title, possession and enjoyment of the suit properties.

15. The defendant has also put forth the claim of title to the suit properties based on the sale deed dated 14.11.1994 executed in his favour by 17 persons. However, the defendant has also failed to establish her vendors' claim and title to the

suit properties and their possession and enjoyment and in such view of the matter, the courts below have rightly disbelieved the abovesaid defence version projected by the defendant for claiming the title to the suit properties.

16. On the same lines, when it is seen that the plaintiff has also failed to establish his vendors' claim of title, possession and enjoyment of the suit properties and other than the joint patta projected by the plaintiff in the name of his vendors, when the abovesaid joint patta has not been established to have been legally issued in favour of his vendors and the vendors' possession and enjoyment has not been established by the plaintiff by placing any document whatsoever, when the patta documents projected by the plaintiff cannot be construed as the document of title in any manner, in such view of the matter, the courts below are found to have totally erred in accepting the plaintiff's case based on the patta projected by the plaintiff in the name of his vendors and furthermore, when as regards the remaining extent of 22 cents land, there is absolutely no document on the part of the plaintiff, the courts below are wholly found to have further erred in granting the reliefs prayed for by the plaintiff in respect of the abovesaid extent also and in toto it is seen that the courts below are found to have accepted the plaintiff's case merely on the footing that the defendant has failed to establish his claim of title, possession and enjoyment of the suit properties. The plaintiff having come forward with the suit seeking the reliefs prayed for on a specific plea and when the same had been challenged by the defendant in toto, it is for the plaintiff to establish his case by placing acceptable and reliable materials. The plaintiff having failed to do so, despite the same, the endeavour of the courts below in granting the reliefs prayed for by the plaintiff on the footing that the defendant has failed to establish his version, the abovesaid approach of the courts below is found to be totally perverse, illogical and irrational and the same does not stand scrutiny in the eyes of law.

17. The defendant's counsel, in support of his contention, placed reliance upon the decision reported in AIR 2003 MADRAS 404 (T.M.Manicka Naicker Vs.N.J.Chandrasekar and another) and the decision of the Apex Court rendered in Civil Appeal No.1330 of 2019 dated 31.01.2019 (Smt. Bhimabai Mahadeo Kambekar (D) Th. LR Vs. Arthur Import and Export Company & Ors. The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at the hand.

18. As rightly putforth by the defendant's counsel, the courts below have failed to follow the settled principles of law that the plaintiff has to stand or fall on the strength of his own case and cannot be allowed to seek the reliefs prayed for by

picking the holes in the defence version and in such view of the matter, merely on the failure of the defendant to establish the truth and validity of his sale deed marked as Ex.B1, that cannot be the basis for upholding the plaintiff's claim of title to the suit property and accordingly the substantial questions of law formulated in the second appeal, are accordingly answered against the plaintiff and in favour of the defendant.

19. For the reasons aforesaid, the judgement and decree dated 28.06.2005 passed in A.S.No.98 of 2004, on the file of the Additional Subordinate Court, Chengalpet, confirming the judgment and decree dated 01.12.2004 passed in O.S.No.424 of 1996 on the file of the District Munsif Court, Chengalpet are set aside and resultantly, the suit laid by the plaintiff in O.S.No.424 of 1996 is dismissed with costs. In conclusion, the second appeal is allowed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judge,
Additional Subordinate Court, Chengalpet,
2. The District Munsif
District Munsif Court, Chengalpet

copy to:

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

+1cc to Mr.R.Bharath Kumar, Advocate sr.18559
+1cc to Mrs.G.Nalini, Advocate sr.18161

S.A.No.1214 of 2005

and

C.M.P. No.16750 of 2005

vgi(co)
nr 29/07/2019