

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2019

PRONOUNCED ON : 05.04.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.367 of 2005

Anjammal ...Appellant/2nd Respondent/2nd Defendant

Vs.

1. Varadharajan (deceased)

...1st Respondent/Appellant/Plaintiff

2.Balasubramanian ...2nd Respondent/1st Respondent/1st Defendant

3.Mariammal

4.Rajadurai

5.Rajendran

6.Mallika

7.Kannagi

8.Gandhimathi ...Respondents 3 to 8

RR3 to 8 brought on record as Lrs of the deceased
R1 vide order of court dated 13.02.2019 made in
C.M.P. Nos.725 to 727 of 2012 in S.A.No.367 of 2005

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of Additional Sub Court, Mayiladuthurai, dated 21.12.2004 made in A.S.No.35 of 2004 reversing judgment and decree of Additional District Munsif Court, Mayiladuthurai dated 11.08.2003 made in O.S.No.161 of 2001.

For Appellant : Mr.S.Sounthar

For Respondents: Mr.A.Muthukumar

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 21.12.2004 passed in A.S.No.35 of 2004 on the file of the Additional Subordinate Court, Mayiladuthurai reversing the judgment and decree dated 11.08.2003 passed in

O.S.No.161 of 2001 on the file of the District Munsif Court, Mayiladuthurai.

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

"1. Whether the lower appellate court is erred in holding that registered sale deed in favour of appellant is invalid, by relying on unregistered, unstamped documents produced by first respondent?

2. Whether the lower appellate court is justified in law in relying on letters alleged to have been written by first defendant when those letters were not proved before court in the manner known to law? Is it not duty of courts below to reject those documents as inadmissible in evidence for want of proper proof?

3. Whether the lower appellate court is justified in granting decree for consequential relief of injunction when prayer of declaration of title is rightly rejected?

4. Whether the decree of lower appellate court is liable to be set aside for error apparent on the face of record, when decree for injunction in respect of entire suit property including house property is in direct conflict with it's own decree in O.S.No.154/2000, wherein decree for injunction is granted in favour of appellant?

5. Whether the lower appellate court's judgment is liable to be set aside in it's failure to frame proper points for consideration as mandated by order 41 Rule 31 of C.P.C?

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. The suit has been laid by the plaintiff seeking for the reliefs of declaration and permanent injunction. Briefly stated, according to the plaintiff, the suit property belonged to the first defendant and he had alienated the suit property in

favour of the plaintiff on 26.03.2000 and delivered the possession of the same to the plaintiff and since then, it is only the plaintiff, who has been in the possession and enjoyment of the suit property and the plaintiff's sister Anjammal, namely, the second defendant claiming title to the suit property on false pleas, laid a suit against the plaintiff in O.S.No.156 of 2000 as if the first defendant had already alienated the suit property in her favour and on the other hand, the first defendant is found to have alienated a portion of the suit property to the second defendant on 12.09.2000. However, the abovesaid sale is not valid and binding upon the plaintiff as the first defendant had already conveyed the suit property in favour of the plaintiff and inasmuch as the plaintiff is the owner of the suit property as above stated, the defendants are not entitled to disturb his possession accordingly, he has been necessitated to lay the suit for appropriate reliefs.

6. The first defendant resisted the plaintiff's suit contending that the suit is not maintainable either in law or on facts and denied the alienation of the suit property in favour of the plaintiff and also the hand letter said to have been given by him with reference to the same in favour of the plaintiff and in toto denied the alleged sale said to have been effected by him to the plaintiff in respect of the suit property and alleged that the documents projected by the plaintiff, with reference to the same, are fabricated and created for the purpose of the case and according to him, knowing fully well that he had alienated the property to the second defendant, it is stated that the plaintiff has come forward with the false case and the suit claimed is time barred and therefore prayed for the dismissal of the plaintiff's suit.

7. The second defendant resisted the plaintiff's suit contending that the plaintiff has never been in the possession and enjoyment of the suit property at any point of time and the claim of the plaintiff that he had purchased the suit property on 26.03.2000 by way of the hand letter said to have been executed by the first defendant in his favour is false and created for the purpose of the case and in fact, the sale had been conferred in favour of the second defendant 25 years ago by way of oral agreement and since then it is only the second defendant who has been in the possession and enjoyment of the suit property and inasmuch as the plaintiff attempted to interfere with the second defendant's possession and enjoyment of the suit property, the second defendant had been necessitated to institute the suit in O.S.No.156 of 2000 and also obtained interim relief in the said proceedings and being enraged over the same, it is stated that, the plaintiff has come forward with the false case by fabricating the records and therefore, the suit is liable to be dismissed.

8. In support of the plaintiff's case P.W.1 and 2 were examined and Exs.A1 to A8 were marked and on the side of the defendants D.W.1 to 3 were marked and Exs.B1 to B4 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit in toto. The first appellate court, on appeal, considering the materials placed on record, set aside the judgment and decree of the trial court and declining the relief of declaration of title sought for by the plaintiff in respect of the suit property, however, granted the relief of declaration sought for by the plaintiff that the sale deed executed by the first defendant in favour of the second defendant dated 12.09.2000 is invalid and consequently, granted the relief of permanent injunction in favour of the plaintiff in respect of the suit property as prayed for and accordingly disposed of the first appeal. Impugning the same, the second defendant has preferred the present appeal.

10. The plaintiff claimed title to the plaint schedule property based on the purchase of the same from the first defendant and according to the plaintiff, the first defendant had alienated the suit property in his favour on 26.03.2000 by way of a hand letter and since then, it is only he, who is in the possession and enjoyment of the same. Both the courts below have rightly held that the alleged hand letter projected by the plaintiff for sustaining his claim of title to the suit property said to have been issued in his favour by the first defendant does not have any legal validity as the same is an invalid document and more particularly, the plaintiff has also failed to establish the genuineness of the same in the light of the factor that the same had been challenged by the first defendant himself, in toto, as a fabricated record on the part of the plaintiff and accordingly, the courts below had declined the relief of declaration of title sought for by the plaintiff in respect of the suit property. Considering the invalid document projected by the plaintiff for sustaining his claim of title to the suit property, in my considered opinion, no interference is called for with reference to the abovesaid determination of the courts below declining the relief of declaration of title sought for by the plaintiff with reference to the suit property.

11. The trial court, in entirety, had dismissed the plaintiff's suit on the footing that the plaintiff has no title

to the suit property and hence not entitled to seek the reliefs prayed for. The plaintiff has also sought for the relief of declaration that the sale deed executed by the first defendant in favour of the second defendant dated 12.09.2000 in respect of the portion of the suit property is invalid. It does not stand to reason as to how the plaintiff would be entitled to seek such a declaration, particularly, he having failed to establish his valid claim of title to the suit property by projecting acceptable and reliable material and on the other hand, when with reference to the same, he has only relied upon the hand letter, an unregistered document, and also not established the genuineness of the same in any manner and also not established his alleged claim of possession and enjoyment of the suit property pursuant to the said hand letter, in the light of the abovesaid factors, the trial court is fully justified in dismissing the plaintiff's suit in entirety as the plaintiff has no semblance of any right, title or interest in the suit property for seeking any reliefs with reference to the same.

12. However, the first appellate court, considering the extent of the property conveyed to the second defendant by the first defendant by virtue of the sale deed dated 12.09.2000 marked as Ex.B1 and holding that the same is not pertaining to the suit property as such and as described in the plaint, accordingly, also on the footing that, the abovesaid sale deed had come into existence after the institution of the suit by the plaintiff, accordingly, on that premise, proceeded to hold that the plaintiff is entitled to seek the relief of declaration that the sale deed dated 12.09.2000 executed by the first defendant in favour of the second defendant in respect of the portion of the suit property is invalid and resultantly also granted the relief of permanent injunction in favour of the plaintiff in respect of the suit property as prayed for.

13. When the first appellate court has concurred with the judgment and decree of the trial court in declining the relief of declaration of title sought for by the plaintiff in respect of the suit property based on the hand letter projected in the matter, it does not stand to reason as to how, thereafter, the first appellate court had proceeded to grant the other reliefs in favour of the plaintiff in respect of the suit property. When the claim of title to the suit property, as projected by the plaintiff, falls to the ground, both factualwise as well as legalwise and cannot at all be countenanced in any manner, in such view of the matter, the plaintiff's suit should have been dismissed in entirety. Even assuming for the sake of argument that the sale deed projected by the second defendant for claiming title to the portion of the suit property by virtue of

Ex.B1 sale deed is not sustainable in law, that by itself, would not entitle the plaintiff to seek any declaration with reference to the same as the plaintiff does not have any claim of title to the suit property as such and in such view of the matter, as rightly argued by the second defendant's counsel, the judgment and decree of the first appellate court is found to be a bundle of inconsistencies and contradictions and having declined the relief of declaration of title to the suit property prayed for by the plaintiff, the first appellate court, by erroneously granting the other relief sought for by the plaintiff qua the sale deed dated 12.09.2000, resultantly had also granted the relief of permanent injunction in favour of the plaintiff in respect of the suit property as prayed for. When the plaintiff has failed to establish his valid claim of title to the suit property and accordingly his claim of declaration of title to the suit property having been negatived by the courts below, to hold, even thereafter, that the plaintiff is entitled to the relief of permanent injunction in respect of the suit property, cannot, at all, be countenanced in any manner, particularly, as against the true owner, namely, the first defendant as well as the second defendant, who is found to have acquired the portion of the suit property from the first defendant by virtue of Ex.B1 sale transaction, all the more, when the plaintiff has placed no acceptable and reliable material for evidencing his claim of possession and enjoyment of the suit property as put forth by him based on the alleged hand letter, despite the above position, the first appellate court had totally committed a miscarriage of justice in granting the other reliefs prayed for by the plaintiff and as rightly pointed out by the second defendant's counsel, when no credence, at all, could be made on the hand letter projected by the plaintiff for claiming any reliefs with reference to the suit property, particularly, when the genuineness and validity of the said hand letter has not been established and also furthermore, when the plaintiff has failed to establish his claim of possession and enjoyment of the suit property, quite inconsistent to its refusal to the grant the relief of declaration of title to the suit property in favour of the plaintiff, the first appellate court has committed a total error in granting the other reliefs prayed for by the plaintiff without appreciating the issues involved in the matter in the right perspective and also by giving perverse reasons and conclusions pertaining to the same.

14. In the light of the above discussions, the judgment and decree dated 21.12.2004 passed in A.S.No.35 of 2004 on the file of the Additional Subordinate Court, Mayiladuthurai, granting the reliefs in favour of the plaintiff as determined by it, are

set aside , and resultantly, the judgment and decree dated 11.08.2003 passed in O.S.No.161 of 2001 on the file of the District Munsif Court, Mayiladuthurai, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bga

To

1. Additional Subordinate Court,
Mayiladuthurai.
2. Additional District Munsif Court,
Mayiladuthurai.

Copy to

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

+1cc to Mr.S.Sounthar, Advocate Sr.33619
+1cc to Mr.A.Muthukumar, Advocate Sr.33296

S.A.No.367 of 2005

mr[co]
srg 31/07/2019

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