

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2019

PRONOUNCED ON : 11.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.926 of 2005

and

C.M.P.No.3438 of 2019

&

C.M.P.Nos.12779 & 19856 of 2005

Muthusamy Udayar [Deceased]

1.Sivakozhunthu

2.Selvaraj

3.Karunanithi

4.Paramasivam

5.Kannadasan

6.Venkatachalam

7.Kanthimathi

8.Malarkodi

[Appellants brought on record
as legal heirs of the deceased
Muthusamy Udayar]

... Appellants/Plaintiffs

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Vs.

1.State of Tamil Nadu
rep. By its District Collector,
Tiruchirappalli,
(Now District Collector,
Perambalur)

2.The Revenue Divisional Officer,
Ariyalur,
Perambalur District.

3.Tahsildar,
Ariyalur,
Perambalur District.

4.I.Kumarasamy Udayar ... Respondents/ Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree made in A.S.No.28 of 1995 on the file of the Subordinate Judge, Ariyalur dated 30.12.2002 confirming the judgement and decree dated 09.12.1994 made in O.S.No.490 of 1993 on the file of the District Munsif, Ariyalur.

For Appellants : Mr.C.Vediappan
for M/s.S.Mani

For RR1 to R3 : Mr.N.Manikandan
Government Advocate (CS)

For RR4 : No appearance
Set exparte vide order dated 25.2.2019

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 30.12.2002 passed in A.S.No.28 of 1995 on the file of the Subordinate Court, Ariyalur confirming the judgment and decree dated 09.12.1994 passed in O.S.No.490 of 1993 on the file of the District Munsif Court, Ariyalur.

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

3. Suit has been laid by the plaintiff for the reliefs of declaration and permanent injunction.

4. The plaintiff claims title to the suit property based upon the sale deed dated 03.10.1989 executed in his favour by Kumarsamy Udaiyar, marked as Ex.A1. Further according to the plaintiff, the suit property had been assigned in favour of Kumarasamy Udaiyar and in this connection, the assignment deed in the name of Kumarasamy

Udaiyar has been marked as Ex.A2. According to the plaintiff, Kumarasamy Udaiyar after enjoying the suit property, had put up a house thereon and had alienated the same in his favour by way of Ex.A1 sale transaction and since then, it is stated that the suit property is in the possession and enjoyment of the plaintiff as the lawful owner. It has also been admitted by the plaintiff that the assignment granted in favour of Kumarasamy Udaiyar in respect of the suit property has been canceled. Materials placed on record go to show that challenging the said assignment, Kumarasamy Udaiyar had preferred an appeal before the concerned authority and the same is still pending. The matters stand as above, on the basis of Ex.A1 sale deed, alleging that the defendants 1 to 3 in particular are attempting to interfere with his possession and enjoyment of the suit property to which that are not entitled to, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The defendants 1 to 3 resisted the plaintiff's suit contending that the assignment granted in favour of Kumarasamy Udaiyar in respect of the suit property has been canceled as he had not complied with the conditions of the assignment and he had failed to put up any construction in the suit property within the time as stipulated in the assignment order and in such view of the matter, according to the defendants 1 to 3, they are entitled to cancel the assignment and therefore it is put forth by them that inasmuch as Kumarasamy Udaiyar has no entitlement to the suit property, as such, he is not entitled, as per law, to convey the same in favour of the plaintiff by way of Ex.A1 sale transaction and therefore, in turn, the plaintiff would also not be entitled to make any claim of valid title to the suit property as well as the lawful possession in respect of the suit property based on Ex.A1 sale transaction and furthermore, it is also stated that the assignment order issued in favour of Kumarasamy Udaiyar has been duly cancelled following the order passed in the Writ petition and therefore the plaintiff's suit has no cause of action and the suit is liable to be dismissed.

6. Based on the materials placed on record by the respective parties, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present Second Appeal has been preferred.

7. No doubt, Kumarasamy Udaiyar had been originally granted the assignment in respect of the suit property by the Government. Admittedly, the suit property is a Promboke land. Therefore, it is found that the Government

is entitled to cancel the assignment issued in favour of Kumarasamy Udaiyar, on his failure to comply with the directions stipulated under the assignment. Now, according to the Government, inasmuch as Kumarasamy Udaiyar had failed to put up any construction in the suit property within the time allotted by law and on the other hand, had endeavored to alienate the same in favour of the plaintiff much against the assignment conditions, his assignment having been cancelled, according to them, the sale deed obtained by the plaintiff in respect of the suit property from Kumarasamy Udaiyar, would not confer any valid title on the plaintiff in respect of the suit property and on the basis of Ex.A1 sale transaction, the plaintiff would not be entitled to seek the reliefs as prayed for.

8. As rightly determined by the Courts below, there is no material placed on the part of the plaintiff that his vendor Kumarasamy Udaiyar had put up any construction in the suit property following the assignment order within the time stipulated thereunder. In such view of the matter, as rightly put forth by the Government, inasmuch as Kumarasamy Udaiyar had failed to comply with the conditions of the assignment, they had rightly cancelled the same and challenging the same, it is found that Kumarasamy Udaiyar had preferred the appeal before the appropriate authority and the same is still pending. Furthermore, even in the sale deed effected in favour of the plaintiff by Kumarasamy Udaiyar marked as Ex.A1, as rightly found by the Courts below, the property has been described only as a vacant site and not stated to be consisting of any superstructure thereon. Therefore, as rightly found by the Courts below, inasmuch as Kumarasamy Udaiyar had not put up any superstructure in the suit property following the assignment and he had sold the suit property as a vacant site in favour of the plaintiff by way of Ex.A1 sale transaction contrary to the assignment conditions, in such view of the matter, the Government having canceled the assignment issued in favour of Kumarasamy Udaiyar, Kumarasamy Udaiyar ceases to have any valid title to the suit property and in such view of the matter, the sale transaction effected by him in favour of the plaintiff by way of Ex.A1 sale deed would not confer a valid title on the plaintiff to the suit property. Therefore, it is seen that the plaintiff has miserably failed to establish that he has a valid title to the suit property.

9. As regards the claim of the plaintiff that he has been in the possession and enjoyment of the suit property following Ex.A1 sale transaction, absolutely there is no acceptable and reliable material placed on the part

of the plaintiff evidencing his claim of possession and enjoyment of the suit property following Ex.A1 sale transaction. In such view of the matter, the case put forth by the plaintiff that following Ex.A1 sale transaction, he has been in the possession and enjoyment of the suit property as the lawful owner and also his further case that he has also prescribed title to the suit property by way of adverse possession also falls to the ground, particularly, when there is no material at all placed on the part of the plaintiff to sustain the abovesaid claim of adverse title to the suit property, particularly against the defendants 1 to 3.

10. Resultantly, inasmuch as the plaintiff has miserably failed to establish his claim of title, possession and enjoyment of the suit property as put forth by him and also his vendor's claim of title and possession and enjoyment of the suit property as put forth by him, in such view of the matter, the plaintiff is found to be not entitled to seek and obtain the reliefs as prayed for.

11. The Courts below had considered all the abovesaid aspects of the matter on a proper appreciation of the materials placed on record both on factual matrix as well as on legal aspects and rightly dismissed the plaintiff's suit. In such view of the matter, I do not find any reason to interfere with the concurrent judgment and decree of the Courts below in dismissing the suit laid by the plaintiff. It is thus found that no substantial question of law is involved in this second appeal for admitting the same.
C.M.P.No.3438 of 2019

12. While the matter stand as such, an application has been preferred by the plaintiff in the second appeal in C.M.P.No.3438 of 2019 to permit him to file the sale deed dated 05.11.1914 as an additional document in support of his case. By way of the abovesaid application, the plaintiff has put forth the case that on verification, he had come to know that the suit property is a private patta land belonging to one Sabapathi Udaiyar and he had alienated the same to one Chellamuthu Udaiyar on 05.11.1914 itself and therefore the question of assigning the suit property by the Government does not arise and further according to the plaintiff, Chellamuthu Udaiyar had died leaving behind his two sons namely Mookappa Udayar and Annamalai Udayar. As Annamalai Udayar has no heirs and Mookappa Udayar had died leaving behind his son namely the plaintiff, accordingly, it is put forth that it is only the plaintiff, who has title to the suit property, as such,

based on the sale deed dated 05.11.1914 and accordingly sought for the reception of the same as an additional document.

13. As rightly argued by the Government Advocate appearing for the defendants 1 to 3, the plaintiff has not come forward with the case that he has a valid title to the suit property by way of a sale deed dated 05.11.1914 as put forth in the abovesaid application. It is found that, by way of the abovesaid application, the plaintiff has brought forth a new case for claiming title to the suit property. When the plaintiff has not based his suit upon the abovesaid plea, he is not entitled to project the same for the first time, in the second appeal and therefore on that score alone the application is found to be liable to be rejected. Furthermore, when the plaintiff has failed to establish that Sabapathi Udayar had a valid title to the suit property as is now sought to be claimed, in such view of the matter, as contended by the defendants' counsel based on the projected additional document, the plaintiff cannot be allowed to seek a valid claim of title to the suit property that too by projecting the abovesaid case in the second appeal. When the second appeal itself is found to be not fit for admission sans the involvement of any substantial question of law for consideration, in such view of the matter, the application preferred by the plaintiff in the second appeal as abovestated for the reception of the additional document does not merit acceptance in the eyes of law and liable to be rejected.

14. For the reasons abovestated, the second appeal is found to be devoid of merits and accordingly the same is dismissed with costs. C.M.P.No.3438 of 2019 is also dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Subordinate Court,
Ariyalur.

2.The District Munsif,
District Munsif Court,
Ariyalur.

Copy to

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

+1 cc to Spl Government Pleader Sr.No. 22527

+1cc to Mr.C.S.Associates, Advocate SR.No. 22922

S.A.No.926 of 2005

and

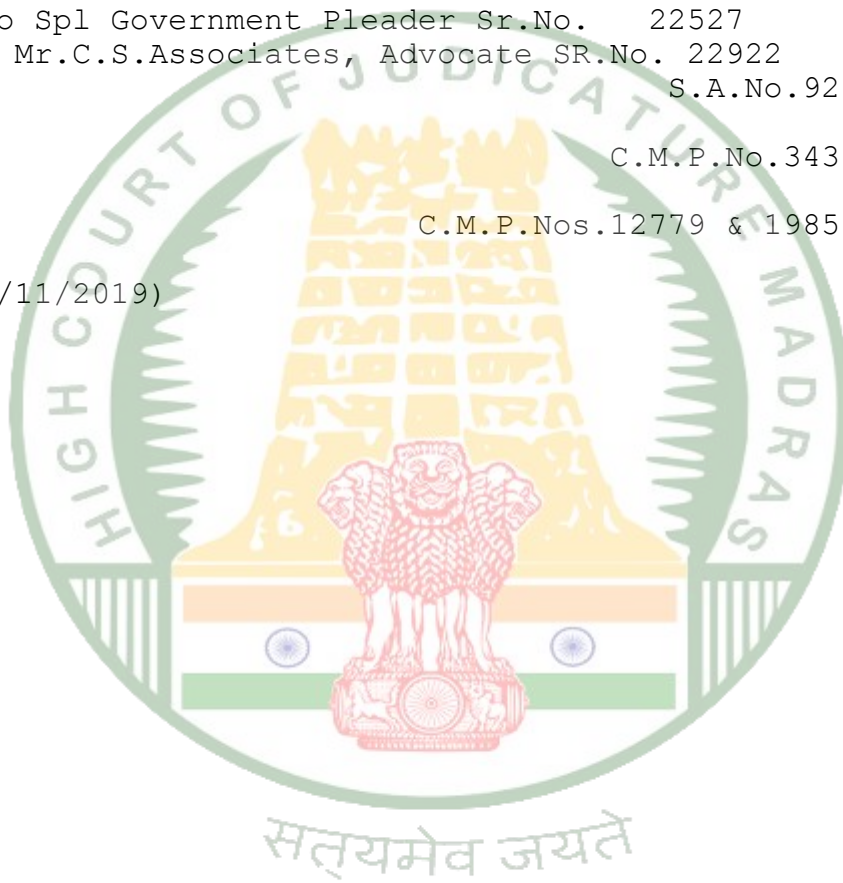
C.M.P.No.3438 of 2019

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C.M.P.Nos.12779 & 19856 of 2005

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A.SK(13/11/2019)



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