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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.04.2019

PRONOUNCED ON : 04.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.109 of 2013

and

C.M.P.No.1 of 2013

G.Thirunavukkarasu

... Appellant/
Plaintiff

Vs.

The Manager,
Rhythiks Firm Pvt Ltd Company,
having its Administrative Office
at No.A1/117, Anna Nagar,
Chennai - 600 010.

... Respondents/
Defendants

PRAYER :

Second Appeal filed under Section 100 of C.P.C., against the decree/judgment dated 10.07.2012 passed in A.S.No.63 of 2010 on the file of the learned Subordinate Judge, Kancheepuram confirming the decree and judgment dated 29.04.2010 and made in O.S.No.566 of 2008 on the file of the District Munsif cum Judicial Magistrate, Sriperumpudur.

For Appellant : Mr.V.Bhiman

For Respondent : Mr.R.Siddharth
for M/s.H.Anbarasu

JUDGMENT

This second appeal has been filed by the plaintiff against the judgment and decree passed by the Sub-Judge, Kancheepuram in A.S.No.63 of 2010 dated 10.07.2012 confirming the judgment and decree passed by the District Munsif-cum-Judicial Magistrate, Sri Perumpudur in O.S.No.566 of 2008 dated 29.04.2010.



2. The appellant had filed a suit in O.S.No.19 of 2007 on the file of the District Munsif, Kancheepuram, to declare that he is the owner of the suit property and for delivery of possession of the suit property. Subsequently, the said suit was transferred to the District Munsif-Cum-Judicial Magistrate, Sri Perumpudur and renumbered as O.S.No.566 of 2008. The learned District Munsif-Cum-Judicial Magistrate, Sriperumpudur by the Judgment dated 29.04.2010 had dismissed the said suit. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.63 of 2010 on the file of the Sub-Judge, Kancheepuram. The learned Sub-Judge, Kancheepuram, by the Judgment dated 10.07.2012 had dismissed the said appeal confirming the judgment and decree passed by the Trial Court. Feeling aggrieved, the plaintiff had filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the Trial Court.

4. The averments made in the plaint are in brief as follows:

The suit property originally belonged to one Muni Ammal, V.Elumalai and V.Dhanapal. The plaintiff had purchased the suit property under a registered sale deed dated 07.06.1972 for valid consideration of Rs.1000/- and from the date of purchase, the plaintiff has been in possession and enjoyment of the suit property. On 09.08.1999, the plaintiff had executed a general power of attorney in favour of one R.Shanmugam Chettiyar to look after the suit property. Accordingly, the said R.Shanmugam Chettiyar was looking after the suit property until the plaintiff cancelled the said power of attorney on 28.09.2006. During the third week of April 2006, the plaintiff came to know that the defendant's Company which is having landed property adjacent to the plaintiff's land was trying to encroach upon the suit property. Hence, the plaintiff had issued notice through his power agent on 15.04.2006 asking the defendant to desist from making any unlawful attempt. The defendant after receipt of the said notice had sent a reply notice through his Lawyer with false averments and thereafter, it seems that defendant's Company had taken possession of the suit property in the last week of May, 2006. Hence, the plaintiff was constrained to file the suit for declaration and for delivery of possession.

5. The averments made in the written statement are in brief as follows:

It is false to state that the plaintiff had purchased the suit property under a registered sale deed dated 07.06.1972 from one Muni Ammal and others and from the date of sale, he has been in possession and enjoyment of the suit property. It is



also false to state that the defendant made attempts to encroach the suit property. It is true that the defendant had received a notice on 15.04.2006, for that, the defendant had sent a suitable reply through his lawyer. It is false to state that after issuing the reply notice, the defendant's Company had taken possession of the suit property in the last week of May, 2006. The suit property was originally belonged to one Shanmugam Chettiyar as his ancestral property and patta also granted in his name after the death of Shanmugam Chettiyar, his son Rathina Chettiyar had sold the property in favour of the defendant under a registered sale deed dated 22.03.1998 and from that date onwards, the defendant is in possession and enjoyment of the suit property. Therefore, there is no question of any encroachment or taking forcible possession of the suit property from the plaintiff. The defendant is in lawful possession of the suit property without any interruption. The suit is barred by limitation. Therefore, the defendant prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned District Munsif-cum-Judicial Magistrate, Sri Perumpudur, had framed necessary issues and tried the suit. During Trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and also examined one more witness as P.W.2. He marked Exhibits A1 to A8 as exhibits. On the side of the defendant, one witness was examined as D.W.1 and Exs.B1 to B4 were marked as exhibits.

7. The learned District Munsif-cum-Judicial Magistrate, Sri Perumpudur, after considering the materials placed before him found that the plaintiff failed to prove title over the suit property and also possession of the suit property. Further, he found that the suit is barred by limitation. Accordingly, he dismissed the suit. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.63 of 2010 on the file of the Sub-Judge, Kancheepuram. The learned Sub-Judge, Kancheepuram by the Judgment dated 10.07.2012, had dismissed the said appeal confirming the judgment and decree passed by the Trial Court. Feeling aggrieved, the plaintiff had filed the present second appeal.

8. This Court on 12.02.2019 after hearing both sides and perusing the appeal memorandum and Judgment of the Courts below has admitted the second appeal and formulated the following substantial questions of law:

"(1) Whether the Courts below are right in rejecting the claim of the appellant when the property has been obtained without tracing the title of the property?



(2) Whether the Courts below are right in rejecting the claim of the appellant when the suit property have been purchased on the basis of the patta which will not confer the title?

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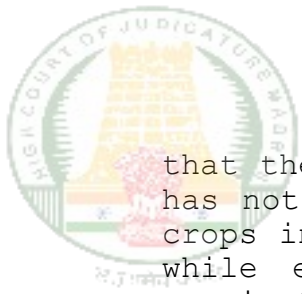
(3) Whether the Court below are right in accepting the inconsistent stand of the defendant with regard to the purchase of the property? "

9. Heard Mr.Mr.V.Bhiman, the learned counsel for the appellant and Mr.R.Siddharth for M/s.H.Anbarasu, the learned counsel for the respondent.

10. Substantial Questions of Law 1, 2 and 3:

The learned counsel for the appellant/plaintiff has submitted that the Courts below failed to consider that the plaintiff had purchased the suit property under Ex.A1 Sale deed dated 07.06.1972 and from that date onwards, he has been in possession and enjoyment of the suit property. He further submitted that the courts below failed to consider that the plaintiff had executed a general power of attorney on 09.08.1999 vide Ex.A2 in favour of Shanmuga Chettiyar and in the pursuance of the said power of attorney, the said Shanmuga Chettiyar was looking after the suit property until it was cancelled by the plaintiff on 28.09.2006. He further submitted that the Courts below failed to consider that taking advantage that the defendant's company is having land adjacent to the suit property, had made attempts to trespass into the suit property and hence the plaintiff has sent a notice to the defendant through power agent on 15.04.2006 and after receipt of the said notice, the defendant had sent a reply notice with false averments and taken possession of the suit property forcibly. He further submitted that the Courts below placing reliance upon Ex.B3 Patta which has been granted in favour of the defendant, concurrently held that the defendant is the absolute owner of the suit property. He further submitted that the suit has been filed for delivery of possession based on title and in the absence of any plea for adverse possession by the defendant, the Courts below ought not to have dismissed the suit, on the ground of limitation. He further submitted that the courts below without considering the oral and documentary evidence in a proper perspective rejected the plaintiff's claim and hence he prayed to allow the second appeal and set aside the judgments and decrees passed by the courts below and decree the suit as prayed for.

11. Per Contra, the learned counsel for the respondent has submitted that the plaintiff failed to prove that how his vendors got title over the suit property. He further submitted



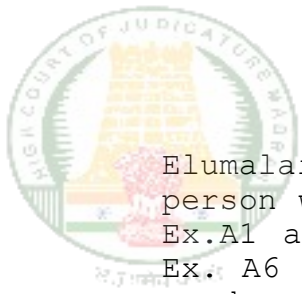
that the suit property is an agricultural land and the plaintiff has not produced any adangal extract to show that he has raised crops in the suit property at any point of time. The plaintiff, while examining himself as P.W.1 has admitted in his cross examination that even at the time of executing the power of attorney in the year 1999 itself, he knows that the defendant's company has been in possession and enjoyment of the suit property. He further submitted that taking in to consideration of the aforesaid facts, the Trial Court has dismissed the plaintiff's suit and the same has been confirmed by the First Appellate Court and in the said factual concurrent findings, this Court cannot interfere and therefore, he prayed to dismiss the second appeal.

12. The suit property is admeasuring 1.54 acres of punja land situated in Survey No.202/1 of Mettupalayam Village, Sri Perumpudur Taluk. According to the plaintiff, he purchased the suit property under Ex.A.1 sale deed dated 07.06.1972 from one Muniammal, w/o. L.Shanmugam, Elumalai, S/o.Velu and Dhanapal, S/o.Velu.

13. A perusal of Ex.A.1 shows that there is no recital in the said document as to how the vendors of the plaintiff got title over the suit property. Further, it is also not stated in the said document that they had handed over the possession of the suit property to the plaintiff. They had simply stated that the plaintiff has to take possession of the suit property and enjoy the same as absolute owner.

14. Though in Ex.A.2 Power of Attorney, it is stated that the plaintiff has been in possession and enjoyment of the suit property from the date of purchase, in Ex.A.1, it is not specifically stated that his vendors had handed over the possession of the suit property. Further, the plaintiff, while examining himself as P.W.1 has admitted in his cross examination that on the date of execution of power of attorney itself, the defendant's company was in possession of the suit property.

15. As already pointed out that in Ex.A.1 it is not stated that how the vendors of the plaintiff got right over the suit property. P.W.1 in his cross-examination has stated that his vendors got the suit property from one Elumalai Naicker and the said Elumalai Naicker gave the suit property only orally to the said Muni Ammal. Further, the plaintiff has produced a Registration Copy of the sale deed dated 13.11.1962 and marked as Ex.A6. In the said document, it is stated that one Shanmugam S/o.Velu, had purchased the suit property on 13.11.1962 from one Rangasamy Naidu. In Ex.A1 while describing the name of vendors, it is stated that (1) Muniammal W/o.L.Shanmugam (2)



Elumalai S/o.Velu and (3) Dhanapal S/o.Velu. Therefore, the person who is mentioned as L. Shanmugam husband of Muniammal in Ex.A1 and the person who is mentioned as Shanmugam S/o.Velu in Ex.A6 are not one and the same person. Further, if really, the vendors of the plaintiff are legal heirs of the said Shanmugam, the said fact would have been mentioned in Ex.A.1. Further, the vendors of the plaintiff would have mentioned in Ex.A1 that they got the property through Shanmugam and the said Shanmugam in turn got the property under Ex.A6 sale deed dated 13.11.1962. In Ex.A1, there is no reference at all as to Ex.A6. Further, P.W.1 has deposed in his cross examination that one Elumalai Naicker gave the suit property orally to Muniammal. Therefore, it cannot be inferred that the plaintiff's vendors got the property through Ex.A.6 Sale deed.

16. It is also to be pointed out that though the plaintiff claimed that he purchased the suit property under Ex.A.1 on 07.06.1972 and from that date onwards, he has been in possession and enjoyment of the suit property, to show his possession, he has not produced any patta, chitta or any other revenue records. Further, P.W.1 has stated in his chief-examination, he has been paying kist to the suit property, but he has not produced even a single kist receipt. On the Contrary, the defendant has produced the sale deed and marked as Ex.B2 and also produced patta and marked as Ex.B.3. The defendant has produced kist receipt and marked Ex.B.4 series. Though the defendant also did not produce any documentary evidence to show how his vendor got title over the suit property, taking into consideration that the defendant is in possession of the suit property and also the fact that the plaintiff failed to prove that how his vendors got title over the suit property and also the fact that the plaintiff failed to prove from which date, the defendant is in possession of the suit property, the Courts below concurrently found that the plaintiff is not entitled for the relief for declaration and possession. In the said factual concurrent findings, this Court cannot interfere. Accordingly, the substantial questions of law are answered against the appellant/ plaintiff.

17. In the result, the second appeal is dismissed confirming the Judgments and decrees of the Courts below. No costs. Consequently, connected miscellaneous appeal is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

Vv



To

1. The Subordinate Judge,
Kancheepuram

2. The District Munsif cum Judicial Magistrate,
Sriperumpudur.

3. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.V.Bhiman, Advocate, S.R.No.33078

S.A.No.109 of 2013
and
C.M.P.No.1 of 2013

RK(CO)
CS/13/09/2019