

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.08.2019

DATED : 27.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A. Nos. 796 & 180 of 2015

And

M.P.No. 1 of 2015

S.A.No. 796 of 2015

Masilamani

.. Appellant

Vs.

1. Sathasivam (Died)

[R1 died R2 are recorded as LRs of the deceased R1 Viz.
Sathasivam vide Order of Court dated 14.11.2016 in S.A.No.
796/2015)

2. Vajjirammal

.. Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree of the Subordinate Judge's Court at Harur, dated 10.07.2015 in A.S.No. 9 of 2014 partly reversing the Judgment and Decree of the District Munsif Court at Harur, dated 07.02.2014 in O.S.No. 176 of 2010.

S.A.No. 180 of 2015

Masilamani

.. Appellant

rep. By her Power Agent,
Inbasekaran.

Vs.

Vajjirammal

.. Respondent

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree of the Subordinate Judge's Court at Harur, dated 27.08.2014 in A.S.No. 33 of 2013 confirming the Judgment and Decree of the District Munsif Court at Harur, dated 26.02.2013 in O.S.No. 99 of 2010.

For Appellant in both

S.As.

: Mr. P.Valliappan

For Respondents in

both S.As.

: Mr. Zenath Begum

COMMON JUDGMENT

S.A.No. 796 of 2015 arises from O.S.No. 176 of 2010 on the file of the District Munsif Court, Harur.

2. O.S.No. 176 of 2010 had been filed by the plaintiff Masilamani represented by her Power Agent, Inbasekaran, her husband, against two defendants Sathasivam and his wife Vajjirammal seeking declaration of title with respect to the suit property and for recovery of possession and for mense profits.

3. The said suit, was partly decreed by judgment dated 07.02.2014 to the extent of declaration of title. Thereafter, the defendants filed A.S.No. 9 of 2014 before the Sub Court, Harur. The said Appeal was allowed by Judgment dated 10.07.2015. Consequently, the plaintiff has filed the present Second Appeal.

4. The Second Appeal had been admitted on the following substantial questions of law:-

"a. Having found that the appellant is the owner of the suit property by virtue of Exhibit A6 sale deed dated 24.06.1986, is the lower appellate Court correct in law in non-suiting the appellant on the flimsy ground that she settled suit property on her husband under Exhibit B1 settlement deed dated 06.08.2012 during the pendency of the suit, by not considering the gamut of Section 52 of the Transfer of Properties Act, 1882?;

b. When the intention of Section 52 of the Transfer of Property Act, 1822 is not to annul voluntary transfers effected by the parties to the suit but only to render them subservient to the rights of the parties thereto under the decree which may be made in the suit, whether the lower appellate Court is correct in law in holding that the appellant cannot maintain the suit due to the doctrine of lis pendens, especially when the appellant had settled only a portion of the suit property under Exhibit B1?; and

c. Whether the lower appellate court is correct in law in holding that the appellant is not entitled to recovery of possession after finding that the trial Court had not

framed any issue regarding the said relief, overlooking the fact that the respondents had already vacated the suit property?".

5. S.A.No. 180 of 2015 arises from O.S.No. 99 of 2010 on the file of the District Munsif Court, Harur.

6. O.S.No. 99 of 2010 had been filed by the plaintiff Masilamani represented by her Power Agent Inbasekaran against Vajjirammal, and the District Collector, Dharmapuri District and the Sub Registrar, Harur seeking an order of permanent injunction restraining the third defendant from registering any document by the first defendant with relation to the suit property. The said suit was dismissed by Judgment dated 26.02.2013. Thereafter, the plaintiff filed A.S.No. 33 of 2013 before the Sub Court, Harur. The Appeal was also dismissed by Judgment dated 27.08.2014. The plaintiff had therefore filed the present Second Appeal. This Second Appeal was admitted on the following substantial questions of law:-

"1. Whether the Courts below are correct in law in holding that the appellant had not established her possession, particularly when the suit is for permanent injunction restraining the respondent from alienating the suit property?;

2. When admittedly the appellant had purchased the suit property under registered sale deed dated 24.01.1986 executed by the respondent and the respondent had also admitted the execution of the same in her written statement, whether the Courts below are correct in law in non-suited the appellant?

3. Whether the Courts below are correct in law in holding that the appellant had not established that the respondent was about to alienate the suit property oblivious of the provisions of Order 8 Rule 3 to 5 of the Code of Civil Procedure?;

4. When the suit is for permanent injunction restraining alienation, is it correct to conclude that the appellant had to seek declaration of title especially when the question of title is

not in issue?

5. Whether the Lower Appellate Court is correct in law in eschewing the vital document produced at the appellate stage”.

7. S.A.No. 796 of 2015 is taken up for discussion first since the issue involves declaration of title over the suit property.

8. The suit properties are two thatched houses in Thottampatti Village, Harur, Dharmapuri District. It is the case of the plaintiff in O.S.No. 176 of 2010 that she was the absolute owner of the suit property since the second defendant Vajjirammal had sold the property to her by a registered sale deed dated 24.01.1986. It must be mentioned that the plaintiff is represented by her Power of Attorney Agent, who is none other than her husband. The defendants Sathasivam and Vajjirammal are the younger brother and sister-in-law of the father of Inbasekaran. It is claimed that even though the second defendant Vajjirammal had executed a sale deed with respect to the suit property on 24.01.1986, they continued to reside in the said property and had however agreed to vacate the premises. But, even though the plaintiff sought vacant possession, since they did not vacate, the suit had been filed seeking declaration of title and possession.

9. It is the case of the defendants that the property was allotted to the first defendant Sathasivam pursuant to a partition between himself and the father of Inbasekaran in the year 1992. The defendants claimed to be in possession. They had no issues. They brought up Inbasekaran as their own son. Out of love and affection, they wanted to settle the property to him. However, he had obtained signatures in a sale deed claiming it was a settlement deed. They claimed that they had no intention to execute a sale deed. They stated that the suit should be dismissed.

10. The learned District Munsif, on the basis of the pleadings framed necessary issues particularly with respect of declaration of right and title. During trial, Inbasekaran was examined as PW-1 and two other witnesses were examined as PW-2 and PW-3. The defendants did not adduce oral evidence. The plaintiff marked Exs. A-1 to A-13. Ex.A-6 was the Sale Deed dated 24.01.1986 and Exs. A-7; A-8 and A-9 were the kist tax receipts, patta and 'A' register respectively. Exs. A-10 to A-12 were the house tax receipts and electricity bills. During cross examination of the plaintiff's witness, the defendants marked Exs. B-1 and B2, namely Gift Deed dated 06.08.2012 and Rectification Deed dated 07.12.2012.

11. It was the contention of the defendants during trial that the plaintiff Masilamani had executed Exs. B-1 and B-2 in favour of her husband and consequently, she cannot maintain the relief of declaration of title. The learned District Munsif found that the defendants had not come forward to adduce evidence regarding the averments in the written statement that they signed Ex.A-6 sale deed thinking it to be a settlement deed. More over the sale deed was of the year 1986 and they had not taken any effective steps to cancel the same. In view of those facts and also in view of the fact that the Revenue records stood in the name of the plaintiff, the suit was decreed with respect to declaration of title. It was also found that the defendants had vacated the premises in the year 2012 itself. Consequently, the relief sought for mense profits was dismissed.

12. The learned First Appellate Court Judge however took into consideration Exs. B-1 and B-2 and observed that though they are subsequent to the suit, since the plaintiff had settled the property in favour of her husband, she cannot maintain her claim for title over the property and consequently, reversed the Judgment of the trial Court and dismissed the suit.

13. The Second Appeal, as aforesaid had been admitted on the following substantial question of law:-

"a. Having found that the appellant is the owner of the suit property by virtue of Exhibit A6 sale deed dated 24.06.1986, is the lower appellate Court correct in law in non-suiting the appellant on the flimsy ground that she settled suit property on her husband under Exhibit B1 settlement deed dated 06.08.2012 during the pendency of the suit, by not considering the gamut of Section 52 of the Transfer of Properties Act, 1882?;

b. When the intention of Section 52 of the Transfer of Property Act, 1822 is not to annul voluntary transfers effected by the parties to the suit but only to render them subservient to the rights of the parties thereto under the decree which may be made in the suit, whether the lower appellate Court is correct in law in holding that the appellant cannot maintain the suit due to the doctrine of lis pendens, especially when the appellant had settled only a portion of the suit property under Exhibit B1?; and

c. Whether the lower appellate court is

correct in law in holding that the appellant is not entitled to recovery of possession after finding that the trial Court had not framed any issue regarding the said relief, overlooking the fact that the respondents had already vacated the suit property?".

14. Heard arguments advanced by Mr.P.Valliappan, learned counsel for the appellant and Ms. Zeenath Begum, learned counsel for the respondents. The appellants are the plaintiffs and the respondents are the defendants. For the sake of convenience, the parties will be referred as plaintiffs and the defendants.

15. It is an admitted fact that the sale deed dated 24.06.1986 had been executed by the second defendant, Vajjrammal in favour of the plaintiff Masilamani. Subsequent to registration of the sale deed, the name of the plaintiff had been mutated in the revenue records, namely, patta, kist receipts and 'A' Register. The house tax receipts and electricity bills are also in the name of the plaintiff. Consequently, I hold that the plaintiff had perfected her title over the suit property. The defendant had not let in any oral evidence to substantiate their claim that they signed Ex.A-6 sale deed under the impression that it was only a settlement deed. However, the First Appellate court had rejected granting declaration of title on the ground that the plaintiff had settled the property in favour of her husband. This reasoning of the First Appellate Court cannot be sustained. Even assuming that the settlement deed had been effected by the plaintiff, if the settlee is to have a clear title, then, the settlor's title must be declared. The suit has been filed only for that purpose. The settlement deed is subsequent to the suit. Declaration of title of the settlor or the plaintiff has to be based on the date of cause of action and as on that date, so long as the Courts had found that the title deed, namely, sale deed, Ex.A-6 has established title on the plaintiff then declaration to that effect must be granted. Documents executed pending the suit cannot be the basis for non-suiting the plaintiff.

16. In view of the above observations I hold, with respect to the first substantial question of law that the First Appellate Court was not correct in law in non suiting the plaintiff on the ground of Ex.B-1 settlement deed.

17. With respect to the second substantial question of law again I hold that the Lower Appellate Court was wrong in holding that the plaintiff cannot maintain the suit due to the Doctrine of lis pendence. It was only a portion of the property which had been settled and even that would not affect seeking of declaration of title as the plaintiff as on the date of the suit.

18. With respect to the third substantial question of law, I hold that since the defendants had vacated the premises and since RW-1 had also admitted that fact, no issue arises for consideration with respect to either recovery of possession or with respect to mense profits.

19. In view of the above observations, S.A.No. 796 of 2015 is allowed, however without costs.

***20."** The above conclusion also leads to the further conclusion that the questions raised in S.A.No. 180 of 2015 are reduced only to an academic exercise. It is however seen that both courts below had dismissed the suits on the ground that Vajjirammal had vacated, failing to note that injunction was sought restricting her from alienating the suit property. Alienation of property is independent of possession of the suit property. In view of that fact the Judgment and Decree of both courts below are reversed, the appeal is allowed."

21. In the result,

***(1) S.A.No.796 of 2015 is allowed;**

(2) S.A.No.180 of 2015 is allowed;

(3) there are no orders as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Insp.Cell)

Dated: 28/08/2019

*** Deleted and Substituted vide
court order dated 26.02.2020
made in Rev.Appln No.30/20 in
SA.No. 180/2015 herein**

Sd/- Assistant Registrar (Inspection Cell)

Dated: 05/08/2020

//True Copy//

Sub Assistant Registrar

vsg

To

1. Sub Court, Harur.
2. District Munsif Court,
Harur.
3. VR Section, High Court,
Madras.

**To be Substituted to the order
already despatched on 30/08/2019**

+1cc to Mr.P.Valliappan, Advocate, S.R.No. 74809 (06/02/2020)

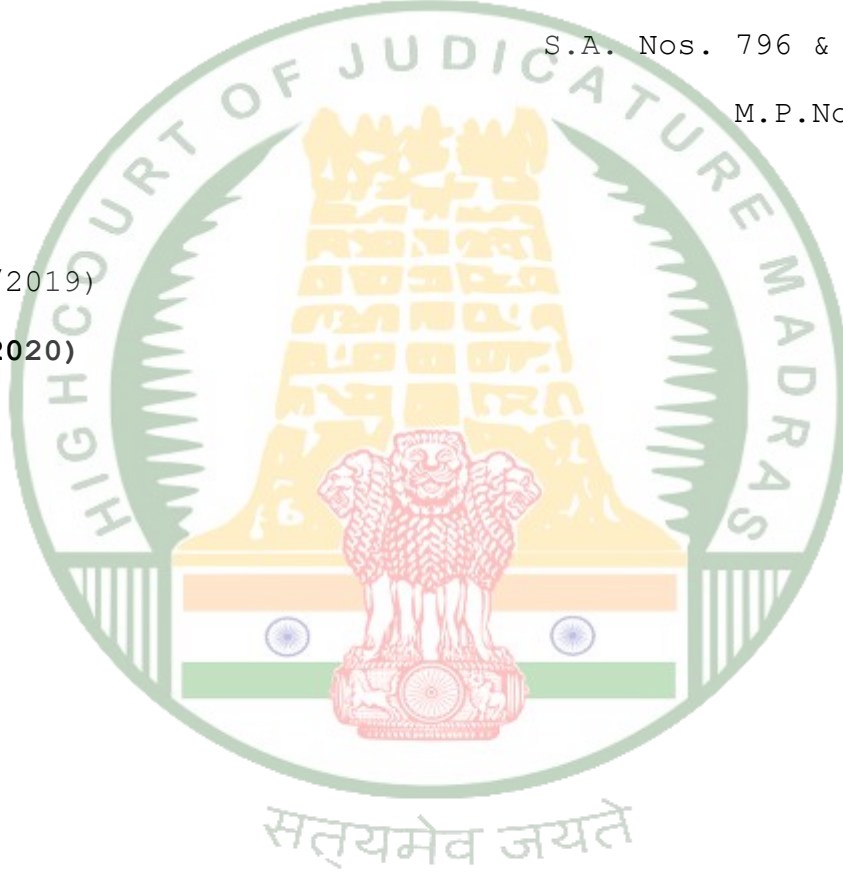
+1cc to Mr.P.Valliappan, Advocate, S.R.No. 74810 (06/02/2020)

S.A. Nos. 796 & 180 of 2015
And
M.P.No. 1 of 2015

KJ (CO)

RRS (28/08/2019)

GN (06/08/2020)



WEB COPY