



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2019

PRONOUNCED ON : 09.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.204 of 2013

and

M.P.No.1 of 2013

1.Durai

2.Kannaga

... Appellants/Defendants 3 and 4

Vs.

1.K.V.S.Salammal

2.Saravanan

3.Alamelu

Ammal

... Respondents/Plaintiff Defendants 1 and 2

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment passed in A.S.No.30 of 2006 by the Additional District Judge (Fast Track Court No.V), Thiruvallur dated 20.09.2007 reversing the decree and judgment in O.S.No.702 of 1993 dated 26.03.2004 passed by the District Munsif, Thiruvallur.

For Appellants : M/s.K.S.Lakshmi Kumaran
B.Christ Das
M.Balasubramanian

For Respondents : set ex-parte

JUDGMENT

This second appeal has been filed by the defendants 3 and 4 against the judgment and decree passed by the Additional District Judge, (Fast Track Court No.V), Tiruvallur in A.S.No.30 of 2006 dated 20.09.2007 reversing the judgment and decree passed by the District Munsif, Tiruvallur in O.S.No.702 of 1993 dated 26.03.2004.



2. The first respondent herein had filed a suit in O.S.No.702 of 1993 on the file of the District Munsif, Tiruvallur to declare her title over the suit properties and for permanent injunction restraining the defendants, their men, etc., from interfering with her peaceful possession and enjoyment of the suit properties. The learned District Munsif, Tiruvallur, by the judgment dated 26.03.2004 had partly decreed the suit declaring the plaintiff's title over the Item Nos.1 to 3 of the suit properties and also granted permanent injunction in respect of Item Nos.1 to 3 of the suit properties. However, he dismissed the suit in respect of Item No.4 of the suit properties. Feeling aggrieved, by the dismissal of the suit in respect of Item No.4 of the suit properties, the plaintiff had filed an appeal in A.S.No.30 of 2006 on the file of the Additional District Judge, (Fast Tract Court No.V), Tiruvallur. The learned Additional District Judge, Tiruvallur, by the judgment dated 20.09.2007 had allowed the said appeal and set aside the judgment and decree passed by the trial Court in respect of Item No.4 of the suit properties and granted decree as prayed for in respect of Item No.4 of the suit properties also. Aggrieved by the same, the defendants 3 and 4 have filed the present second appeal. For the sake of convenience, the parties are referred to as described before the trial Court.

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

(a) One Jittu Udayar @ Govinda Udayar, Son of Chinna Govinda Udaiyar had purchased item Nos.1 and 2 of the suit properties under a registered sale deed dated 25.01.1939 from one Pasoor Reddi and others. On the same day, the said Jittu Udayar @ Govinda Udayar had purchased item Nos.3 and 4 of the suit properties from the same persons under a separate registered sale deed. The said Jittu Udayar @ Govinda Udayar and his brothers namely, Saminatha Udayar and Rajagopal Udayar constituted a Hindu joint family. The said Rajagopal Udayar had released his right in the suit properties by executing a registered release deed dated 30.05.1949 in favour of Jittu Udayar @ Govinda Udayar and Saminatha Udayar and subsequently, the said Jittu Udayar @ Govinda Udayar and Saminath Udayar had executed a settlement deed dated 01.09.1950 in favour of one Kannammal, who is daughter-in-law of Jittu Udayar @ Govinda Udayar.

(b) In pursuance of the said settlement deed, the said Kannammal got the suit properties and enjoyed the same as absolute owner. She had mortgaged the suit properties along with her children in favour of one Kuppusamy Nattar under a registered mortgaged deed dated 04.05.1981. Thereafter the said



mortgage was redeemed on 18.06.1985. Later the said Kannammal and her children had sold the suit properties to the plaintiff under a registered sale deed dated 10.10.1985. Pattas for the suit properties were also transferred to the name of the plaintiff. Since the land in the vicinity where the suit property is situated is used as house sites, the plaintiff has not cultivated the suit properties and it remains as vacant land. Except the plaintiff, no others have any right over the suit properties. The defendants are strangers and they have no right over the suit properties. The defendants attempted to trespass into the suit properties, taking advantage that the plaintiff is residing away from the suit properties. Hence, the plaintiff was constrained to file the above suit for the relief of declaration and permanent injunction.

4. The averments made in the written statement filed by the defendants 1 and 2 are in brief as follows:

(a) It is false to state that the suit properties were purchased by one Jittu Udayar @ Govinda Udayar under separate sale deeds dated 25.01.1939 from one Pasoor Reddi and others and subsequently Jittu Udayar @ Govinda Udayar and his brothers Rajagopala Udayar and Saminath Udayar constituted a joint Hindu Family and thereafter Rajagopala Udayar executed a release deed in favour of other two brothers and thereafter the said Jittu Udayar @ Govinda Udayar and Saminatha Udayar had executed a registered settlement deed in favour of one Kannammal and the said Kannammal and her children had sold the suit properties to the plaintiff under the sale deed dated 10.10.1985. The aforesaid persons were never in possession and enjoyment of the property situated in S.No.511/1 (paimash No.485) ad measuring 22 cents out of 66 cents and the same has been shown as Item No.4 in the plaint. The land situated in Paimash No.485 originally belonged to one Kamatchiammal in patta No.78 of Pungathur. The said Kamatchiammal's heirs sold the property situated in Paimash No.485 ad-measuring 22 cents to the husband of the second defendant through a registered sale deed dated 09.03.1945. After resurvey, Paimash No.485 was assigned Survey Number as S.No.511/1 and the same has been in possession and enjoyment of one Kuppusamy Nattar.

(b) The said Kuppusamy Nattar and his wife Alameluammal had sold 18 cents out of 66 cents in S.No.511/1 to one Muthammal under a registered sale deed dated 02.07.1987. After the death of the said Kuppusamy Nattar on 09.02.1989, the defendants 1 and 2 succeeded to his properties. The defendants 1 and 2 sold 44 cents out of the remaining 48 cents through a registered sale deed dated 17.09.1992 in favour of one K.Diraviam wife of A.Krishnaswamy. By another sale deed dated 30.10.1992, the defendants 1 and 2 sold 18 cents along with Muthammal to the fourth defendant and therefore, the defendants 1 and 2 prayed to



dismiss the suit.

5. The averments made in the written statement filed by the defendants 3 and 4 are in brief as follows:

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The allegations that the plaintiff had purchased the suit properties under a registered sale deed dated 10.10.1988 is false. The defendants 3 and 4 and their predecessor in title viz., Alameluammal, Saravanan and Muthammal had been cultivating the suit properties and the suit properties are vacant for the past one year alone for want of irrigation. The fourth defendant had purchased 22 cents in R.S.No.511/1 from the defendants 1 and 2 and one Muthammal on 30.10.1992 and from that date onwards the defendants 3 and 4 are in exclusive possession and enjoyment of the item No.4 of the suit properties. The defendants 3 and 4 and their predecessors in title have been in possession and enjoyment of the said property for more than twelve years and hence, they perfected title by adverse possession also. The plaintiff is not at all in possession of item No.4 of the suit properties and therefore, the defendants 3 and 4 prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned District Munsif, Tiruvallur, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined herself as PW1 and also examined two more witnesses as PW2 and PW3. She has marked Exs.A1 to Ex.A8 as exhibits. On the side of the defendants, the first defendant was examined as DW1 and the third defendant was examined as DW2 and they also examined two more witnesses as DW3 and DW4. They have marked Exs.B1 to Ex.B25 as exhibits.

7. The learned District Munsif, after considering the materials placed before him found that the plaintiff had established her title and possession in respect of item Nos.1 to 3 of the suit properties but she failed to prove her title and possession in respect of item No.4 of the suit properties. Accordingly, he partly decreed the suit in respect of item Nos.1 to 3 but he dismissed the suit in respect of Item No.4 of the suit properties. Aggrieved by the dismissal of the suit in respect of item No.4 of the suit properties, the plaintiff had filed an appeal in A.S.No.30 of 2006 on the file of the Additional District Judge, (Fast Track Court No.V), Tiruvallur and the learned Additional District Judge had allowed the said appeal and decreed the suit in respect of item No.4 of the suit properties also. Feeling aggrieved, the defendants 3 and 4 have filed the present second appeal.



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8. This Court, at the time of admitting the second appeal, has formulated the following substantial questions of law:-

"1. Whether the first Appellate Court is right in reversing the decree and judgment of the lower Court especially when it is found that boundaries are different in Ex.A5 and Ex.B6?

2. Whether the decree and judgment of first Appellate Court is sustainable when there is no proof to establish the possession of the first respondent/plaintiff as against the patta in favour of the appellant which is proof for possession?"

9. Though notices have been served on the respondents 1 to 3 on 04.07.2013 and their names also printed in the cause list, they neither appeared in person nor through counsel and hence, they have been called absent and set exparte. Hence, after hearing the arguments of Mr.K.S.Lakshmi Kumaran, Mr.B.Christ Das and Mr.M.Balasubramanian, learned counsel for the appellants and perusing the records, the judgment is being passed in the Second Appeal.

10. Substantial questions of law 1 and 2:

The learned counsel for the appellants has submitted that the first Appellate Court erred in holding that Item No.4 of the suit properties is included in Exs.A1 and A4. He further submitted that the first Appellate Court failed to consider that Exs.B6 to B10 would establish that the claim of the plaintiff with respect to Item No.4 of the suit properties is without any basis. He further submitted that the first Appellate Court having found that the boundaries given in Ex.A5 and Ex.B6 are different ought not to have accepted the claim of the plaintiff, in respect of Item No.4 of the suit properties and therefore, he prayed to allow the Second Appeal and set aside the judgment and decree passed by the trial Court.

11. In the plaint schedule, there are four items mentioned. Item No.1 is situated in S.No.224/2 ad-measuring 11 cents. Item No.2 is situated in S.No.224/3 ad-measuring 11 cents and that the aforesaid items are situated in Perumbakkam Village,



Tiruvallur Taluk. Item No.3 is situated in S.No.510/2 ad-measuring 16 cents and item No.4 is situated in S.No.511/1 ad-measuring 22 cents out of 66 cents. Item Nos.3 and 4 are situated in Pungathur Village, Tiruvallur Taluk. There is no dispute with regard to the item Nos.1 to 3 of the suit properties. The dispute is only with regard to item No.4 of the suit properties i.e., 22 cents out of 66 cents situated in S.No.511/1 of Pungathur Village, Tiruvallur Taluk.

12. The plaintiff is tracing title to her property through Exs.A2 to A6. Whereas, the fourth defendant is tracing title to her property through Exs.B6, B7 and B9. Amongst the aforesaid documents, the oldest document is Ex.A2 dated 25.01.1939 which stands in the name of Jittu Udayar @ Govinda Udayar. In the said document, it is also stated that 0.2.2 kani land situated in Paimash No.485 sold to the said Jittu Udayar @ Govinda Udayar. In the said document, it is stated that the aforesaid properties are situated on the north of Kamatchiammal's land. The next oldest document is Ex.B7 dated 09.03.1945. In the said document, it is stated that one Thayammal and legal heirs of Kamatchiammal had sold the property ad-measuring 0.2.2 kani land situated in Paimash No.485 among other lands in favour of one Kuppusamy Nattar son of Raji Nattar. In the said document, while describing the boundaries for the aforesaid property, it is stated that the said property is situated on the south of Jittu Udayar @ Govinda Udayar's lands. From Exs.A2 and Ex.B7 it is clear that the property of Jittu Udayar @ Govinda Udayar which has been purchased by him under Ex.A7 is situated on the northern side and the property purchased by Kuppusamy Nattar under Ex.B7 is situated on the southern side and it is also clear that they had purchased their properties from different persons.

13. The next oldest document is Ex.A3 dated 30.05.1949. The said document is the release deed executed by one Rajagopal Udayar in favour of the said Jittu Udayar @ Govinda Udayar and Saminatha Udayar. In the said document, while mentioning the southern boundary, instead of mentioning the land of Kuppusamy Nattar, it has been wrongly mentioned as the land of Kamatchiammal, perhaps it may be mentioned so, without knowing the fact that the said Kuppusamy Nattar had already purchased the said property from the legal heirs of Kamatchiammal.

14. The next oldest document is Ex.A4 dated 01.09.1950. Under the said document, the said Jittu Udayar @ Govinda Udayar and Saminatha Udayar had settled the suit properties in favour of one Kannammal. In the said document, while describing the



property ad- measuring 0.2.2 kani land situated in Paimash No.485, it has been correctly mentioned, the southern boundary as Kuppusamy's land.

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15. Ex.A6 is the mortgage deed dated 04.05.1981 executed by the said Kannammal and her sons in favour of Kuppusamy Nattar son of Raji Nattar. In the said document, for item No.4 instead of mentioning Paimash No.485, it has been mentioned as S.No.511/1 and 22 cents out of 66 cents. In the said document, the western boundary has been shown as Kuppusamy Nattar's land, eastern and northern boundaries have been shown as Alamelu Ammal's land. Ex.A5 is the sale deed dated 10.10.1985 executed by the said Kannammal and her sons in favour of the plaintiff namely, Salammal. In the said document also the same description has been given.

16. Ex.B9 is the sale deed dated 02.07.1987. In the said sale deed it is stated that the aforesaid Kuppusamy and his wife Alamelu Ammal had sold 18 cents out of 66 cents in S.No.511/1 in favour of one Muthammal wife of Kistapa Reddiar. The said Muthammal, the wife and son of Kuppusamy Nattar namely, Alamelu Ammal and Saravanan had jointly sold four items in favour of the fourth defendant namely, Kanaga. In the said document, item No.4 is mentioned as 18 cents out of 66 cents in S.No.511/1. While describing the said property, it is stated that the said property is situated on the south of Salammal's land. The said Salammal is the plaintiff. So, it is clear that the fourth defendant and her vendors namely, the defendants 1 and 2 have clearly admitted that on the northern side, the plaintiff's property is situated. But the plaintiff and the fourth defendant are claiming right over the same property. So, it appears that the parties are in confusion with regard to the identity their properties. Under the said circumstances, this Court is of the view that the properties which have been purchased by both the parties have to be measured by appointing an Advocate Commissioner.

17. The properties have to be measured with the help of a qualified surveyor with reference to Exs.A2 to Ex.A6, Ex.B6, Ex.B7 and Ex.B9, field measurement plan and other revenue records and the properties of both the parties have to be identified and located and then only the issue between the parties can be properly adjudicated. Hence, this Court is inclined to remand the matter to the trial Court. Accordingly, the substantial questions of law are answered.



18. In the result, this Second Appeal is allowed. The judgments and decrees passed by the Courts below are set aside. The matter is remitted back to the trial Court. The trial Court is directed to appoint an Advocate Commissioner to measure the properties of both the parties with the help of a qualified surveyor with reference to Ex.A2 to A6, B6, B7 and B9, field measurement plan and other revenue records and identify and locate the properties of both the parties. It is further directed that after filing of the report and plan by the Advocate Commissioner as aforesaid, the trial Court has to dispose of the suit in O.S.No.702 of 1993 in accordance with law. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

dna

To

- 1.The Additional District Judge, (FTC No.V)
Thiruvallur.
- 2.The District Munsif,
Thiruvallur.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.M.Balasubramanian, Advocate SR.No.36011

S.A.No.204 of 2013
and
M.P.No.1 of 2013

VBA (CO)
GMY (07/11/2019)