

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2019

Delivered on : 30.08.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.225 of 2013

and

M.P.No.1 of 2013

K. Ravi

Appellant/1st respondent/
Plaintiff

Vs

1.N. Krishnappa

2.K. Shylaja

... Respondents/Appellants/
Defendants 1 and 2

3.N. Ramaiah

... Respondent/2nd Respondent/
3rd defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.16 of 2009 on the file of the learned Subordinate Judge, Hosur, dated 19.10.2012, reversing the Judgment and Decree of the learned District Munsif, Hosur, in O.S.No.243 of 2001, dated 29.04.2009.

For Appellant : Mr.V. Raghavachari
For Respondents : Mr.S. Subramanian
for R1 and R2

R3 - Ex parte vide Court order
dated 19.02.2019.

JUDGMENT

The plaintiff, who is the appellant before this Court, has challenged the Judgment and Decree in A.S.No.16 of 2009 on the file of the learned Subordinate Judge, Hosur, in and by which the learned Judge has reversed the Judgment and Decree in O.S.No.243 of 2001 on the file of the learned District Munsif, Hosur.

2.The parties are referred to in the same array as in the suit.

3.The facts in brief which are necessary for disposing of the above Second Appeal are hereinbelow narrated:

The plaintiff has filed the suit O.S.No.243 of 2001 on the file of the learned District Munsif, Hosur, for declaration of his title and interest in the suit property and for injunction restraining the defendants 1 and 2 from interfering with his peaceful possession and enjoyment of the suit property.

4.The suit properties are comprised in S.F.No.213/2A, measuring an extent of 81 cents (0.33.0 Hectares) and in S.No.1233/2B, measuring an extent of 86 cents (0.35.0 Hectares) which are situated in Avalapalli Village, Hosur Taluk and bounded on the

East by	-	S.No.213/2C belonging to Rangappa
West by	-	Mekalappa @ Goopalliappa's land
North by	-	Land of Nagappa, Son of Chinnappa
South by	-	Land of Chinnappa

Plaintiff's case:

5.The suit properties originally belonged to one Myathappa @ Muniappa. The said Myathappa had six sons, namely, Muniappa, Avaliappa, Ajjappa, Rangappa, Ramaiah, (3rd defendant) and Krishnappa (1st defendant).

6.The admitted case of both the parties is that the first son Muniappa had released all his rights in respect of the ancestral property in favour of his father. Similarly, Ajjappa was adopted by one Muddaiah, when he was 5 years old. Thereafter, during the life time of the father Myathappa, the remaining four sons namely, Avaliappa, Rangappa, Ramaiah and Krishnappa, had orally partitioned their properties and each of them were in enjoyment of their shares to the exclusion of others.

7.The plaintiff would further contend that prior to its Sub-division Survey No.213/2 in Avalapalli Taluk, fell to the share of the 3rd defendant under the oral partition between the brothers. The UDR patta was thereafter given and the property was sub divided as Survey Nos.213/2A and 213/2B. It is this property that is the subject matter of the suit.

8.It is the further case of the plaintiff that on 09.01.1995, he had entered into an oral Agreement of Sale with the 3rd defendant, who is none other than his father-in-law, to purchase the suit property for a total sale consideration of Rs.48,720/-. On the date of the Agreement, a sum of Rs.100/- was given to the father-in-law and the balance was payable in three years time. Thereafter, on 21.08.1997, the plaintiff had

obtained a registered Sale Deed from the 1st defendant and he had also obtained of mutation of revenue records. On 06.01.2012, the patta was transferred in his name.

9. In the original partition that has been entered in the year 1964, each of the parties were allotted various extent of lands and Survey No.213 fell to the share of the 3rd defendant, Ramaiah. Avaliappa had got 8.50 acres together with house property and Rangappa had obtained 7.8 acres together with a house property. The 3rd defendant got 8 acres and the 1st defendant got an extent of 7.28 acres. Both of them were also given a house property. It is only the plaintiff who had not got any house property.

10. While so, the plaintiff came to learn that the 1st defendant had executed a Gift Deed in favour of his daughter in respect of a portion of the suit property, i.e., an extent of 14 cents in S.No.213/2A and 86 cents in S.No.213/2B and an extent of 86 cents in S.No.213/2B i.e., a total extent of one acre. This Gift Deed had come into existence on 16.03.1995. The plaintiff would contend that the patta was illegally changed in the name of the 2nd defendant and since the 2nd defendant was asserting a right to the suit property the plaintiff was left with no other alternative except to file the present suit.

Written Statement:

11. The 1st and 2nd defendant had filed a detailed Written Statement in which they had admitted the sequence of events till the oral partition in the year 1964. It is their case that the 1st defendant who was employed at Bangalore, had entrusted the care of the properties allotted to him to his elder brother, the 3rd defendant and taking advantage of this, the 3rd defendant had managed to get the revenue records mutated in his name during the updating survey scheme.

12. The defendants would come forward with the specific case that the properties comprised in Survey Nos.213/2A, 213/2B, 214, 211 and 212 together measured an extent of 4.50 acres. These properties were sub-divided into four shares as they were contiguous lands and under this Partition, the Eastern side was allotted to the share of Avaliappa and Rangappa and the Western side to the defendants 1 and 3. The 1st defendant had got the Eastern portion, i.e., Survey No.213/3B and the 3rd defendant had got the Western portion in Survey No.213/2A. The defendants would deny knowledge about the sale in favour of the plaintiff. The defendants would contend that from the year 1960, the 3rd defendant is in possession of the property comprised in Survey No.213/3B. The 3rd defendant had been in enjoyment of the property right from the year 1960 onwards and on coming to know about the patta being granted to the 2nd defendant without notice

to her, the 2nd defendant had moved an appeal before the Revenue Divisional Officer. The Revenue Divisional Officer was pleased to cancel the order of the Tahsildar granting patta to the plaintiff. As against the order of the Revenue Divisional Officer, the plaintiff did not file any further appeal to the District Revenue Officer and therefore, the observation by the Revenue Divisional Officer that it is the defendants who are in possession of the property comprised in Survey No.213/3B, cannot be set aside by way of this appeal. Therefore, the defendants would seek to have the suit dismissed.

Trial Court:

13.The learned District Munsif, Hosur, had framed the following issues:

- “1.வாதி வழக்குரையில் கோரியுள்ளவாறு தாவா சொத்து பொருத்து விளம்புகைப் பரிகாரம் பெற அருகதையுடையவரா—
- 2.வாதி வழக்குரையில் கோரியுள்ளபடி தாவா சொத்தைப் பொருத்து பிரதிவாதிகளுக்கு எதிராக நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் பெற அருகதையுடையவரா—
- 3.தாவா சொத்தானது வழக்கு தாக்கல் செய்த தேதியில் வாதியின் சுவாதீனத்தில் இருந்ததா—
- 4.வாதிக்கு கிட்டும் இதர பரிகாரங்கள் யாவை—”

14.The plaintiff had examined himself as P.W.1 and one Niyakalla as P.W.2 and marked Ex.A.1 to Ex.A.8. On the side of the defendants, the 3rd defendant examined himself as D.W1 and the 1st defendant and the 2nd defendant as D.W.2 and D.W.3, one Ramappa and Chinnappan as D.W.4 and D.W.5 and marked Ex.B.1 to Ex.B.25. The Commissioner's Report and Plan obtained from the Revenue Authorities was marked as Ex.C.1 and Ex.C.2.

15.The learned District Munsif, Hosur, on the basis of UDR Patta, came to a conclusion that the suit was being enjoyed only by the plaintiff and the 3rd defendant prior to him. Therefore, the suit was decreed as prayed for. Challenging the said Judgment and Decree, the defendants 1 and 2 had moved the Appellate Court in A.S.No.16 of 2009 on the file of the learned Subordinate Judge, Hosur.

16.The learned Subordinate Judge, Hosur, taking into consideration the discrepancies in passing of consideration for the sale, non production of Agreement of Sale, etc., alleged to have been executed on 09.10.1995 and also taking note of the fact that the patta granted to the 2nd appellant had been cancelled without notice held that the plaintiff had not proved his title to the suit property, particularly, when even prior to the suit,

the plaintiff and the 3rd defendant were aware of the Gift in favour of the 2nd defendant. Aggrieved by this Judgment and Decree, the plaintiff is before this Court.

17.While admitting the Second Appeal, this Court was pleased to frame the following Substantial Questions of Law:

"1.Whether the Lower Appellate Court has erred in overlooking the provisions of Section 110 of the Indian Evidence Act, 1872, which lays down the evidentiary rule that possession is prima facie evidence of ownership and that burden is upon the person asserting a plea to the contrary?

2.Whether the Lower Appellate Court had erred in disregarding the settled possession of law that patta granted in favour of a person is prima facie evidence of title as laid down by the Division Bench of the Madras High Court in 2011 (5) CTC 241 (Mad)?

3.Whether the Lower Appellate Court had posed a wrong question to itself by reversing the onus of proof and placing the same on the appellant, when it was the duty of the respondent to have proved their title to the property on the basis of the alleged gift deed?

4.Whether the Lower Appellate Court had manifestly erred in disregarding the Sale Deed executed in favour of the appellant, especially, in view of the fact that the same was not challenged by any of the parties to the Deed?

18.Mr.V.Raghavachari, learned counsel for the appellant/plaintiff, would contend that the 3rd defendant from the date of oral partition has been in possession and enjoyment of the larger extent of the suit property and further, the revenue receipt, kist receipts, etc., stood in the name of the 3rd defendant and thereafter, was transferred in the name of the plaintiff. The learned counsel for the appellant/plaintiff would argue that once the oral partition in 1964 has been admitted by the parties, the Appellate Court ought not to have reversed the Judgment and Decree of the trial Court. He would further argue that the contention of the defendants that the suit Survey Number along with Survey Nos.211 and 212 had been sub-divided and allotted to all the four sons of Myathappa, has not been proved by the defendants. He would argue that the Commissioner, who had visited the suit property and noted down the physical features, did not find any demarcation between the lands comprised in Survey No.213/2A and 213/2B as portrayed by the defendants and therefore, the learned Appellate Court ought not to have set aside the findings of the trial Court.

19.Mr.S.Subramanian, learned counsel for the respondents 1

and 2 would submit that the plaintiff, who has come forward to have his title declared to the suit property, has not let in any convincing evidence to show that the property exclusively belonged to the 3rd defendant and the 3rd defendant is in possession of the same. He would contend that despite knowing that the 1st defendant had executed a Gift Deed in favour of the 2nd defendant as early in the year 1995, the plaintiff has not sought to have Gift Deed declared as null and void, particularly, when even as early as in the year 1996, the 3rd defendant, who is the father-in-law of the plaintiff and his vendor was aware about the Gift Deed. He would further argue that the plaintiff, who had come forward with the case that he has been in continuous possession and enjoyment of the property since 1964, has not produced even a shred of evidence to show possession from the year 1964. He would rely upon the following Judgments in support of his arguments in a suit for declaration of title and possession, the burden of proof is heavily upon the plaintiff's to prove their case:

1. (1993) 3 Supreme Court Cases 573
Vidhyadhar v. Manikrao and another
2. (2014) 2 Supreme Court Cases 269
Union of India and others v. Vasavi
Co-operative Housing Society Limited
and others

DISCUSSION:

20. From the perusal of the records, evidence and arguments, it is clear that the plaintiff had come forward with the case that he had in the year 1995 entered into an Agreement of Sale. After January 1995, he had on 21.08.1997 obtained a registered Sale Deed from the 3rd defendant. The Agreement of Sale is however not made available for the scrutiny of the Court. The non-filing of the Agreement of Sale assumes significance because the Gift Deed executed by the 1st defendant in favour of the 2nd defendant was on 16.03.1995. It is the further case of the plaintiff that on the date of Agreement of Sale, a sum of Rs.100/- alone was paid. Thereafter, the Plaint does not give any detail as to the date on which the entire sale consideration had been paid to the 3rd defendant vendor. In the proof affidavit that has been filed by the plaintiff as P.W.1 also the details are wanting. However, in his cross examination, P.W.1 would submit that the balance sale consideration was paid in two installments namely, Rs.20,000/-, after the Agreement of Sale and the balance of Rs.28,720/- on the date on which the Sale Deed was executed. However, a perusal of Ex.A.1 would indicate that the entire sum of Rs.48,720/- was paid only on the date when the Sale Deed was executed. Therefore, there is a discrepancy with reference to the passing of consideration. D.W.1, who is the vendor and father-in-law of the plaintiff, in

the cross examination would submit that the entire sum of Rs.48,720/- was paid on the date when the negotiations in respect of the sale concluded which going by the pleadings would be on 09.01.1995. Considering the discrepancy between the evidence of P.W.1 and D.W.1 regarding the passing of consideration, it is evident that the Sale Deed was a sham and nominal one and not intended to be acted upon. Further, the sale has been taken place two years after the Gift Deed executed in favour of the 2nd defendant by the 1st defendant and after a year of Ex.A.6- Notice by the 1st defendant.

21.In the Judgment cited by the plaintiff with reference to inadequacy of sale consideration i.e., (1993) 3 Supreme Court Cases 573 [Vidhyadhar v. Manikrao and another], though the Hon'ble Supreme Court had held that the sale would not be rendered invalid. However, the intention of the parties should be gathered from the recital in the Sale Deed. Considering the fact that the evidence of P.W.1 and D.W.1 along with recitals in the Sale Deed would give rise to suspicion insofar as the intention behind the execution of the Sale Deed as also the passing of consideration it is clear that the Sale Deed has been created by the plaintiff and the 3rd defendant.

22.The plaintiff would contend that in the year 1964, after the oral partition, the 3rd defendant has been in continuous possession and enjoyment of the suit property. The 3rd defendant as D.W.1 would contend that he had handed over all the revenue receipts with reference to the subject property to the plaintiff immediately after the sale. However, none of these documents have been filed on the side of the plaintiff. On the contrary, the plaintiff has only filed revenue receipts after the sale in his favour. It is also to be noted that the plaintiff had not challenged the order of the Revenue Divisional Officer cancelling patta granted to him. A perusal of documents would reveal that the 1st defendant had produced the revenue receipts for the year 1989 to 1991, 1993, 1994, etc., which would only show that the possession of the property is with the defendants. The Appellate Court has rightly observed that the UDR patta alone would not confer a title or possession on the plaintiff, particularly, when the kist receipts prior to grant of UDR patta has not been filed by the plaintiff. The 1st defendant had executed the Gift Deed in favour of his daughter, the 2nd defendant, on 16.03.1995. This fact was known to the 3rd defendant even on 10.04.1996. The present suit has been filed in the year 2001. However, there is no relief sought for setting aside the Gift Deed executed by the 1st defendant in favour of the 2nd defendant.

23.Considering the fact that the defendants have admittedly been in possession of the property since 1989 and the patta has

been transferred in favour of the 2nd defendant on 13.09.1996. and considering the fact that the plaintiff has not been able to prove their possession to the suit property, prior to Ex.A.1, I do not find any reason to interfere with the Judgment and Decree of the Lower Appellate Court. The Substantial Questions of Laws are answered against the plaintiff.

In the result, the Second Appeal is dismissed and the Judgment and Decree in A.S.No.16 of 2009 on the file of the learned Subordinate Judge, Hosur, dated 19.10.2012, are confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mps

To

1.The Subordinate Judge,
Hosur.

2.The District Munsif,
Hosur.

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.75020

+lcc to Mr.S.Subramanian, Advocate, S.R.No.75855

S.A.No.225 of 2013
and
M.P.No.1 of 2013

RSV (CO)
GN (07/02/2020)

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