

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.02.2019

PRONOUNCED ON : 25.04.2019

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.35 of 2013

and

M.P.Nos.1 and 2 of 2013

1.Kothaiammal (Died)

2.K.Thandapani Appellants/Appellants

(second appellant is brought on record as LR of the deceased sole appellant vide order of the court dated 21.04.2005 made in C.M.P.No.20624 to 20626 of 2004).

Vs

1.Konda Reddiyar

2.Murugesan

3.Bhanumathi

4.Subburayalu

(R1, R3 and R4 given up as per orders of court dated 10.01.2013 made in C.M.P.No.6045 of 2004 in S.A.SR.No.40795 of 2002 vide Memo SR.No11027 dated 27.11.2012 and 11441/2012 dated 14.12.2012).

... Respondents/Respondents

Prayer: This second appeal is filed under Section 100 of CPC., as against the Judgment and Decree dated 23.10.2000 made in Appeal Suit No.27 of 1999 on the file of the Additional District Judge, Villupuram, against the Judgment and Decree dated 21.01.1998 made in O.S.No.1338 of 1995 on the file of the Principal District Munsif, Ulundurpet, Villupuram District.

For Appellants : Mr.R.G. Annamalai

For Respondent No.2 : Ms.U.Sabapathy Manonmani
For Mr.V. Raghavachari

For RR1, 3 and 4 : Given up

JUDGMENT

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the Additional District Judge, Villupuram in A.S.No.27 of 1999 dated 23.10.2000, confirming the judgment and decree passed by the Principal District Munsif, Ulundurpet, Villupuram District, in O.S.No.1338 of 1995, dated 21.01.1998.

2. The appellant herein had filed a suit in O.S.No.1338 of 1995 on the file of the Principal District Munsif, Ulundurpet, Villupuram District, to declare her title over the suit properties and to restrain the defendants by means of permanent injunction from interfering with her peaceful possession and enjoyment of the suit properties. The learned Principal District Munsif, Ulundurpet, Villupuram District, by the judgment dated 21.01.1998 had decreed the suit in respect of Item No.1 alone and dismissed the suit in respect of Item Nos.2 to 6 of the suit properties. The plaintiff had preferred an appeal in A.S.No.27 of 1999 on the file of the Additional District Judge, Villupuram District, against the dismissal of her suit in respect of Item Nos.2 to 6 of the suit properties. The third defendant had filed a cross-objection against the granting of decree in respect of Item No.1 of the suit properties. The learned Additional District Judge, Villupuram District, by the judgment dated 23.10.2000 had dismissed the said appeal as well as the cross-objection and thereby confirmed the judgment and decree passed by the Trial Court. Feeling aggrieved, the plaintiff has 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:

The suit properties and other properties originally belonged to plaintiff's relative viz., Ramasamy Asari. The said Ramasamy Asari had sold the said properties to one Narayana Reddiyar under a registered sale deed dated 22.05.1923. The said Narayana Reddiyar had two sons viz., Sundara Reddiyar and Konda Reddiyar. After the death of the said Narayana Reddiyar, his two sons had orally partitioned the properties and in the said oral partition, the suit properties were allotted to the share of Sundara Reddiyar. The said Sundara Reddiyar is the husband of the first defendant. The said Sundara Reddiyar in the month of August 1945 had sold the suit properties orally to the plaintiff for a sum of Rs.25/- and also handed over the possession to the plaintiff. The plaintiff had constructed a house in the suit properties and she has been enjoying the same without any disturbance and hence she had perfected title by adverse possession also. The properties which were allotted to the share of the second defendant viz., Konda Reddiyar were sold by him to one Venkata Subramania Asari under a registered sale deed dated 06.12.1945

and he is not having any right or interest over the suit properties. The fact remains so, the defendants 2 and 3 attempted to trespass into the suit properties and hence the plaintiff had sent a lawyer's notice dated 09.02.1985. After receipt of the said notice, the defendants sent a reply notice dated 04.03.1985 with false averments. In the said reply notice, they have stated that the second defendant had sold the suit properties to the third defendant on 31.08.1984 under a registered sale deed from that date onwards, he has been in possession and enjoyment of the same. The said allegations are false. The defendants are never in possession of the suit properties at any point of time. Hence, the plaintiff was constrained to file the above suit for declaration and permanent injunction. During pendency of the suit, the first defendant died and hence, her legal representatives have been impleaded as defendants 4 and 5.

4.The averments made in the written statement filed by the defendants 2 and 3 are, in brief, as follows:

It is false to state that the suit properties were allotted to the share of Sundara Reddiyar in the oral partition which took place between the said Sundara Reddiyar and the second defendant. It is also false to state that in the year 1945, the said Sundara Reddiyar had orally sold the suit properties to the plaintiff for a sum of Rs.25/- from that date onwards, she has been in possession and enjoyment of the suit properties. In Item No.1 of the suit properties out of ten cents, the plaintiff is in possession of two cents only on the eastern side. The remaining eight cents on the western side and also the Item Nos.2 to 6 of the suit properties were allotted to the share of the second defendant under a registered partition deed in the year 1941 and also in the oral partition which took place between the second defendant and his brother. The second defendant had sold half of his properties to one Venkata Subramania Asari under a registered sale deed dated 06.12.1945 and the remaining half is the suit properties and he sold the same to the third defendant under a registered sale deed dated 31.08.1984 and from that date onwards, the third defendant is in possession and enjoyment of the same. Since the defendants 2 and 3 have been in possession and enjoyment of the suit properties for more than 40 years, they perfected title to the suit properties by adverse possession also. The allegation that the defendants 2 and 3 attempted to trespass into the suit properties in the first week of February, 1985 is false. After receipt of the lawyer's notice, the defendants 2 and 3 had sent reply suitably. The plaintiff is not in possession and enjoyment of the Item Nos.2 to 6 of the suit properties and therefore, the defendants 2 and 3 prayed to dismiss the above suit.

5. Based on the aforesaid averments, the learned Principal District Munsif, Ulundurpet, Villupuram District, had framed necessary issues and tried the suit. During trial,

on the side of the plaintiff, the plaintiff examined herself as P.W.1 and she also examined one more witness as P.W.2. She had marked Ex.A1 to Ex.A18 as exhibits. On the side of the defendants 2 and 3, the third defendant was examined as D.W.1 and the second defendant was examined as DW2 and one more witness was examined as D.W.3. They had marked Ex.B1 to Ex.B22 as exhibits.

6. The learned Principal District Munsif, Ulundurpet, after considering the materials placed before him, found that the plaintiff had failed to prove that she had purchased the suit properties orally in the year 1945 from one Sundara Reddiyar. However, the learned District Munsif taking into consideration that the defendants 2 and 3 had admitted in their written statement that the plaintiff is in possession of the Item No.1 of the suit properties, he decreed the suit in respect of Item No.1 alone and dismissed the suit in respect of Item Nos.2 to 6 of the suit properties. Aggrieved by the dismissal of the suit in respect of Item Nos.2 to 6 of the suit properties, the plaintiff had preferred an appeal in A.S.No.27 of 1999 on the file of the Additional District Judge, Villupuram District. The third defendant had filed a Cross-Objection against the granting of decree in respect of Item No.1 of the suit properties. The learned Additional District Judge, Villupuram District by the judgment dated 23.10.2000 had dismissed the appeal as well as the Cross-Objection and thereby confirmed the judgment and decree passed by the Trial Court. Feeling aggrieved, the plaintiff has filed the present Second Appeal.

7. During pendency of the Second Appeal, the sole appellant died and hence her son has been impleaded as second appellant.

8. At the time of admitting this Second Appeal, this Court has formulated the following substantial questions of law:-

"1) Whether the Courts below are right in ignoring oral sale made in favour of the plaintiff by one Mr.Late.Sundara Reddiyar, represented by his wife Mrs.Padmavathy Ammal, who also died during the pendency of the suit?

2) Whether the Courts below are right in upholding the sale in favour of second defendant by one mr.Konda Reddiyar?"

3) Whether the findings given by the Courts below with respect to the claim of the plaintiff regarding the title to the suit properties are legal or liable to be set aside?"

4) Whether the sale in favour of the 3rd defendant dated 31.03.1984 is valid or not?"

9. Heard Mr.R.G.Annamalai, learned counsel appearing for the appellants and Ms.U.Sabapathy Manonmani, for Mr.V.Raghavachari, learned counsel appearing for the second respondent.

10.Question Nos.1 to 4:

The learned counsel for the appellants has submitted that the Courts below failed to consider the oral and documentary evidence adduced by the plaintiff. He further submitted that the documents produced by the plaintiff would clearly establish that the plaintiff had purchased the suit properties in the year 1945 and from that date onwards, she has been in possession and enjoyment of the suit properties. He further submitted that Ex.A18-Patta would clearly show that the plaintiff is having title over the suit properties. He further submitted that Exs.A4 to A6 would clearly show that the plaintiff is in possession and enjoyment of the suit properties. He further submitted that Ex.A17-sale deed would clearly show that the second defendant had sold his share in the year 1945 itself to one Venkata Subramania, Asari and hence, he cannot claim any right over the suit properties. He further submitted that the Trial court without considering the evidence in a proper perspective had dismissed the suit in respect of Item Nos.2 to 6 of the suit properties and the First Appellate Court also had mechanically confirmed the findings of the Trial Court and therefore, he prayed to allow the Second Appeal and set aside the said judgments and decrees passed by the Courts below and decree the suit fully.

11. Per contra, the learned counsel for the second respondent/third defendant has submitted that since the plaintiff had filed a suit for declaration and permanent injunction, the burden is upon her to prove her title over the suit properties. She further submitted that in the plaint, she had stated that she purchased the suit properties orally from one Sundara Reddiyar in the year 1945 and at the same time, she claimed title over the suit properties by adverse possession also. She further submitted that the plaintiff is not entitled to take inconsistent pleas i.e., claiming title over the suit properties as purchaser and also claiming title over the suit properties by adverse possession. She further submitted that the Ex.A18-Patta has been granted only in respect of Item No.1 of the suit properties and in respect of other Item Nos.2 to 6 of the suit properties, the plaintiff has not produced any Patta, Chitta or any other Revenue records. She further submitted that the plaintiff while examining herself as PW1 had admitted in her cross-examination that the gist receipts and tax receipts produced by her are related to the properties belong to her husband and therefore,

no reliance can be placed upon the said documents. She further submitted that the Trial Court after taking into consideration of the aforesaid facts, has rightly dismissed the suit in respect of Item Nos.2 to 6 and the same has also been confirmed by the First Appellate Court and in the said factual concurrent findings, this Court cannot interfere and therefore she prayed to dismiss the Second Appeal.

12. The plaintiff had filed the above suit in respect of six Items. The Item No.1 is situated in Survey No.13/13 of Iluppaiyur Village, ad-measuring two cents with specific boundaries. In respect of the said Item there is no dispute. The dispute is only in respect of other Items. The other Items are situated in Survey No.13/12 of Iruppaiyur, Madhura, Nallalangkuppam Village. In the plaint schedule, the Item No.2 is described as east-west 4/50 feet but north-south measurement has not been given. Likewise, in Item No.3 also only east-west measurement has been given as 9/80 feet, but north-south measurement has not been given. Further, in Item No.3, it is mentioned that one thatched house is situated but door number has not been mentioned for the said house. In Item No.4, it is mentioned as one tamarind tree in which 1/6th share is claimed. Item No.5 is a vacant site ad-measuring 18 feet east-west and 17 feet north-south and out of which 1/6th share is claimed. The plaintiff has not stated the remaining 5/6th shares belong to whom. Further, when the plaintiff claimed undivided shares, she ought to have impleaded the other sharers as the defendants. But the plaintiff has not impleaded the other sharers as the defendants.

13. Eventhough the plaintiff claimed that she purchased the suit properties orally in the year 1945 from one Sundara Reddiyar, she has not produced Patta, Chitta or any other Revenue records except Ex.A18-Patta. In Ex.A18, it is stated that the said document is relating to Survey No.13/13B of Iluppaiyur Village. So, it is clear that the said document is relating to Item No.1 of the suit properties. As already pointed out that in respect of Item No.1, the defendants 2 and 3 have not claimed any right. The dispute is only in respect of other Items. In respect of other Items of the suit properties, the plaintiff has not produced any Patta. If really, the plaintiff has been in possession and enjoyment of the Item Nos.2 to 6 of the suit properties from the year 1945, the said fact would have been reflected in the Revenue records. But, she has not produced any Revenue records such as Patta, Chitta, etc., in respect of those Items. Therefore, the contention of the plaintiff that she has been in possession and enjoyment of the Item Nos.2 to 6 of the suit properties from the year 1945 cannot be accepted.

14. It is also to be pointed out that the plaintiff while examining herself as PW1 has deposed that at the time of oral sale by the said Sundara Reddiyar in her favour, the PW2 was also present. PW2 also deposed before the Trial Court

that in the year 1945, Sundara Reddiyar had orally sold the suit properties for a sum of Rs.25/- in favour of the plaintiff. During his cross-examination, he has stated that his age is 63. He was examined before the Trial Court on 16.04.1997. In the year 1997, if his age was 63, he would have born in the year 1934. In such a case, in the year 1945, he would be only 11-year-old boy. Hence, he could not have any knowledge about the oral sale said to have been took place in the year 1945. Therefore, the contention of the PWs 1 and 2 that the said Sundara Reddiyar had sold the suit properties in favour of PW1 in the year 1945 cannot be accepted.

15. It is also to be pointed out that the plaintiff while examining herself as PW1 has admitted that her husband is having a house adjacent to Item Nos.2 to 6 of the suit properties and she is residing only in that house. She further deposed that Exs.11 to 13, 15 and 16 are relating to the said house only. Therefore, no reliance can be placed upon Exs.11 to 13, 15 and 16.

16. As already pointed out that the plaintiff has not produced any Revenue records to show her possession in respect of Item Nos.2 to 6 of the suit properties. Further, Item Nos.2 and 3 have not been properly described. Further, though in Item Nos.4 and 5, it is stated that the plaintiff is having 1/6th share, she has not disclosed the name of other sharers. She has not arrayed the other sharers as parties. Further, Ex.A18-Patta is relating to Item No.1 alone. The Trial Court taking into consideration of all the aforesaid facts has rightly decreed the suit in respect of Item No.1 alone and dismissed the suit in respect of Item Nos.2 to 6 of the suit properties. The First Appellate Court also confirmed the same. In the said concurrent factual findings, this Court cannot interfere. Accordingly, the substantial questions of law are answered.

17. In the result, the Second Appeal is dismissed confirming the Judgments and Decrees of the Courts below. Considering the facts and circumstances of the case, the parties are directed to bear their own costs. Consequently, connected miscellaneous petitions are closed.

msm

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
<https://hcservices.ecourts.gov.in/hcservices/>
Villupuram.

2.The Principal District Munsif,
Ulundurpet,
Villupuram District.

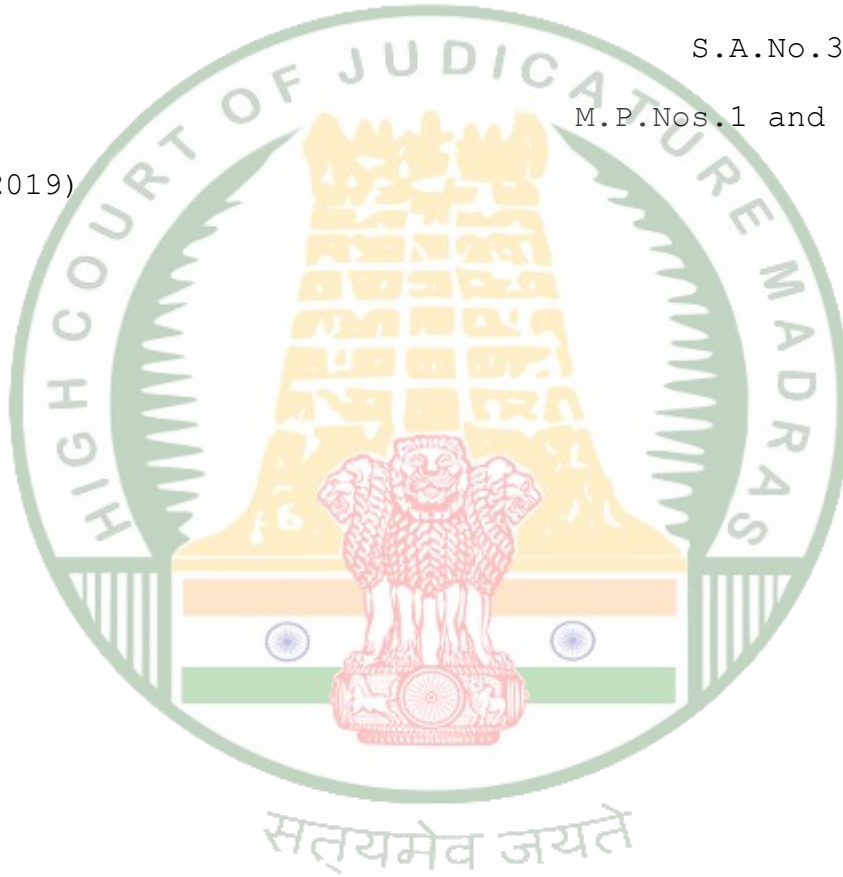
Copy TO

The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.V.Raghavachari, Advocate, S.R.No. 39609
+lcc to Mr.R.G.Annamalai, Advocate, S.R.No. 39813

S.A.No.35 of 2013
and
M.P.Nos.1 and 2 of 2013

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