

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 04.01.2019

CORAM:
The Hon'ble Mr.Justice Krishnan Ramasamy

S.A.No.9 of 2013
and
M.P.No.1 of 2013

Anandraj ... Appellant/Appellant/Defendant

Versus

Karuppusamy ... Respondent/ Respondent / Plaintiff

Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 31.01.2011 made in A.S.No.14 of 2009 on the file of the Subordinate Court, Ariyalur, in confirming the judgment and decree dated 05.12.2008, made in O.S.No.383 of 2005 on the file of the Principal District Munsif Court, Ariyalur.

For Appellant : Mr.R. Krishna Prasad
for M/S.SARAVABHAUMAN ASSOCIATES
For Respondent : Mr.C.Prabakar

J U D G M E N T

This Second Appeal has been filed against the judgment and decree passed by the Subordinate Court, Ariyalur (first appellate Court), in A.S.No.14 of 2009, dated 31.01.2011 thereby, confirming the judgment and decree passed by the Principal District Munsif Court, Ariyalur (trial Court) in O.S.No.383 of 2005, dated 05.12.2008.

2. For the sake of convenience, the parties herein shall be referred hereinafter as per the rank assigned in the suit, unless and otherwise, they are specifically referred to as per the status in this Second Appeal.

3. The unsuccessful defendant is the appellant herein.

4. The plaintiff filed the suit for declaration and consequential injunction.

5. The case of the plaintiff, as stated in the plaint in short are as follows:-

i) Originally, the suit property and other properties belong to one Chinnapillai Udayar and his wife Alamelu Ammal. The plaintiff purchased the suit property along with other properties measuring an extent of 0.93 cents, comprised in S.No.254/6, from the aforesaid two persons by means of a sale deed dated 30.10.1982. Out of the said extent of 0.93 cents, the plaintiff sold 0.55 cents to one Kaliyaperumal and 0.31 cents to one Kanthamani, the grand father of the defendant. After such sale, the said survey number 254/6 was subdivided into S.No.254/6A, 254/6B and 254/6C and the remaining property, measuring an extent of 0.07 cents, which the plaintiff is in exclusive possession, is comprised in S.No.254/6D. The plaintiff being the absolute owner of 0.07 cents, constructed a residential house in the said property. However, the plaintiff is not residing in the suit property and he allowed his sister and her husband to reside and he is residing in another Village. However, the father of the minor defendant is claiming right over 0.07 cents comprised in S.No.254/6D by stating that the suit property and other properties were settled by Kanthamani in favour of his grand son, minor defendant. By claiming so, he trespassed into the suit property, destroyed the residential house put up by the plaintiff and attempted to put up a new construction. In regard to the said trespass, the plaintiff also lodged a criminal complaint. However, since the father/guardian of the defendant claiming illegal right over the suit property may, at any point of time, disturb the plaintiff's peaceful possession and enjoyment of the suit property, the plaintiff filed the present suit for the relief, as stated supra.

6. The defendant, who was minor at the time of filling of the suit was represented by his father/guardian and he contested the suit by filing a written statement, inter alia stating that the suit is not maintainable and liable to be dismissed on the ground that the suit property does not belong to the plaintiff and he is not even in possession of the same. This fact has been admitted by the plaintiff himself in the plaint that he is not residing in the suit property but in some other village. So far as the allegation regarding the trespass alleged to have committed by the defendant is concerned, the same is not true. However, the defendant contended that the allegation of trespass would ipso facto shows that the plaintiff has indirectly accepted the defendant's right over the property.

7. Though the plaintiff claims that by virtue of a sale deed dated 30.10.1982, he purchased the suit property along with other properties measuring an extent of 0.93 cents from Chinnapillai Udayar and his wife, Alamelu Ammal, the said sale deed is not valid. Though it is stated that 0.93 cents belongs to three brothers, the said extent purchased by Chinnapillai and his wife Alamelu from Chinnamani Udayar, in the year 1981 which covers the 1/3rd share of Kanthamani and the 1/3rd share purchased by the Chinnapillai were obtained by playing fraud, and therefore, the settlement made in favour of the plaintiff in respect of the entire 0.93 cents is not valid and by virtue of such settlement, the plaintiff cannot claim any right.

8. Further, since the grandfather of the defendant, Kanthamani filed a suit in O.S.No.3 of 1983 on the file of the District Munsif Court, Ariyalur against the plaintiff, Chinnapillai Udayar and his Alamelu Ammal and obtained a decree in his favour, in respect of his 1/3rd share, it is clear that the settlement made by Chinnamani Udayar and Chinnapilla in the year 1981 and 1982 were unsustainable and by playing fraud, those documents were executed. Thereafter, the said Kanthamani settled the suit property and other properties in favour of his grandson, minor defendant. Therefore, the plaintiff cannot claim right over the suit property based on the sale deed dated 30.10.1982. Hence, the claim of the plaintiff that he is the absolute owner is untenable and the suit is liable to be dismissed.

9. On appreciating the evidence before it, the Courts below have concurrently held that the plaintiff was entitled to a decree, as prayed for. Aggrieved by the concurrent findings of the Courts below, the present Second Appeal has been filed, as stated supra.

10. The following substantial questions of law were framed at the time of admission of this Second Appeal:-

i) Whether the Courts below have failed to consider the plea of the defendant that the previous suit filed by the vendor of the plaintiff, viz., O.S.No.206 of 2005 on the file of the Additional District Munsif, Ariyalur, was the suit filed in respect of the very same property, which is shown as the suit property in the present suit?

ii) Whether the Courts below have failed to properly appreciate the contention of the defendant that by filing the earlier suit for partition, the

vendor of the plaintiff himself admitted the possession of the defendant in respect of the suit property?

iii) Whether the Courts below have committed an error in holding that the defendant is not entitled to stake any claim in respect of the suit property since he had not taken steps to get Ex.A.1, sale deed cancelled so far as it relates to the suit property?

11. The learned counsel appearing for the appellant submitted that the suit property is in possession of the appellant and he is enjoying the property by virtue of a settlement deed executed by his grandfather, dated Ex.B.1 dated 17.05.2004 and based on Ex.B.1, the defendant and his father have also obtained joint patta in their names in the year 2005 in respect of the entire 0.93 cents, which includes the suit property, measuring 0.07 cents comprised in S.No.254/6D, which has been marked as Ex.B.2. Therefore, the learned counsel submitted that the defendant is the absolute owner of the suit property and other properties and Ex.A.1, dated 30.10.1982, by which, the plaintiff claims right over the suit property will not have legal sanctity in the eye of law. All these aspects were not properly appreciated by the Courts below.

12. Further, the learned counsel, in support of his contention that, permanent injunction can be granted only in favour of the real owners of the property, who established the title of the property, he relied upon the decision rendered by the Hon'ble Supreme Court, in the case of Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Vs. Chandran and others, reported in [(2017) 3 SCC 702)].

13. Therefore, the learned counsel for the appellant contended that the plaintiff has not established his title over the suit property beyond reasonable doubt and when the appellant disputed the title of the respondent, the Courts below ought not to have declared the plaintiff as absolute owner of the suit property and granted the relief of permanent injunction, without appreciating the contentions of the appellant highlighting the dispute in the properties. Therefore, the learned counsel prays for setting aside the judgments and decrees passed by the Courts below.

14. On the other hand, the learned counsel appearing for the respondent/plaintiff advanced his arguments by stating that the plaintiff purchased the property measuring an extent of 0.93 cents by virtue of the

sale deed dated 30.10.1982, executed in his favour, marked as Ex.A.1. Subsequent to the said purchase of the property, the plaintiff sold 0.55 cents to one Kaliyaperumal and 0.31 cents to one Kanthamani, the grand father of the defendant, and the remaining portion of 0.07 cents, which is the subject matter of the suit is retained by the plaintiff himself. Since certain extent of properties were sold to the defendant's grandfather and another person, they both colluded together and manoeuvred to obtain patta in their favour in respect of the entire 93 cents comprised in S.No.254/6. Subsequently, the survey number No.254/6 was subdivided into S.Nos.254/6A, 254/6B and 254/6D and the suit property is comprised in S.No.254/6D. This is the property being enjoyed by the plaintiff by constructing a house in that as on today. When the plaintiff has been enjoying the property, all of a sudden, the father of the defendant trespassed into the property, demolished the house put up by the plaintiff and attempted to put up a construction claiming that the suit property belonged to his son/defendant based on Ex.B.1 dated 17.05.2004, executed by Kanthamani, (grandfather of the defendant) in favour of the defendant. Therefore, the plaintiff was constrained to give a Police Complaint against the father of the defendant for trespassing into the property of the plaintiff. The said complaint has been marked as Ex.A.5. Subsequently, the plaintiff came to know about the receipt of joint patta by the defendant and his father illegally, he is constrained to file the present suit against the defendant for declaration and permanent injunction. All these aspects were rightly appreciated by the Trial Court and decreed the suit as prayed for and the first Appellate Court also concurred with such findings of the trial Court and dismissed the appeal preferred by the defendant. Therefore, the learned counsel submitted that the well reasoned judgments and decrees passed by the Courts below does not call for interference of this Court in this Second Appeal and the Second Appeal is liable to be dismissed.

15. Heard both sides and this Court has perused both the oral and documentary evidences adduced by the parties.

16. As rightly pointed out by the learned counsel for the respondent/plaintiff, admittedly, the suit property, measuring an extent of 0.07 cents is part of 0.93 cents purchased by the plaintiff, in the year 1982 from his vendors (viz., Chinnapillai Udayar and his wife Alamelu Ammal) as evident from Ex.A.1 and subsequently, certain portions of the property was sold by the plaintiff to two persons, i.e. 0.55 cents to one Kaliyaperumal and 0.31 cents to one Kanthamani, the defendant's grandfather and the

plaintiff has retained 0.07 cents. Therefore, the joint patta was issued for the entire 0.93 cents in the name of all three persons as stated therein. So the plaintiff is in possession and enjoyment of an extent of 0.07 cents, and he has constructed a house in it. To prove the same, the plaintiff also marked documents, Exs.A.1. to A.5. Though the appellant claims that Ex.A1. is not valid, as certain fraud was played by the vendors of the plaintiff, so far, no steps were taken by the defendant to cancel the sale deed dated 30.10.1982. Therefore, the plaintiff proved his title beyond doubts.

17. The contention of the appellant that he is enjoying the property by virtue of a settlement deed executed by his grandfather, dated Ex.B.1 dated 17.05.2004 based on which, the defendant and his father have also obtained joint patta in their names in respect of the entire 0.93 cents, which includes the suit property, will not have any bearing on the subject matter of the suit property and it was only a moonshine. Similarly, the decision relied on by the learned counsel for the appellant, viz., in the case of Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Vs. Chandran and others, is not applicable to the appellant's case, as the appellant is not the real owner of the property.

18. Thus, as rightly held by the first Appellate Court merely because, the patta in respect of the suit property stands in the name of the defendant, it cannot be presumed that the appellant has right over the suit property without any title deed. All these aspects were well appreciated by the Courts below and decreed the suit as prayed for by the plaintiff. This Court also is of the view that no interference is called for with the well reasoned judgments passed by the Courts below. Hence, this Court does not have any hesitation to hold that the plaintiff is entitled to the decree prayed for. Accordingly, all the substantial questions of law are answered against the appellant/defendant.

19. In the result, the Second Appeal is dismissed confirming the judgments and decrees passed by the Courts below. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Ariyalur.
2. The Principal District Munsif ,
Ariyalur.

+1cc to Mr.C.Prabhakar, Advocate SR.No. 1289

+1cc to M/S.SARAVABHAUMAN ASSOCIATES , Advocate SR.No. 1207

S.A.No.9 of 2013

and

M.P.No.1 of 2013

A.SK(14/02/2019)



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