

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2019

PRONOUNCED ON : 17.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.129 of 2016

Veerabadran Appellant/Defendant
Vs.
Paramathal Respondent/ Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 18.07.2013 passed in A.S.No.137 of 2012 on the file of the Principal Subordinate Court, Salem, reversing the Judgment and Decree dated 26.06.2008 passed in O.S.No.1275 of 2004 on the file of the Principal District Munsif Court, Salem.

For Appellant : Mr.D.Shivakumaran

Respondent :No Representation/No Appearance
vide order dated 31.07.2019.

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 18.07.2013 passed in A.S.No.137 of 2012 on the file of the Principal Subordinate Court, Salem, reversing the Judgment and Decree dated 26.06.2008 passed in O.S.No.1275 of 2004 on the file of the Principal District Munsif Court, Salem.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for Permanent Injunction.

4.The case of the plaintiff in brief is that the suit property belonged to one Kandasamy and the defendant and they have executed two separate power deeds in the names of V.Kannammal and Kala by way of the registered power deeds dated 13.05.1996 and on the basis of the same, the power of Attorney Kannammal and Kala had executed the sale deeds in the name of the plaintiff on 02.03.2004 for a valid consideration and put the plaintiff in the possession of the suit property on the date of the sale and the suit property being a vacant site and Natham patta also been granted in favour of the Power of Attorney by the Natham Thashildar and therefore, the

defendant, who had executed the registered sale deed in favour of the plaintiff in respect of the suit property through his Power of Attorney Kala, cannot claim any right over the suit property and after the purchase of the suit property by the plaintiff, the defendant demanded the plaintiff to resell the same to him, however, the plaintiff declined and aggrieved over the same, the defendant, on 20.04.2004, all of the sudden, unlawfully entered into the suit property and attempted to put shed therein and on getting information about the same, the plaintiff with the assistance of neighbours thwarted the said attempts of the defendant, however, inasmuch as the defendant is still persisting in disturbing the possession and enjoyment of the plaintiff qua the suit property, according to the plaintiff, she has been necessitated to levy the suit against the defendant for the relief of permanent injunction.

5.The defendant resisted the plaintiff's suit contending that the suit property and the other properties totally measuring about two acres of land originally belonged to the defendant and his father Kaliappan and they have been in the possession and enjoyment of the same and the Government had acquired the lands situated in various villages for the establishment of Salem Steel Plant and accordingly, in lieu of their lands acquired, with reference to the same, the Government had allotted other lands to the persons, from whom the lands were acquired and accordingly, it is put forth by the defendant that plot No.117 measuring 1350 sq.ft was allotted to Kandasamy and the plot No.118 measuring 1350 sq.ft was allotted to the defendant by way of a condition assignment patta on 13.09.1988 and since then it is only the defendant, who is in the possession and enjoyment of the plot No.118 and Kandasamy had requested the defendant to occupy the plot No.117 and to take care of the same and since then it is only the defendant, who is in the possession and enjoyment of both plots abovestated and the defendant had constructed a house in Plot No.118 and paid the tax with reference to the same and in Plot 117, he has put up a foundation and enjoying the same and the defendant had executed a power of attorney deed in favour of one Kala in respect of the Plot No.118 empowering her to sell the property and as the power of attorney did not take steps to sell the property and on the other hand, the power of attorney along with one Kannammal started acting against the interest of the defendant, according to the defendant, he had executed a deed of cancellation on 01.03.2004 and by way of the same, cancelled the power given to Kala on 13.05.1996 and despite the same, on 02.03.2004, Kala along with Kannammal, who is the power of attorney of Kandasamy, had jointly sold the plot Nos.117 & 118 to the plaintiff by way of a sale deed dated 02.03.2004, however, by way of the said sale deed, the plaintiff could not claim any valid right to the suit property in respect of Plot No.118 since kala did not have the power to sell and hence, the sale deed in the name of the plaintiff is not valid in so far as the plot No.118 is concerned and the

defendant had put up the terraced building in his plot and however, there is no mention of any building in the description of the suit property and furthermore, the measurement of the property given in the sale deed put forth by the plaintiff is incorrect and misleading and the plot allotted to the defendant and Kandasamy measured east-west 27' and north-south 50' and therefore, in toto, two plots measures only 2700 sq.ft and therefore, the description of the suit property is not correct and it is false to state that the plaintiff was put in the possession of the suit property on 02.03.2004 and the same is a vacant site. The alleged patta issued in the name of the power of attorney is not binding upon the defendant and the plaintiff is not in the possession of either plot No.118 or Plot No.117 and the plaintiff does not have any valid right, title, possession and enjoyment over the suit property and hence, the suit is liable to be dismissed on that score alone and accordingly, prayed for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case, PWs 1 to 4 were examined and Exs.A1 to A8 were marked. On the side of the defendant, DW1 was examined and Ex.B1 was marked. Exs.C1 & C2 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit. However, the first appellate Court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, decreed the suit in favour of the plaintiff as prayed for. Impugning the same, the defendant has preferred the present second appeal.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

“(i). Whether the lower Appellate Court is correct in law in presuming that the plaintiff is in possession of the suit property and grant a decree for permanent injunction in favour of the plaintiff since the plaintiff has stated in the plaint that the defendant has entered into the suit property?

(ii). Whether the lower Appellate Court is correct in law in granting a decree for permanent injunction in favour of the plaintiff reversing the defendant from interfering with the alleged possession of the suit property by the plaintiff when neither the pleadings nor the evidence disclose that

the plaintiff was in actual and peaceful possession of the suit property on the date of filing of the suit?"

9.The suit has been laid by the plaintiff simplicitor for the relief of permanent injunction.

10.According to the plaintiff, the suit property is a vacant site. The defendant in the written statement has, in toto, challenged the plaintiff's claim of title, right and interest as well as the claim of possession and enjoyment of the suit property based on the sale deed dated 02.03.2004. Despite the same and when further more, according to the plaintiff, he had purchased the suit property also comprised in Plot No.118 from the defendant through his power of Attorney Kala and when according to the defendant, prior to the execution of the abovesaid sale deed dated 02.03.2004, he had cancelled the power deed in the name of Kala by a deed of cancellation dated 01.03.2004 marked as Ex.B1 and thereby, also the defendant has refuted the case of the plaintiff by contending that his alleged power of attorney Kala had no entitlement to convey the suit property in favour of the plaintiff and the defendant has also challenged the claim of possession and enjoyment of the suit property as put forth by the plaintiff and on the other hand, her claim that the suit property, particularly, comprised in plot No.118 is in her possession and enjoyment and also would claim that the plot No.117 is also in her possession and enjoyment, despite all the abovesaid factors and particularly, when the defendant had also raised the plea in the written statement, in particular, the plaintiff without having any valid right, title, possession and enjoyment over the suit property, not entitled to maintain the suit and on that score alone, the plaintiff's suit is liable to be dismissed, despite the abovesaid factors, as rightly put forth by the defendant's counsel as well as in my considered opinion, the plaintiff should have instituted the suit against the defendant seeking for the relief of declaration of title to the suit property as per law, at least, the plaintiff, after the filing of the written statement, should have endeavoured to amend the suit for including the declaration of title to the suit property as per law. In this connection, the defendant's counsel placed reliance upon the decision of the Apex Court in AIR 2008 SCC 2033 (Anathula Sudhakar Vs.P.Buchi Reddy (dead) by Legal heirs and others) as well as the decision reported in CDJ 2018 MHC 5239 (Pariasamy Vs.Anjalam). Considering the principles of law outlined in the abovesaid decisions, it is found that the plaintiff's suit laid simplicitor for the relief of permanent injunction without seeking the relief of declaration of title to the suit property is legally unsustainable and on that score alone, the plaintiff's suit is liable to be dismissed.

11.As could be seen from the materials set out in the <https://hcservices.ecourts.gov.in/hcservices/> plaint and when the plaintiff herself has admitted that she

had only purchased the suit property, particularly, the plot No.118 from the power of attorney of the defendant, accordingly, it is found that the plaintiff has admitted that the suit property belonged to the defendant and accordingly, it is found that the plaintiff traced her title to the suit property, particularly, plot No.118 through the defendant. The defendant has also not disputed the power deed executed by him in favour of Kala and the abovesaid power deed has been marked as Ex.A3. Ex.A3 power deed has been given to Kala by the defendant empowering her to sell the suit property. Now, according to the defendant, the power of attorney had started acting against his interest and therefore, he had chosen to cancel the power deed granted in her favour by way of a cancellation deed dated 01.03.2004, which has been marked as Ex.B1. According to the plaintiff, the power of attorney had alienated the suit property in her favour by way of the sale deed dated 02.03.2004, which document has been marked as Ex.A1. It is thus found that after the cancellation of the power deed Ex.B1, by way of Ex.A1, on the next day, the power of attorney of the defendant appears to have alienated the suit property in favour of the plaintiff. The trial Court has proceeded to hold that the mere factor of the deed of cancellation of the power on the part of the defendant, amounts to notice to the agent. However, as rightly determined by the first appellate Court, considering Section 206 of the Indian Contract Act, 1872, a reasonable notice must be given of such revocation to the power agent. In so far as this case is concerned, it is found that the defendant examined as DW1 has admitted that he had not given any notice to the power agent about the cancellation of the power deed nor orally informed the same to the power agent in person. Therefore, it is found that the power agent Kala had no knowledge about the deed of cancellation executed by the defendant on 01.03.2004 and without the knowledge of the same, it is found that she had proceeded to act upon the power deed issued in her favour and conveyed the suit property to the plaintiff. Therefore, on that score, it is found that the first appellate Court is correct in holding that the defendant cannot be allowed to contend that power agent had no authority to sell the plot No.118 in favour of the plaintiff by way of Ex.A1 sale deed.

12.However, the materials placed on record would go to show that both the defendant and Kandasamy had been granted patta for the Plot Nos.118 & 117 respectively of an area measuring an extent only 1350 sq.t. Accordingly, only in respect of the abovesaid extent, it is found that they had also executed the power deeds marked as Exs.A2 & A3. In toto, it is found that both the plot Nos.117 & 118 totally measures an extent of 2700 sq.ft. and the same is also reflected in the power deeds Exs.A2 & A3. In such view of the matter, even assuming for the sake of arguments, the power holders had the authority to convey the Plot Nos. 117 & 118 to the plaintiff, when considering the sale deed projected by the plaintiff

marked as Ex.A1 said to have been executed in her favour by the power agent, by way of the same, when the power agent is found to have conveyed a total extent of 2847 sq.ft. of vacant site in favour of the plaintiff. The same extent of property is also given in the plaint schedule, thereby, as rightly determined by the trial Court, when the defendant as well as Kandasamy had been granted the condition patta only in respect of an extent of 1350 sq.ft each in the plots concerned and only to that extent, the power deeds had also been executed by them by way of Exs.A2 & A3, despite the abovesaid position, it does not stand to reason as to how the power agent would be competent to convey more extent of property than what they are entitled to convey on the strength of the power given to them. On that score alone, it is found that the power agent had exceeded their authority and without any backing had proceeded to convey a larger extent of the property to the plaintiff. Therefore, it is found that the suit property is not properly described and the plaintiff is found to be claiming right to more extent of the property than what she is actually entitled to.

13.Despite the abovesaid factors, according to the defendant, it is only he, who is now in the possession and enjoyment of the suit property, particularly, the Plot No.118. Per contra, according to the plaintiff, it is she, who is in the possession and enjoyment of the suit property as described in the plaint. However, to sustain her claim of possession and enjoyment of the suit property, absolutely, there is no valid material on the part of the plaintiff pointing to the same other than Ex.A1 sale deed in favour of the plaintiff and Exs.A2 & A3, the power deeds. Therefore, on the basis of the abovesaid documents, it cannot be held that the plaintiff is in the possession and enjoyment of the suit property as described in the plaint. Exs.A4 & A5 are the pattas in the names of the power holders. It has not been explained by the plaintiff as to how pattas had come to be issued in the name of the power holders and therefore, a serious doubt arises as regards the validity of the pattas standing in the name of the power holders and projected by the plaintiff as Exs.A4 & A5. Even the abovesaid documents would not ennure to the benefit of the plaintiff to contend that she is in the possession and enjoyment of the suit property as described in the plaint. Exs.A6 & A7 are the survey notices and on that basis, it cannot be inferred that she is in the possession and enjoyment of the suit property and Ex.A8 is only caveat petition. Therefore considering the abovesaid documents projected by the plaintiff, it is evident that there is no proof at all placed on the part of the plaintiff to hold that she is in the lawful possession and enjoyment of the suit property. When as abovenoted, the plaintiff's title deed is defective in the sense the power agents are not competent to convey more extent of land than what they are entitled to convey and in addition to that, when the plaintiff has also miserably failed to establish that since the date of Ex.A1 sale deed, she has been in the possession and enjoyment of the

suit property as claimed by her and when the documents projected by the plaintiff as above pointed out do not advance her case and the present suit has been laid by the plaintiff only for the relief of permanent injunction, in such view of the matter, as rightly held by the trial Court, the plaintiff would not be entitled to sustain her claim of lawful possession and enjoyment of the suit property and thereby, consequently not entitled to obtain the relief of permanent injunction as prayed for.

14. In addition to that, considering the pleas set out in the plaint, even according to the plaintiff, on 20.04.2004 itself the defendant had unlawfully entered into the suit property and attempted to put a shed therein, therefore, when according to the plaintiff, the defendant had already entered into the suit property on 20.04.2004 itself, in such view of the matter, her claim that she is still in the possession and enjoyment of the suit property, as such, cannot be believed and accepted. As rightly contended by the defendant's counsel, when the plaintiff has not established her case that she had thereafter dispossessed the defendant from the suit property and though the plaintiff would claim that she had dispossessed the defendant thereafter with the assistance of the neighbours and however, with reference to her claim, there is no acceptable and convincing materials projected on the part of the plaintiff and as above noted, when the defendant right from the inception has been contending that the suit property is still in his possession and enjoyment, in such view of the matter, it is found that the claim of the possession and enjoyment of the suit property as described in the plaint by the plaintiff cannot be believed and accepted in any manner.

15. According to the defendant, he had also put up a superstructure in the suit property. Per contra, according to the plaintiff, the suit property is only a vacant site. The commissioner's report and plan projected in the matter go to disclose that there is a basement at about 3' in height and also the presence of mangalore tiles. The plaintiff has not disclosed of the abovesaid features in the plaint and described the suit property only as a vacant site. Be that as it may, when there is no material on the part of the plaintiff worth acceptance that she has taken over the possession of the suit property pursuant to the alleged sale deed dated 02.03.2004 and enjoying the same, and as abovenoted, when the documents projected by the plaintiff do not advance her claim of possession and enjoyment of the suit property and if really the plaintiff had secured a valid claim of possession of the suit property based on Ex.A1 sale deed, at this point of time, she would have obtained a patta with reference to the same and other revenue documents mutated in the name qua the suit property and on the other hand, when there is no evidence at all on the part of the plaintiff to sustain her claim of possession and enjoyment, in such view of the matter, the

trial Court is found to be wholly justified in holding that the plaintiff has miserably failed to establish her claim of lawful possession and enjoyment of the suit property and when the plaintiff has also miserably failed to establish her claim of valid ownership to the suit property as described in the plaint by way of Ex.A1 sale deed, in such view of the matter, the first appellate Court is found to have erroneously accepted the plaintiff's case on the footing that the defendant has failed to establish his claim of possession and enjoyment of the suit property by furnishing patta in his favour. However, when the plaintiff has come forward with the suit seeking the relief of permanent injunction based on her alleged claim of possession and enjoyment of the suit property, the plaintiff having miserably failed to establish the said plea, the first appellate Court is found to have erroneously shifted the burden upon the defendant and on that basis, has further erroneously proceeded to uphold the plaintiff's case. As above pointed out, even according to the plaintiff, the defendant has already occupied the suit property on 20.04.2004 itself and thereafter dispossessed from the suit property and the abovesaid case having not been established by the plaintiff, in all, it is found that and as above pointed out, when the plaintiff has also miserably failed to establish her valid claim of title to the suit property as described in the plaint and the plaintiff having also not prayed for the relief of declaration of title to the suit property as per law, in all, it is found that the plaintiff's suit is legally not sustainable and accordingly, the first appellate Court is found to have, on an erroneous appreciation of the materials placed on record, accepted the plaintiff's case. However, the abovesaid approach of the first appellate Court, not legally sustainable as above discussed, in such view of the matter, the reasonings and conclusions of the first appellate Court for upholding the plaintiff's case being perverse and illegality, in such view of the matter, the same are liable to be set aside.

16. For the reasons aforesaid, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

In conclusion, the Judgement and Decree dated 18.07.2013 passed in A.S.No.137 of 2012 on the file of the Principal Subordinate Court, Salem, are set aside and the Judgment and Decree dated 26.06.2008 passed in O.S.No.1275 of 2004 on the file of the Principal District Munsif Court, Salem, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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- 1.The Principal Subordinate Court, Salem.
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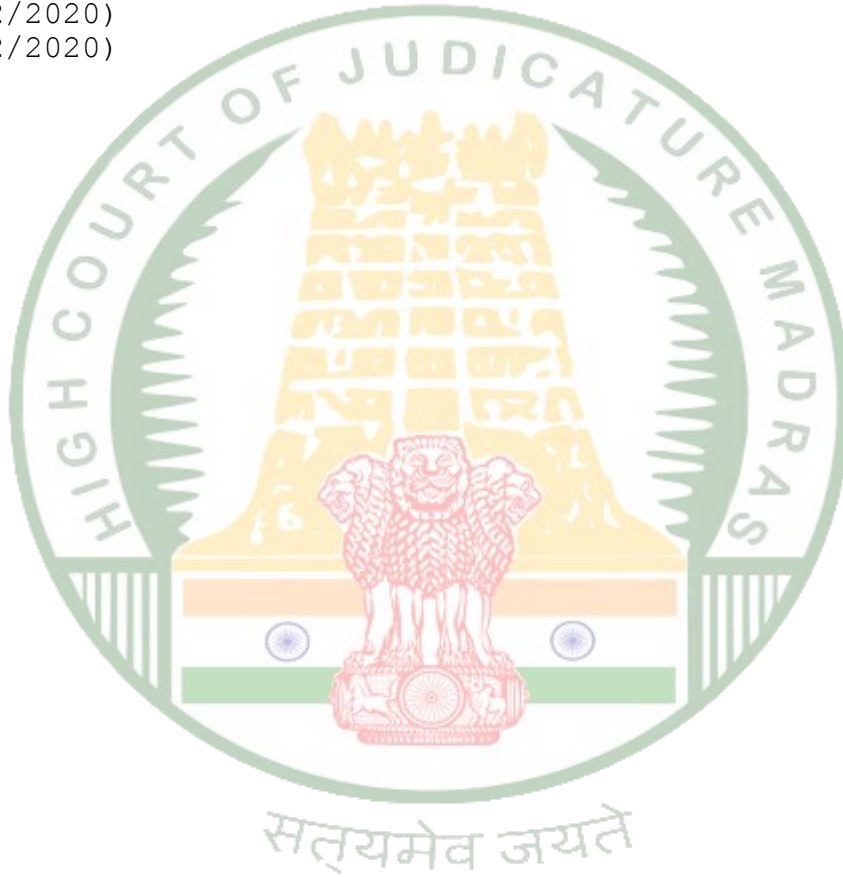
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The Section Officer, V.R.Section, High Court, Madras.

+lcc to Mr.D.Shivakumaran , Advocate SR.No. 80422
in S.A.No.129 of 2016

A.SK(12/02/2020)

A.SK(18/02/2020)



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