

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.305 of 2016  
and  
C.M.P.Nos.5765 and 5766 of 2016

Padma

..Appellant

Vs.

1.Arumugam  
2.Mohana

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 30.10.2015 made in A.S.No.10 of 2014 on the file of the Sub Court, Tiruvallur confirming the judgment and decree dated 26.08.2013 made in O.S.No.611 of 2007 on the file of the District Munsif Court, Tiruvallur.

For Appellant : Mr.N.Manokaran

For Respondents: Mr.A.R.Suresh

J U D G M E N T

The plaintiff who failed in her suit for declaration and permanent injunction before both the courts below has come forward with this Second Appeal.

2. The case of the plaintiff is that one Nagamma was the owner of the property having purchased the same under the sale deed dated 04.05.1937. The said Nagamma died leaving behind her son Chinnaiah Chetty who inherited her property on her death. The said Chinnaiah Chetty died on 15.02.1970 leaving behind the plaintiff (Daughter) and her mother Muniamma. The said Muniamma had relinquished her interest in the suit property under a registered deed of release dated 02.05.2007. Thus, the plaintiff would claim that she is the absolute owner of the suit property.

3. The suit was resisted by the defendants contending that the plaintiff have no right over the suit property. It was further contended by the defendants that the suit

property originally belonged to the family of Ragava Reddy, Manika Reddy, Kanniappa Reddy and Mariyappa Reddy and at a family partition evidenced by a registered instrument dated 24.06.1972, the 10 cents of the suit property was allotted to Ragava Reddy and 28 cents was allotted to Kanniayappa Reddy. The said Ragava Reddy and Kanniayappa Reddy sold the suit property under two registered sale deeds dated 09.11.1983 and 24.10.1983 to the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant in turn settled the same on his wife, 2<sup>nd</sup> defendant by a settlement deed dated 30.06.1993.

4. Pursuant to the said settlement, it is claimed that the 2<sup>nd</sup> defendant is in possession and enjoyment of the property. It is also claimed that patta No.31 has been issued in the name of the 1<sup>st</sup> defendant. It is also pointed out that the plaintiff has nothing to do with the suit property and the release deed executed by the mother of the plaintiff dated 02.05.2007 is invalid as it is a self serving document.

5. At trial, the plaintiff examined herself as PW1 and had produced Ex.A1 to Ex.A4. One Suresh was examined as PW2. On the side of the defendants, the 1<sup>st</sup> defendant was examined as DW1 and one Venkatesan was examined as DW2. Ex.B1 to Ex.B12 were produced on the side of the defendants.

6. The trial court upon consideration of the evidence on record found that the plaintiff has not established her title. In order to establish her title, the plaintiff had produced Ex.A1 the extract of Town Survey Land Register and Ex.A2 release deed executed by her mother. The trial court found that since Ex.A2, is a self serving document which came to existence just prior to the suit, the same cannot be safely relied upon in order to prove the title of the plaintiff's father Chinnaiah Chetty.

7. The trial court also concluded that the entries in the Town Survey Land Register alone cannot be taken as a proof of title. The trial court also concluded that the defendants have not established their title since they had not produced any document prior to the partition deed of the year 1972 between the four brothers viz., Ragava Reddy, Manika Reddy, Kanniappa Reddy and Mariyappa Reddy. On the aforesaid findings the learned trial Judge dismissed the suit.

8. Aggrieved by the said dismissal, the plaintiff preferred an appeal in A.S.No.10 of 2014. The lower appellate court upon reconsideration of the evidence on

record agreed with the conclusions of the trial court and dismissed the appeal. Aggrieved the plaintiff has come forward with this Second Appeal. 9. Notice of motion was ordered on 30.03.2016, pursuant to which Mr.A.R.Suresh, learned counsel, has entered appearance for the respondents.

10. It is the specific case of the plaintiff that the suit property belonged to Chinnaiah Chetty and he has been in absolute possession and enjoyment of the property by raising crops in the said land. He has also been paying kisth. Once the plaintiff claims title to the property, it is for her to establish her title by producing reliable evidence. The only document that has been produced by the plaintiff before the trial court is the extract from the Town Survey Land Register which stands in the name of Chinnaiah Chetty S/o. Mottai Chetty.

11. A perusal of the document which has been marked as Ex.A1 shows that the extent has been written in pencil. The said document also reveals that the old Paimash number was 904, it was classified as dry land. The name of Nagamma figures as the registered owner in the said document. The courts below disbelieved this document and held that the entries in Town Survey Land Register cannot be taken as proof of title.

12. The plaintiff has now filed an application under Order 41 Rule 27 of the Code of Civil Procedure in CMP.No.5766 of 2016 seeking permission to produce the sale deed dated 04.05.1937 claiming that it relates to the suit property.

13. A perusal of the document shows that it relates to Paimash No.958A and the extent purchased by Nagamma under the said document is only 1560 sq.ft and the land purchased is described as house site in the said document. It is therefore clear that the said document does not relate to the suit property, the Paimash number of which is 904 and it measures 38 cents. Therefore, I find that the document viz., sale deed dated 04.05.1937 does not relate to the suit property and the same will not aid this court in any manner for deciding the controversy in this appeal. Hence, I do not find any just cause to receive the sale deed as additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. Hence, CMP.No.5766 of 2016 is dismissed.

14. Arguing the appeal, Mr.N.Manokaran, learned counsel appearing for the appellant would vehemently contend that the courts below, having rejected the title of the

defendants, were not right in rejecting the claim of title of the plaintiff.

15. This submission of the counsel runs counter to the established position of law that it is for the plaintiff to prove his or her case particularly in a suit for declaration of title. When the plaintiff comes to court with a specific case, it is for the plaintiff to prove his or her claim to the satisfaction of the court in order to obtain a declaration regarding a legal right or status. The plaintiff cannot rely upon the weakness of the defence to seek declaration of her title or right.

16. Though the trial court has held that the defendants have not established their antecedent title, equally the plaintiff has also failed to establish her antecedent title to the property. The extract of Town Survey Land Register has been rightly disbelieved by the courts below, inasmuch as the extent of the property is filled up in pencil and the same being a document akin to a patta, cannot be relied upon to prove title.

17. I do not see any perversity in the findings of the courts below which are concurrent. In the absence of any perversity, I do not think, I can interfere with the factual findings of the courts below sitting in a Second Appeal. I do not find any question of law much less a substantial question of law in order to enable this court to entertain this appeal.

18. Hence, this Second Appeal is dismissed. Consequently, the connected miscellaneous petition in CMP.No.5765 of 2016 is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dsa  
To

1. The Sub Judge,  
Tiruvallur.
2. The District Munsif,  
Tiruvallur.

WEB COPY

3. The Section Officer, V.R. Section,  
High Court of Madras, Chennai 600 104.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.88458  
+lcc to Mr.A.R.Suresh, Advocate, S.R.No.88176

S.A.No.305 of 2016

PM(CO)  
CB(22/07/2020)



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