

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2019

PRONOUNCED ON : 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.57 of 2016

1.S.Jayaraman

2.Mallika

3.J.Karthikeyan

4.Sathiya

5.Sakthivel

...

Appellants/ Defendats

Vs.

Kumaran

...

Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 12.01.2016 passed in A.S.No.2 of 2015 on the file of the Subordinate Court, Harur, confirming the Judgment and Decree dated 29.01.2015 passed in O.S.No.102 of 2011 on the file of the District Munsif cum Judicial Magistrate Court, Pappireddipatty.

For Appellants : Mr.P.Valliappan

For Respondent : Mr.C.Munusamy

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 12.01.2016 passed in A.S.No.2 of 2015 on the file of the Subordinate Court, Harur, confirming the Judgment and Decree dated 29.01.2015 passed in O.S.No.102 of 2011 on the file of the District Munsif cum Judicial Magistrate Court, Pappireddipatty.

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

3.Suit for declaration and Permanent injunction.

4.The case of the plaintiff in brief is that the suit properties originally belonged to Ponnusamy Gounder by way of the sale deeds dated 16.11.1959 and 23.03.1960 and after his enjoyment of the same, he died intestate and the suit properties were succeeded by his legal heirs and the legal heirs of Ponnusamy Gounder alienated the suit properties to one Velu by way of the sale deed dated 23.11.2009 and thenceforth, Velu has been in the possession and enjoyment of the suit properties and on 01.06.2011, he had sold the suit properties to the plaintiff by way of a registered sale deed

and since then, it is only the plaintiff, who has been in the possession and enjoyment of the suit properties and cultivating the same. While so, the defendants, who are the adjacent land owners and who had failed to purchase the suit properties from Velu, developed ill will towards the plaintiff and attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit properties and hence, according to the plaintiff, he has been necessitated to institute the suit against the defendants for the appropriate reliefs.

5.The defendants resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and admitted that the suit properties originally belonged to Ponnusamy Gounder by way of the sale deeds dated 16.11.1959 & 23.03.1960 and that he was in the possession and enjoyment of the same and however, contended that after his demise, his legal heirs made encumbrance in respect of the suit properties in favour of the District Collector, Dharmapuri and hence, his legal heirs had not acquired any valid title to the suit properties and hence stated that the conveyance of the suit properties in favour of Velu is not true and valid and that Velu has never been in the possession and enjoyment of the suit properties and contended that it is further false to state that Velu had alienated the suit properties in favour of the plaintiff by way of a sale deed dated 01.06.2011 and that the plaintiff is in the possession and enjoyment of the suit properties and cultivating the same and further false to state that the defendants attempted to interfere with the possession and enjoyment of the plaintiff in respect of the suit properties without any entitlement and it is further contended by the defendants that criminal action had been launched against the legal heirs of Ponnusamy Gounder in Crime No.274 / 2009 on the file of Pappireddipatty Police Station and final report has been filed and the case has been taken cognizance in STC No.8/2010 on the file of the District Munsif cum Judicial Magistrate Court, Pappireddipatty and another criminal case has also been launched against Velu and his alleged vendors qua the act of the execution of the sale deed dated 23.11.2009 in Crime No.26 of 2009 on the file of the District Crime Branch, Dharmapuri under various Sections of law and thereafter, also put forth that a sale deed had been entered into in favour of one Chennakesavan and Ravishankar by Velu and others on 10.11.2010 and the same was cancelled on 01.06.2011 and according to the defendants, the legal heirs of Ponnusamy Gounder had executed Security deed in favour of the District Collector, Dharmapuri on 16.06.1979 and hence, they are not entitled to create any encumbrance qua the suit properties and furthermore, the legal heirs of Ponnusamy Gounder viz., Mani and Rajendran had entered into a sale agreement in favour of the first defendant in the year 1988 and handed over the suit properties and since then, it is only the first defendant, who has been in the possession and

enjoyment of the suit properties continuously and recognising his possession and enjoyment, the patta has been issued in the name of the first defendant and it is he, who is paying the kist etc., and also had obtained crop loan and subsequently, on 12.01.2009, the first defendant had executed a settlement deed in favour of his son viz., the third defendant and put him in the possession and enjoyment of the suit properties and the patta and the revenue records have been transferred in the name of the third defendant and the third defendant, pursuant to the same, had also entered into an agreement with Subramaniya Siva Sugar Mill for supplying sugarcane, which were cultivated in the suit properties and also secured loan from the said Mill and the plaintiff has suppressed the same and come forward with the false case and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to A12 were marked. On the side of the defendants, DWs 1 to 7 were examined and Exs.B1 to B16 were marked and Exs.C1 to C13 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to grant the reliefs in favour of the plaintiff as prayed for. Aggrieved over the same, the present second appeal has been preferred by the defendants.

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

"(i). Whether the Courts below are correct in law in granting decree of declaration and injunction especially when the respondent failed to prove valid title and possession over the suit properties?

(ii). When Sections 101 to 103 of the Evidence Act, 1872, mandate that the burden of proof is on the person who would fail if no evidence at all were given on either side, whether the courts below are correct in law in granting decree, in the absence of legal evidence to support the claim made by the respondent?

(iii). Whether the Courts below are correct in law in granting decree by picking illusory holes in the defence, obvious of the fact that the plaintiff has to succeed or fail on the strength of his case."

9. There is no dispute between the parties that the suit properties originally belonged to Ponnusamy Gounder and that he had acquired the same by way of the sale deeds dated 16.11.1959 and 23.03.1960, the certified copies of which documents had come to be marked as Exs.A1 to A3. It is found that Ponnusamy Gounder had died leaving behind his legal heirs viz., VEDIYAMMAL, RAJENDRAN, MANI, RAVIKUMAR and RAJESH. Now, according to the plaintiff, the legal heirs of Ponnusamy Gounder had alienated the suit properties in favour of one Velu by way of a sale deed dated 23.11.2009, which has come to be marked as Ex.A5 and since then, it is only Velu, who had been enjoying the suit properties. Further, it is also put forth by the plaintiff that Velu had alienated the suit properties in his favour by way of a sale deed dated 01.06.2011 and the said sale deed has come to be marked as Ex.A6 and accordingly, it is the case of the plaintiff that since then it is only he, who has been in the possession and enjoyment of the suit properties and the defendants, without any entitlement, had unlawfully attempted to interfere with his possession and enjoyment of the suit properties and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

10. Though the defendants had resisted the plaintiff's suit on various grounds, as regards the claim of title of the suit properties on the part of the defendants, it is mainly put forth by them that the legal heirs of Ponnusamy Gounder viz., Mani and Rajendran had entered into a sale agreement in favour of the first defendant with regard to the suit properties in the year 1988 and handed over the suit properties to the first defendant and pursuant to the same, according to the defendants, it is only the first defendant, who had been in the possession and enjoyment of the suit properties by obtaining patta, paying kist etc., and on that basis, it is also stated that the first defendant had settled the suit properties in favour of his son, the third defendant by a deed of settlement dated 12.01.2009 and since then, it is only the third defendant, who has been in the possession and enjoyment of the suit properties by obtaining patta, paying kist, etc., entering into an agreement with the mill for the supply of sugarcane etc.

11. It is thus noted that the defendants claimed title on the basis of the so-called sale agreement said to have been entered into by the two of the legal heirs of Ponnusamy Gounder in favour of the first defendant during 1988. It is found that the alleged sale agreement has also not been placed for consideration by the defendants and it is noted that the same is also not a registered instrument. In such view of the matter, when by way of the alleged sale agreement, the first defendant would not be entitled to seek any valid claim of title to the suit properties, as such, the case put forth by the defendants that based on the sale agreement, the first defendant had been exercising absolute ownership to the suit

properties by obtaining patta, paying kist, etc., cannot at all be countenanced in any manner and equally, the case of the defendants that the first defendant had settled the same in favour of his son, the third defendant by a deed of settlement dated 12.01.2009 also cannot be accepted legally as when it is noted that the first defendant had not acquired any valid title to the suit properties based on the alleged sale agreement said to have been executed in his favour by the two of the legal heirs of Ponnusamy Gounder during 1988. In such view of the matter, it is found that the third defendant cannot also be held to have acquired a valid title to the suit properties based on the alleged deed of settlement abovestated and therefore, it is found that till date, the defendants, viz., the first defendant and the third defendant had not acquired any valid title to the suit properties for sustaining their case that they have a valid ownership in respect of the suit properties.

12. From the encumbrance certificate produced in the matter marked as Ex.A7 for the period from 01.01.1959 to 25.07.2011, it is found that the same contains the entries regarding the partition effected amongst the legal heirs of Ponnusamy Gounder as well as the deed of conveyance executed by the legal heirs of Ponnusamy Gounder in favour of Velu on 23.11.2009 and also the sale deed executed by Velu in favour of the plaintiff on 01.06.2011, no doubt, Ex.A7 also contains the entries viz., the sale agreement dated 10.11.2010 entered into between Chennakesavan and the legal heirs of Ponnusamy Gounder, the cancellation deed pertaining to the same between the legal heirs of Ponnusamy Gounder and Chennakesavan and also contains the entry qua the settlement deed executed by the first defendant in favour of the third defendant on 12.01.2009. Therefore, it is found that the sale transactions pleaded by the plaintiff for deriving title to the suit properties through his predecessors in interest had been clearly reflected in Ex.A7 encumbrance certificate. Furthermore, Ex.A4 kist receipt dated 12.03.2009 pertaining to the suit properties for the fasali 1418 stands only in the name of Mani S/o. Ponnusamy Gounder and therefore, it is seen that even during 2009, the possession of the suit properties had been only in the custody of the legal heirs of Ponnusamy Gounder.

13. No doubt, it is seen that the plaintiff has not placed the revenue records standing in his name in respect of the suit properties, as according to the plaintiff, immediately after his purchase, as the defendants attempted to interfere with his possession and enjoyment of the suit properties, he had been necessitated to institute the suit against the defendants and it is seen that within 29 days from the date of Ex.A6 sale deed, the plaintiff has levied the suit on 30.06.2011. However, the plaintiff has produced the proceedings of the Thasildhar of Pappireddipatti dated 13.11.2010 marked as Ex.A8, with reference to the application

submitted by Velu, his vendor for the patta transfer and from Ex.A8, it is seen that there is no valid transfer of patta order in the name of the first defendant qua the suit properties and it is also disclosed that the patta continuous to stand in the name of the sons of Ponnusamy Gounder viz., Rajendran and Mani under Nila Udaimai Pathivu Mempoattu Thittam and the possession of the suit properties continues to be in the enjoyment of the legal heirs of Ponnusamy Gounder and in such view of the matter, when as abovenoted, the first defendant claims title to the suit properties based on the sale agreement, which document itself has not been produced, it does not stand to reason as to how the first defendant could have effected the change of patta in his favour in respect of the suit properties, particularly, when it is seen that pursuant to the alleged sale agreement, the first defendant had not acquired any valid transfer of title in his favour in respect of the suit properties. The computer patta dated 17.06.2011 marked as Ex.A9 go to show that the same has been issued only in favour of the legal heirs of Ponnusamy Gounder viz., Rajendran and Mani.

14.The defendants have also taken the plea that some criminal proceedings had been launched against the legal heirs of Ponnusamy Gounder with reference to the creation of certain documents and thereby, attempted to throw a cloud of title in respect of their ownership over the suit properties, however, as could be seen from the available materials on record, the criminal case launched against the legal heirs of Ponnusamy Gounder had ended in acquittal.

15.In addition to that, the defendants also would put forth the case that the property has been encumbered with the Government by the legal heirs of Ponnusamy Gounder and therefore, they would not have any title to the suit properties as such. However, considering the documents marked as Exs.A11/B11 as well as Ex.A10 mortgaged deed, it is found that the legal heirs of Ponnusamy Gounder had endeavoured to clear the dues to be paid to the government by way of mortgage deed under Ex.A10. Be that as it may, when it is not in dispute that Ponnusamy Gounder is the original owner of the suit properties and after his demise, the same would be inherited by his legal heirs and when it is further seen that the defendants themselves claimed title to the suit properties only through the legal heirs of Ponnusamy gounder and as abovenoted, the defendants would only put forth the claim of derivation of the title to the suit properties based on the alleged sale agreement effected during 1988 and when they had not even endeavoured to place the said sale agreement for consideration, it is seen that the case of the defendants that on the strength of the sale agreement, the patta and revenue records had come to be effected and changed in their name cannot at all be accepted in any manner. No doubt, some patta documents and kist receipt had been projected by the defendants and the Courts below had rightly assessed and

analysed the same and found that considering the doubts, which arise on the face of the abovesaid documents and when the defendants have failed to establish that the abovesaid revenue records, patta, kist receipt etc., had been mutated in their names only after due enquiry and to cap it all, when as above pointed out and determined by the Courts below, the defendants have not acquired any valid title to the suit properties other than the projection of the sale agreement, when the alleged sale agreement would not create a valid title in favour of the defendants viz., the first defendant in respect of the suit properties and in such view of the matter, the first defendant would also not to be competent to settle the suit properties in favour of his son viz., the third defendant. Hence, the claim of the defendants that pursuant to the alleged sale agreement and the settlement deed marked as Ex.B7, the first defendant and the third defendant are in the possession and enjoyment of the suit properties by obtaining patta, paying kist etc., cannot be believed and accepted. When the defendants are found to have obtained the revenue records mutated in their names without establishing their claim of title to the suit properties in any manner and when the patta said to have been effected in favour of the defendants has not shown to be legally done, particularly, after issuing notice to the lawful owners of the suit properties, in such view of the matter, the patta document and kist receipt projected by the defendants cannot confer or create title in favour of the defendants qua the suit properties and the abovesaid aspects of the matter had been rightly considered and determined by the courts below and I do not find any acceptable reason to interfere with the same.

16. Similarly, as regards the case of the defendants that they had obtained change of service connection in their names and the obtainment of the loan from the Mill concerned, as rightly found by the Courts below, when the abovesaid change of service connection in the name of the defendants are not shown to be validly done after obtaining no objection from the lawful owners of the suit properties and furthermore, the obtainment of loan by the defendants from the Mill concerned would not create title in their favour, in such view of the matter, all the abovesaid documents would be of no use to sustain the claim of title of the defendants qua the suit properties.

17. As regards the sale agreement said to have been entered into between the legal heirs of Ponnusamy Gounder and one Chennakesavan and the cancellation of the same and though the same had been projected in the matter, they all would not in any manner tilt the case in favour of the defendants for their claim of title to the suit properties or act against the plaintiff for his claim of title to the suit properties. Similarly, the case of the alleged agreement said to have been entered into with the Mill for the supply of sugarcane, when the Mill owner has not come forward with the acceptable

materials as to how the said agreement had been entered into, particularly, for determining the lawful ownership of the third defendant qua the suit properties and furthermore, when the evidence adduced in the matter through DW4 do not indicate that the alleged sugarcane accepted to be supplied by way of the agreement are only cultivated in the suit properties and whether the same actually belonged to the defendants, in such view of the matter, the documents pertaining to the abovesaid agreement said to have been entered into with the Mill, by themselves, would be of no use to uphold the defence version.

18. When the materials placed by the defendants are found to be not reliable and acceptable in any manner, particularly, the defendants having miserably failed to establish their valid claim of title to the suit properties and on the other hand, the plaintiff has projected the derivation of title to the suit properties through the lawful owners of the same right from Ponnusamy Gounder and in such view of the matter, it is seen that the defendants have also put forth the plea that on account of their long and continuous enjoyment of the suit properties for more than the period of 23 years, they had derived title to the suit properties by way of the adverse possession. However, for sustaining the said plea, some materials projected by the defendants are found to be not useful and as above pointed out and determined by the Courts below, when the patta, kist receipt etc., projected by the defendants are not shown to be validly effected in the name of the defendants after the determination of their legal title to the suit properties and with reference to the other documents projected by the defendants as above pointed out and when it is seen that the plaintiff and his predecessors in interest had been asserting their title to the suit properties and as abovenoted, during 2009 - 2010 itself, when it is found that the kist receipt in respect of the suit properties are issued only in the name of the legal heirs of Ponnusamy Gounder for the fasali 1418 and accordingly, the lawful owners of the suit properties have not ceased their claim of title, possession and enjoyment of the suit properties in any manner and hence, the defendants, on the other hand, having taken the plea of adverse possession on account of their long and continuous enjoyment are bound to establish the said plea by placing acceptable and reliable materials and however, as determined by the Courts below and as could be seen from the available materials on record, the documents projected by the defendants would not be useful to uphold their plea of adverse possession and in such view of the matter, the courts below had also rightly held that the abovesaid claim of title to the suit properties on the part of the defendants by way of adverse title cannot be countenanced.

19. In the light of the abovesaid discussions, it is found that the plaintiff having established his derivation of title to the suit properties through proper source and accordingly,

established his valid title, possession and enjoyment of the suit properties and on the other hand, the defendants having failed to establish their claim of title to the suit properties in any manner as well as their claim of adverse title to the suit properties as adumbrated under law and the Courts below are found to have assessed and analysed the materials placed on record in the proper perspective and on an appreciation of the same and considering the preponderance of probabilities with regard to the same, legally, rightly held that it is only the plaintiff, who has the valid title, possession and enjoyment of the suit properties and that the defendants are not entitled to the suit properties in any manner and in such view of the matter, it is seen that the judgment and decree of the courts below do not warrant any interference.

20.The defendants' counsel, in support of his contentions, placed reliance upon the decisions reported in AIR 2014 SUPREME COURT 937 (Union of India Vs. Vasavi Co-op. Housing Society Ltd and others), 2015 (6) CTC 359 (M.P.Natesan and two others Vs. Palanisamy) and 2014 (2) MWN (Civil) 337 (C.Chonachalam and others Vs. Veeranarayanamangalam Vellala Samudayam Muthalamman Koil Trust, Kanyakumari District and others). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

21.For the reasons aforesated, the second appeal is found to be devoid of merits. In my considered opinion, no substantial question of law is found to be involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly, answered in favour of the plaintiff and against the defendants.

Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

sms

To

1.The Subordinate Court, Harur.

2.The District Munsif cum Judicial Magistrate Court, Pappireddipatty.

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

+lcc to Mr.C.Munusamy , Advocate SR.No. 66884

+2ccs to Mr.P.Valliappan , Advocate SR.No. 67029

in S.A.No.57 of 2016

A.SK(13/02/2020)

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