

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.09.2019

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAM

S.A.No.272 of 2014

1.K.Gopal
2.G.Dhandapani
3.G.Suriyakala

... Appellants/Defendants/Defendants

-vs-

P.Sundaresan

... Respondent/Plaintiff/Plaintiff

PRAYER: The Second Appeal is filed under Section 100 of CPC, against the Judgment and decree made in A.S.No.50 of 2011 dated 19.12.2013 on the file of the Sub Court, Gudiyattam, Vellore District reversing the well considered judgment and decree made in O.S.No.393 of 2006 dated 30.10.2010 on the file of the District Munsif Court, Gudiyattam.

For Appellants : Mr. K.A.Ravindran

For Respondent : Mr. T.Dhanya Kumar

JUDGMENT

The second appeal has filed by the appellants/defendants against the judgment and decree passed by the Sub Judge, Gudiyattam in A.S.No.50 of 2011 dated 19.12.2013 reversing the well considered judgment and decree passed by the District Munsif Judge, Gudiyattam made in O.S.No.393 of 2006 dated 30.10.2010.

2. The appellants/defendants in O.S.No.393 of 2006, who had suffered decree for permanent injunction restraining them from interfering with the plaintiff's possession with reference to 14 cents of land in Survey No.68/1, came forward this Second Appeal.

3. The suit in O.S.No.393 of 2006 is filed by the sole respondent claiming that the property belong to one Venkatammal wife of Krishnasamy Mudaliyar who had executed a Settlement Deed dated 16.07.1981 settling the same in favour of her two daughters Anandammal and Babyammal. The respondent/plaintiff is the son of Anandammal. The said Anandammal and Babyammal had sold the property to respondent/plaintiff under a Registered Sale Deed 15.02.2005. It is also claimed that pursuant to the settlement deed, the revenue records were mutated and patta was

issued in favour of Anandammal. Based upon the patta, the property was purchased by the respondent/plaintiff. The respondent/plaintiff was granted patta in respect of 0.05.5 Hectares equivalent to 14 cents in Survey No.68/1. Claiming title and possession under the Settlement Deed dated 16.07.1981 and the Registered Sale Deed dated 15.02.2005 the respondent/plaintiff sought for a decree for permanent injunction.

4. The suit was resisted by the appellants/defendants contending that the suit property (14 cents of land in Survey No.68/1) was originally purchased by the Narayanasamy Mudaliyar brother of Krishnasamy Mudaliyar in the year 1919. Since Narayanasamy Mudaliyar died with out any issues, the suit property devolved on his brother Krishnasamy Mudaliyar. Krishnasamy Mudaliyar left behind four sons, two daughters and his wife Venkatammal (7 persons) as his legal representatives. Therefore, the property devolved on all seven of them. The appellants/defendants also denied the execution of the Settlement Deed by Venkatammal in favour of her two daughters Anandammal and Babyammal. It was also contended that Venkatammal has no absolute right to execute the settlement deed in favour of her daughters. It was therefore, claimed that the sale in favour of the respondent/plaintiff is not valid.

5. The learned trial Judge considered the evidence on record and found that the respondent/plaintiff has not made out the case for granting injunction. The learned trial Judge took note the fact that original ownership of Narayanasamy Mudaliyar and Krishnasamy Mudaliyar have been admitted by the respondent/plaintiff. In view of the said admission, the trial Court doubted the validity of the settlement deed dated 16.07.1981 executed by Venkatammal in favour of her two daughters Anandammal and Babyammal. The trial Court also took note of evidence of PW1 wherein he has deposed that he was not in a possession of the suit property. On the above findings, the learned trial Judge concluded that the respondent/plaintiff has not establish his exclusive possession of the suit property measuring about 28 cents in Survey No.68 (Survey Nos.68/1 and 68/2).

6. On the above conclusion, the Trial Court dismissed the suit. Aggrieved by the same, the respondent/plaintiff filed an appeal in A.S.No.50 of 2011. The Lower Appellate Court concurred with the findings of the trial Court in respect of the title to the property. The Lower Appellate Court infact found that since the property is an ancestral property, venkatammal had no right to execute the Settlement Deed in favour of her two daughters on 16.07.1981. However the Lower Appellate Court concluded that the respondent/plaintiff is in possession of 14 cents of land in Survey No.68/1 based on the patta that has been produced by the respondent/plaintiff as Ex.A5.

7. In view of the fact that the patta for atleast 14 cents of land in Survey No.68/1 stands in the name of the respondent/plaintiff, the lower Appellate Court granted decree for injunction in respect of said 14 cents of land alone restraining the appellants/defendants from interfering with the possession of the respondent/plaintiff except under due process of law. It is the said decree for injunction granted by the lower Appellate Court which is under challenge.

8. I have heard Mr.K.A.Ravindran, learned counsel for the appellants and Mr.T.Dhanyakumar, learned counsel for the respondent.

9. The following substantial questions of law arises wherein at the time of admission:

1) When the plaintiff/respondent admits that he is not in possession of the suit property for an extent of 28 cents whether the Lower Appellate Court is right in granting a decree for permanent injunction for not to evict him without due process of law for 14 cents?

2) Whether the Lower Appellate Court is right in granting decree for injunction for not to evict him without due process of law, when the evidence of P.W.1 and P.W.2 is contradictory to each other with respect of possession?

3) When the plaintiff/respondent failed to establish his possession whether the Lower Appellate Court is right in granting the decree for injunction?

While elaborating all the substantial questions of law, the learned counsel appearing for the appellants/defendants would vehemently contend that once the respondent/plaintiff himself has admitted in his evidence that he is not in possession of the suit property, the Lower Appellate Court was not right in granting injunction based on patta alone. He would also point out that the Lower Appellate Court has specifically found that respondent/plaintiff is not entitled to any right or title over the property under a Registered Sale Deed dated 15.02.2005.

10. Countering the said submission, Mr.T.Dhanya kumar, the learned counsel for the respondent/plaintiff would submit that the respondent/plaintiff has not admitted that he is not in possession. In fact the revenue records produced in the form of patta would show that the respondent/plaintiff is in possession of 14 cents of land in Survey No.68/1. Therefore, according to

him, the Lower Appellate Court was justified in granting limited injunction restraining the appellants/defendants from interfering with the respondent/plaintiff's possession in respect of the said property except under due process of law. The suit filed by the respondent/plaintiff is one that based on the title and the injunction is sought for based on title and not on possession. The respondent/plaintiff claims that his mother Anandammal and Aunt Babyammal had become owners of the property under Settlement Deed dated 16.07.1981. The execution of the Settlement Deed was not admitted and on the other hand it was specifically denied that the said Settlement Deed was not proved in accordance with law as required under Sections 68 or 69 of the Evidence Act. The settlees namely Anandammal and Babyammal have conveyed the property to the respondent/plaintiff under the Registered Sale Deed 15.02.2005 which has been marked as Ex.A2.

11. The Lower Appellate Court has specifically found that the vendors of the respondent/plaintiff are not entitled to any right under the Settlement Deed dated 16.07.1981 and they did not have absolute right in respect of the land in question. The Lower Appellate Court had also come to the conclusion that the respondent/plaintiff does not get any right under the Registered Sale Deed dated 15.02.2005 marked as Ex.A2. However the Lower Appellate Court would conclude that since the patta has been issued to the respondent/plaintiff in respect of 14 cents of land, the respondent/plaintiff's possession should be protected to the said extent. During the cross examination the respondent/plaintiff has deposed as follows:

"I do not know how much properties are in possession since the properties in Ex.P2 are not in anybody's possession."

12. The Trial Court has relied upon the evidence of the respondent/plaintiff and concluded that the respondent/plaintiff is not in actual possession and therefore, he is not entitled to injunction. The Lower Appellate Court has overlooked this very vital evidence while granting relief of injunction. Infact that Narayanasamy Mudaliyar has purchased the property. The respondent/plaintiff did not plead that there was an oral partition between the legal representatives of Krishnasamy Mudaliyar and therefore, Venkatalakshmi was entitled to settle the property in favour of her two daughters under the Settlement Deed dated 16.07.1981 marked as EX.A1. These facts are introduced only in evidence. Any amount of evidence which is not supported by pleading cannot be looked into. Having found that the respondent/plaintiff has not proved his claim for title the Lower Appellate Court, in the considered the opinion of this Court, was in error in granting decree for injunction solely based on the patta, Settlement Deed and registered Sale Deeds dated 16.07.1981 and 15.02.2005 namely Ex.A1 and Ex.A2 respectively.

13. In the light of the above, the substantial questions of law are answered in favour of the appellants/defendants. The appeal is therefore allowed. The Judgement and decree of the Lower Appellate Court are set aside and that of the trial Court dismissing the suit in O.S.No.393 of 2006. However there shall be no order as to costs.

Sd/-
Assistant Registrar(CS)

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To Sub Assistant Registrar

1. The Sub Judge, Gudiyattam, Vellore.
2. The District Munsif, Gudiyattam, Vellore.
3. The Section Officer, VR Section, High Court, Chennai.

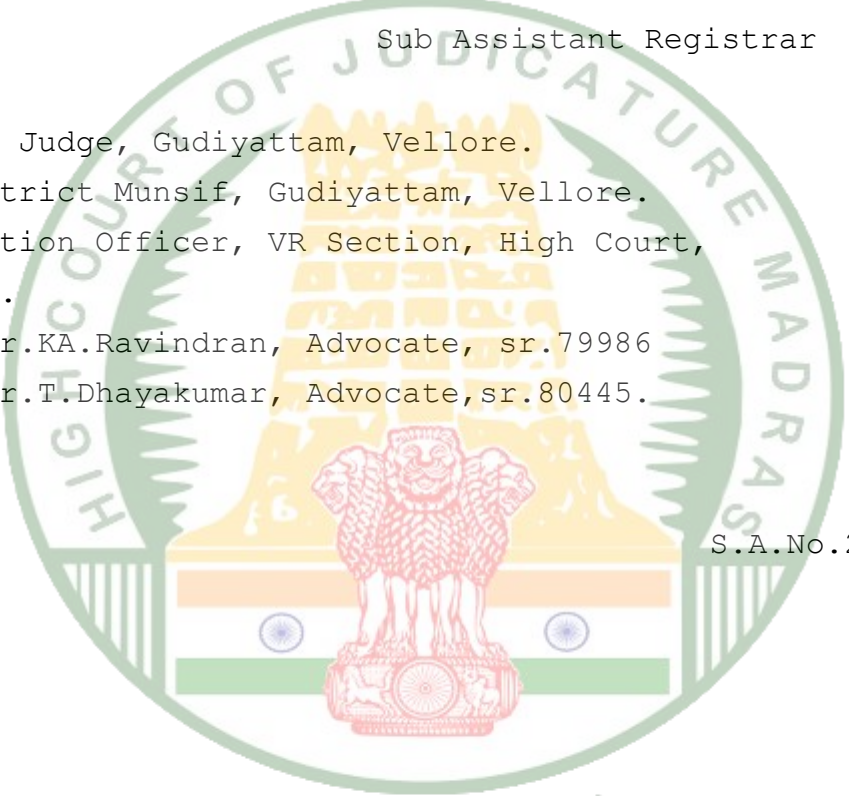
+1 cc to Mr.KA.Ravindran, Advocate, sr.79986

+1 cc to Mr.T.Dhayakumar, Advocate, sr.80445.

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