

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 14.11.2019	Delivered on 20.11.2019
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.NO.389 OF 2014
AND
MP.NOS.1 AND 2 OF 2014

1. K.Kasinathan
2. Thiyageswari

... Appellants/Plaintiffs

vs.

N.Umasankar

... Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 26.02.2014 in A.S.No.21 of 2014 on the file of Principal Subordinate Judge, Cuddalore reversing the Judgment and Decree dated 18.11.2011 in O.S.No.261 of 2009 on the file of Principal District Munsif, Cuddalore.

For Appellants : Mr.D.Ravichander

For Respondent : Mr.R.Muralidharan

J U D G E M E N T

The plaintiffs in O.S.No: 261 of 2009 on the file of the District Munsif, Cuddalore who succeeded in obtaining a decree for declaration of title of the first plaintiff to the first item of the suit properties and that of the second plaintiff to the second item of the suit properties and for a permanent injunction on the said decree being reversed by the Appellate court in A.S.No: 21 of 2012 have come up with this second appeal.

2. The case of the plaintiffs is that the suit properties measuring about 2.50 acres in new survey number 79/3 of Sandoorpalayam village, Cuddalore district belonged to one Kunjan. He had sold the said property for a sum of Rs.90/- on 8/8/1966 under a unregistered sale deed and delivered possession to the purchaser namely A.Dhandapani. According to the

plaintiffs ever since the date of purchase the said Dhandapani was in possession and enjoyment of the suit property openly, uninterruptedly, peacefully and adverse to the interest of anyone else and he had also prescribed title by adverse possession. It is the further claim of the plaintiffs that the said Dhandapani died on 26/02/ 2002 leaving behind the second plaintiff Thiyaageswari and his children to succeed to the said property. It is claimed that the children of the second plaintiff relinquished their interest to her and the second plaintiff has been in enjoyment of the entirety of the property absolutely. With the consent of the children the patta was also changed in her name. The plaintiffs would further contend that the second plaintiff and one of her daughters Gayathri had entered into an agreement of sale on 20/11/2007 and thereafter sold and an extent of 2 acres and 10 cents out of 2 acres 50 cents under a registered sale deed dated 11/2/2008. Upon such sale the first plaintiff has been in possession of the property conveyed to him and the second plaintiff has been in possession of the remaining 40 cents of land. Claiming that the defendant attempted to interfere with the possession of the plaintiffs setting up a claim of title under a sale deed said to have been executed by the heirs of Kunjan, the plaintiffs sought for the reliefs of declaration and injunction.

3. The suit was resisted by the defendant contending that the sale by Kunjan in favour of Dhandapani dated 8/8/1966 is not valid. The said sale being unregistered cannot confer any title on the plaintiff's predecessor in interest, Dhandapani. The claim based on adverse possession was also denied. It was his further claim that the assignment was made in favour of Kunjan in 1962 subject to the condition that he should not alienate the property within 10 years of the assignment. The sale dated 8/8/1966 having taken place within 10 years of the said assignment, according to the defendant, is invalid. This defence was however not canvassed seriously at trial. The defendant would further claim that Kunjan died about 20 years prior to the suit and after his death his wife and his daughter have been in possession and enjoyment of the property as absolute owners. Visalakshi wife of Kunjan executed a general power dated 4/12/2003 in favour of Amaravathi and the said Amaravathi sold the suit property under a sale deed dated 1/2/2008 in favour of the defendant for valid consideration. Therefore according to the defendant he alone is entitled to the suit property.

4. At trial the first plaintiff was examined as PW-1, the second plaintiff was examined as PW-2 and three other witnesses were examined on the side of the plaintiffs. Exhibits A1 to A28 were marked. The first defendant was examined as DW-1 and

Visalakshi wife of Kunjan was examined as DW-2. Exhibits B 1 to B 16 were marked. On a consideration of the evidence on record the learned trial Judge found that the plaintiffs have proved their title. The learned trial Judge concluded that Exhibit A 1 sale deed dated 8/8/1966 being for a value of less than Rs.100/-, the same does not require registration. The learned trial Judge also found that the plaintiffs have been in continuous possession and enjoyment of the property right from the date of Exhibit A 1 and as such they have perfected title by adverse possession. It was also the conclusion of the learned trial Judge that the sale deed dated 01/02/2008 executed by Visalakshi in favour of the first defendant is invalid since she did not possess title to convey on the date of the said sale. On the aforesaid findings the learned trial Judge decreed the suit.

5. Aggrieved the defendant preferred an appeal in A.S.No: 21 of 2012 on the file of the principal Sub-Court, Cuddalore. The learned Subordinate Judge on a reconsideration of the evidence on record concluded that there are certain corrections in the contents of Exhibit A 1 which led him to believe that Exhibit A 1 is not a genuine document. On the said finding, the learned Appellate Judge concluded that the plaintiffs have not made out their claim of adverse possession also. On the above conclusions the learned subordinate Judge allowed the appeal dismissed the suit. Aggrieved the plaintiffs have come up with the above second appeal.

6. The following substantial questions of law were framed at the time of admission

- 1) Is the sub- Judge right and reversing the judgment of the trial court on the simple ground that the second plaintiff was not the manager of the family of Dhandapani when such issue is not vital for deciding the suit?
- 2) The alleged suspicion with respect to the representation to the family of Dhandapani can be treated as a ground for non-suiting the plaintiffs, despite the fact that the plaintiffs having established their case by filing all parent documents of title?

Upon hearing the counsel for the parties the following additional questions of law were framed for determination in this appeal:

- 1) Whether the finding of the lower appellate court that the plaintiffs have not perfected title

by adverse possession is justified?

2) Whether Exhibit A 1 sale deed can be said to be valid in the absence of registration?

The counsel for the parties were heard on the additional questions of law framed in the appeal.

7. I shall first deal with the second additional question of law framed since it assumes significance and the decision on the appeal would depend on the answer to the second additional question of law.

8. A perusal of Exhibit A 1 sale deed shows that it effects transfer of title in presenti. Mr.D.Ravichandar learned counsel appearing for the appellant would vehemently contend that Exhibit A 1 sale deed which creates a transfer of interest in immovable property value of less than Rs.100/- the same need not be registered. I am unable to countenance his submissions in this regard for the following reasons;

Section 54 of the Transfer of Property Act defines "sale" and it reads as follows:

Section 54. "Sale" defined.- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

"In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for Sale.- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

9. A perusal of Section 54 extracted above would show that the law contemplates only two modes of transfer of interest in immovable property. It can either be by a registered instrument in case of immovable property of value of more than Rs.100/- or by way of delivery of possession in case of immovable property of value less than Rs.100/-. A third method namely a transfer by way of an unregistered instrument is not contemplated. This court in V.S. Meenakshisundram and others v. Kaliyaperumal and others, reported in Volume 98 Law Weekly 906, has considered the admissibility of an unregistered sale deed of immovable property for value below Rs.100/- and has held as follows:

"In dealing with Section 49 of the Registration Act, the Supreme Court, in Raghunath v. Kedarnath, pointed out that by the enactment of Act XXI of 1929 which, by inserting in Section 49 of the Registration Act the words, "or by any provision of the Transfer of Property Act, 1882, 'has made it clear that the documents in the supplemental list, that is, the documents of which registration is necessary under the Transfer of Property Act, but not under the Registration Act, fall within the scope of Section 49 of the Registration Act and if not registered, are not admissible as evidence of any transaction affecting any immovable property comprised therein, and do not affect any such immovable property. Therefore, it is obvious that these documents, viz., Exhibits A-4 to A-8 and A-10 which are unregistered sale deeds and Exhibit A-9, an unregistered exchange deed, are inadmissible in evidence. That disposes of the substantial question of law formulated in the second appeal.

10. In doing so this court had relied upon a division bench judgment of this court Kuppuswami Vs Chinnaswami reported in AIR 1928 Madras 546 wherein it was held that a transaction of sale if in writing, even if it is for a value of less than Rs.100/-, has to be registered. No doubt Mr.D.Ravichandar counsel appearing for the appellant would draw my attention to Section 17 of the Registration Act to contend that a sale deed of immovable property for a value less than Rs.100/- is not compulsorily registrable. This submission of the learned counsel overlooks an important amendment brought to Section 49 of the Registration Act by the Transfer of Property Amendment Act 1929, wherein, the words "or by any provision of Transfer of Property Act" were included in Section 49 of the Registration Act.

Therefore as on date in view of Section 49 of the Registration Act a sale deed for a value less than Rs.100/-, if it is reduced to writing, is required to be registered in accordance with law. The resultant position is an unregistered instrument of sale for whatever value be it, relating to immovable property cannot be looked in to as a source of title to the property conveyed. Section 54 of the Transfer of Property Act does not contemplate sale of immovable property by an unregistered instrument in writing which conveys an interest in immovable property by itself. Mr.D.Ravichandar would draw my attention to the judgment of this court in Viswalingam @ Mayavel and others v. Balasubramaniam reported in 2013 (5) MLJ 785 to contend that a sale deed for value less than Rs.100/- need not be registered. He would draw my attention to paragraph 11 of the said judgment which reads as follows:

"11. At this juncture, it is just and proper to refer to a very important law point which is more often than not lost sight of by many. The trial Court in fact was carried away by the misconception that an immovable property worth less than Rs.100/-, could be transferred without any registered deed. Such a proposition is basically and fundamentally wrong. If a sale deed is executed relating to a property worth less than Rs.100/-, then only no registration is required. But in respect of a settlement deed even if it relates to a property less than Rs.100, it requires registration compulsorily. This aspect has not been considered at all by the Courts below."

11. After saying so the Hon'ble Judge who decided Viswalingam @ Mayavel and others v. Balasubramaniam extracts Section 54 of the Transfer of Property Act and has this to say:

"13. As such, in the second paragraph cited supra, the portion emphasized would indicate and exemplify that in the case of sale of an immovable property worth less than Rs.100/-, registration is not compulsory. ..."

I must point out that the attention of the learned Judge who decided Viswalingam @ Mayavel and others v. Balasubramaniam was not drawn to Section 49 of the Registration Act. The earlier judgment of this court reported in 98 Law Weekly 906 was also not brought to the notice of the Honourable Judge who decided Viswalingam @ Mayavel and others v. Balasubramaniam. The Honourable Supreme Court in Raghunath -Vs-Kedarnath, reported in AIR 1969 SCC 1316 had held that the enactment of Act XXI of 1929

namely the Transfer of Property Amendment Act inserting in Section 49 of the Registration Act the words 'or by any provision of the Transfer of Property Act 1882' has made it clear that the documents in the supplemental list, that is the documents of which registration is necessary under the Transfer of Property Act, but not under the Registration Act, fall within the scope of Section 49 of the Registration Act and if not registered, are not admissible as evidence of any transaction affecting any immovable property comprised therein and do not affect such immovable property. The above observation of the Honourable Supreme Court and the Judgment of this court in Kuppaswami Vs Chinnaswami, referred to supra, makes it clear that a unregistered sale deed affecting transfer of immovable property of whatever value is not admissible in evidence as proof of any transaction affecting any immovable property comprised therein. Therefore I have no hesitation in concluding that Exhibit A 1 sale deed dated 8-8-1966 being an unregistered instrument is not admissible in evidence as a transaction affecting any immovable property comprised therein. Therefore the additional question of law number two is answered against the appellant to the effect that Exhibit A 1 being unregistered cannot be relied upon to prove the title of the plaintiff's predecessor in interest.

12. Realising the difficulty in claiming title under Exhibit A 1 Mr.D.Ravichandar learned counsel appearing for the appellant would alternatively submit that the plaintiffs have pleaded adverse possession and even if this court is to come to the conclusion that Exhibit A 1 will not confer valid title on the plaintiffs and their predecessor in interest having been in possession of the property right from the date of execution of Exhibit A 1 namely 8-8-1966 have perfected the title by adverse possession since their title is referable to an inchoate instrument or an invalid instrument of sale. In doing so the learned counsel would draw my attention to the pleadings in paragraph 3 of the plaint which reads as follows: 'Ever since the date of purchase the said Dhandapani was in possession and enjoyment of the same openly, uninterruptedly, peacefully and adverse to the interest of anyone else and he had also prescribed title by adverse possession'. Relying upon the above pleading and the long uninterrupted possession of the suit property by Dhandapani and his successors, the plaintiffs, the learned counsel would contend that the plaintiff's title should be upheld on the ground of adverse possession. He would also rely upon the Judgment of the Honourable Supreme Court in Ravinder Kaur Grewal v. Manjit Kaur, reported in 2019 (4)CTC 936 in support of his submission. While answering the question "Whether a person claiming title by adverse possession can maintain a suit for declaration of title and permanent

injunction?" a three-Judge bench of the Honourable supreme had observed as follows:

59. Possession is the root of title and is right like the property. As ownership is also of different kinds of viz. sole ownership, contingent ownership, corporeal ownership, and legal equitable ownership. Limited ownership or limited right to property may be enjoyed by a holder. What can be prescribable against is limited to the rights of the holder. Possession confers enforceable right under Section 6 of the Specific Relief Act. It has to be looked into what kind of possession is enjoyed viz. de facto i.e., actual, 'de jure possession', constructive possession, concurrent possession over a small portion of the property. In case the owner is in symbolic possession, there is no dispossession, there can be formal, exclusive or joint possession. The joint possessor/coowner possession is not presumed to be adverse. Personal law also plays a role to construe nature of possession.

13. He would also buttress the submission by relying upon the judgment of the Division Bench of this court Rukmani -vs- Gopalaswamy, reported in 1993 (2) MLJ 598, wherein it was held that a person in open continuous and uninterrupted possession on the basis of a void sale deed can acquire title by adverse possession. A perusal of the said judgment of the Division Bench shows that the Division Bench had actually approved a claim of title by adverse possession by the purchaser under a invalid instrument observing as follows:

'Even if it is assumed that Exhibit B 2 sale deed is void, in view of the evidence showing that the vendors are in open continuous and uninterrupted possession and enjoyment of the land since 1954, they have acquired title by adverse possession. In Venkatasubramania - versus - Sivagurunatha AIR 1938 Madras 60 a Division Bench of this court has held that adverse possession of an alienee dates from the moment the alienee is without lawful title. That time is, in case of a void transfer, the date of transfer.'

14. Countering the said submissions, Mr.R.Muralidharan, learned counsel appearing for the respondent would submit that the plaintiffs having claimed title under the unregistered Sale

Deed cannot be allowed the rest their claim on adverse possession. He would also point out that a claim of title and adverse possession cannot go together. Mr.R.Muralidharan, would further point out that the plaintiffs have not proved uninterrupted possession for over the statutory period so that the Court could grant them a relief on the basis of adverse possession.

15. In the case on hand the Trial Court had categorically found that the plaintiffs and their predecessor in interest Dhandapani have been in possession and enjoyment of the property right from the date of Exhibit A 1 sale. This is also demonstrated by Exhibits A3 and A6 to A20 of which Exhibits A 7 to 18 of are adangal extracts for over 12 years. The evidence of DW-2 assumes significance in this regard. The said witness who is the wife of Kunjan had in fact admitted that Kunjan had sold the property to Dhandapani under Exhibit A 1 the relevant portion of her evidence reads as follows:

“தண்டபாணிக்கு ஏற்கனவே கொடுத்த கிரையம் பதிவு, செய்யப்படாத கிரையம் என்பதால் அது செல்லாது என்பதால் நான் தடை செய்வதற்கு தடங்கல் பத்திரம் எழுதினேன்,

ஏற்கனவே நான் தண்டபாணி பெயரில் உள்ள பதிவாகாத கிரையப்பத்திரம் உள்ளதாக சொன்னது சொத்தின் மீது உள்ள வில்லங்கம் தான். வில்லங்கம் இருந்தால் பரவாயில்லை நான் பார்த்துக் கொள்கிறேன் என்று பிரதிவாதி சொன்னார்.....”

16. Even the defendant in his oral evidence has admitted that the revenue records stand in the name of the Dhandapani. He would further admit that all the revenue records produced by him are subsequent to the suit. The above evidence would show that the plaintiffs and their predecessor Dhandapani are in continuous possession and enjoyment of the property right from the date of Exhibit A1 namely 8-8-1966 and that they have perfected title by adverse possession. No doubt the learned appellate Judge has disbelieved Exhibit A 1 on the ground that there has been some correction in the name of the person in whose name the stamp paper was purchased. I have already extracted the admission of Visalakshi wife of Kunjan as DW 2 wherein she had admitted the execution of Exhibit A 1 by her husband. Exhibit A1 is also more than 30 years old and has been produced from proper custody. Hence it is entitled to the presumption available under Section 90 of the Evidence Act. The so-called discrepancy pointed out by the lower appellate court would not have the effect of invalidating Exhibit A 1 as evidence of possession. For the foregoing reasons the additional question of law number 1 is answered in favour of the appellants concluding that the plaintiffs have perfected title to the suit property by adverse possession.

17. This takes us to the two other questions of law framed at the time of admission of the appeal. As far as the first question of law is concerned there is a clear pleading in the plaint itself that the other legal heirs of Dhandapani have given up their right in the suit property and only upon their no objection the revenue records have been mutated in the name of the second plaintiff. The second plaintiff along with her daughter Gayathri had sold the property to the first plaintiff under a registered sale deed dated 11-2-2008. A decree for declaration of title is not one in rem but it is in personam. It would only bind the parties to the suit. Any decree granted in this suit would not be binding on the other heirs of Dhandapani who have not joined the execution of the sale deed in favour of the first plaintiff. Similarly the decree declaring the title of the second plaintiff to the remaining extent of 40 cents would only operate against defendant in this suit. Therefore the lower appellate court was not right in dismissing the suit on the non-existent grounds namely the capacity of the second plaintiff to alienate the property and the claim of the second plaintiff that she represents the family as its manager. Therefore the questions of law framed at the time of admission are also answered in favour of the appellants against the respondent.

18. In view of the above answers to the questions of law framed the Second Appeal is allowed. The judgment and decree of the lower appellate court are set aside and that of the trial court are restored. However in the circumstances of the case there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jv

To

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

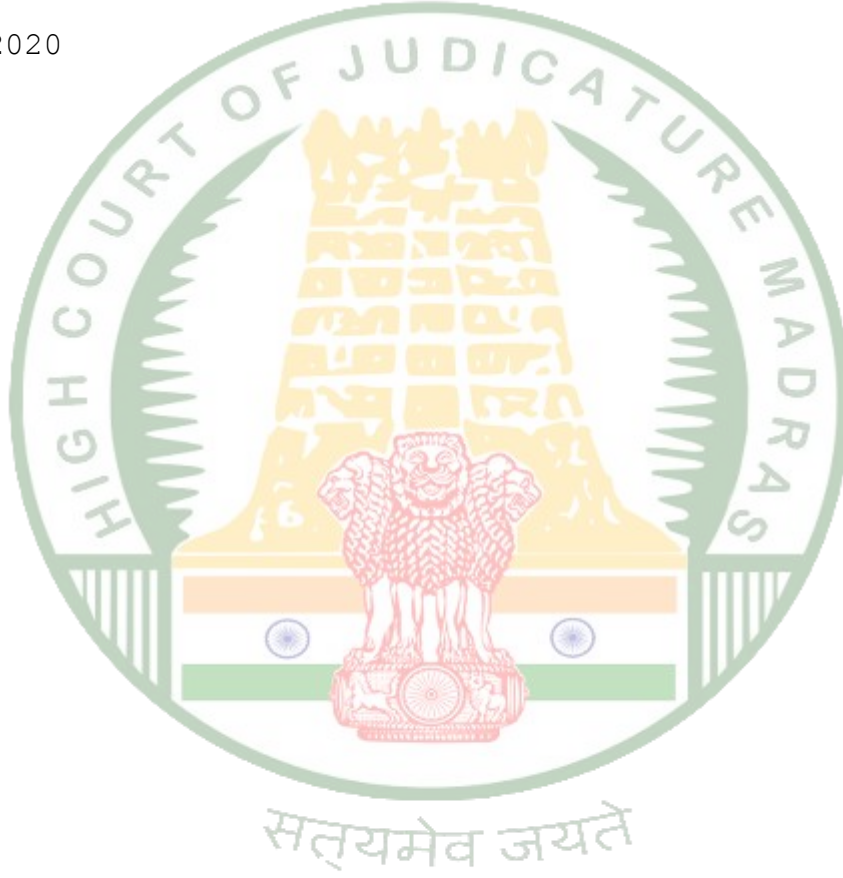
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+2cc to Mr.R.Muralidharan, Advocate, S.R.No.96615
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