IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 68 of 2014
and
M.P.No. 1 of 2014

1.M.Raju
2.M.Manickam
3.Gopal ..Appellants/Defendatns

Vs.

1.Pachamuthu
2.Kandasami
3.Palanisami ..Respondents/Plaintiffs

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 28.01.2013 made in A.S.No.103 of 2010 on the file of II-Additional Sub-Oridnate Judge of Salem, confirming the judgment and decree dated 01.07.2010 made in O.S.No.946 of 2008 on the file of II-Additional District Munsif Court, Salem(First Additional District Munsif / In Charge of Second Additional District Munsif) and to set aside the same.

For Appellants : Mr. V.Raghavachari

For Respondents : Mr.T.M.Hariharan

J U D G M E N T

The defendants in O.S.No. 946 of 2008 having suffered a decree for declaration and injunction concurrently, have come forward with this second appeal.

2. The said suit was filed by the respondents / plaintiffs seeking declaration of the title and permanent injunction contending that the suit properties originally allotted to their father Chellappa Gounder in a partition that took place on 11.07.1957 between him and his brother Nachiappa. The plaintiffs purchased part of the suit properties under sale deed dated 09.10.1978 from the said Nachiappa Gounder. According to the plaintiffs, they have been in possession of the property right from the date of partition. Though the other

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properties that were allotted to Chellappa Gounder were partitioned, the suit property was not divided and it continued to be in joint possession of the plaintiffs. Claiming that the defendants had attempted to interfere with their possession on 23.08.2008, the plaintiffs have come forward with the above suit seeking declaration of their title and injunction.

3. The suit was resisted by the defendants contending that the plaintiffs do not have any right or title over the suit properties. The partition deed and the sale deed are self-serving documents which will not confer title. It is also claimed that the suit properties ancestrally belonged to the defendants family and they have been in possession of the property. It was further contended that the son of the first plaintiff Raja was permitted to put up construction in a portion of the suit property and run a powerloom. Taking advantage of the said permission, the plaintiffs have come forward with the present suit. On the above pleadings, the defendants sought for dismissal of the suit.

4. The Trial Court framed relevant issues and upon consideration of the evidence on record concluded that the plaintiffs have proved their title. The said conclusion was arrived at by the Trial Court based on partition deed dated 11.07.1957(Ex.A1). The defendants had produced the sale deed dated 16.06.1922 as Ex.B1. The said sale deed was executed by Pachamuthu / grandfather of the plaintiffs in favour of Umapathi @ Nallappa Gounder/ grandfather of the defendants in and by which an extent of 78 cents in Survey No.97/1 was conveyed to Umapathi by Pachamuthu. Under Ex.B2 (Mortgage deed), the said Umapathi @ Nallappa Gounder had mortgaged an extent of 1.56 acres in Survey No.97/1 to one Velmayil Chettiar. The defendants also produced Ex.B6, which is a mortgage deed executed by Pachamuthu Gounder / grandfather of the plaintiffs in favour of Umapathi @ Nallappa Gounder / grandfather of the defendants. The plaintiffs have produced Ex.A18 (sale deed) dated 14.08.1941 in and by which, the grandfather of the defendants namely, Umapathi @ Nallappa Gounder had sold 1.58 acres in Survey No.15/6 to Pachamuthu Gounder / grandfather of the plaintiffs. It is seen from the records that Ex.A18 (sale deed) dated 14.08.1941 and Ex.B6 (Mortgage deed) dated 14.08.1941 are on the same day. Subsequently, the plaintiffs have created another mortgage on 01.04.1971 in favour of the Co-operative Society over the properties measuring about 1.58 cents in Survey No.15/6.

5. The learned Trial Judge concluded that the plaintiffs have proved their title through Exs.A1, A2 and A18. The Trial Court had also concluded that the defendants have not proved that Ex.B1(sale deed) dated 16.06.1922 relates to the suit

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property, since the survey numbers are different. The Trial Court also concluded that the defendants have not co-related the survey numbers to show that Old Survey No.97/1 has now been assigned as New No. 15/6. The Trial Court further found even assuming that Survey Nos. 97/1 and 15/6 are one and the same. Ex.A18(Sale deed) would put the title of the plaintiffs beyond doubt, since the defendants' grandfather Umapathi @ Nallappa Gounder had sold 1.58 cents in Suvey No.15/6 to Pachamuthu Gounder / grandfather of the plaintiffs under Ex.A18 dated 14.08.1941. The Trial Court also took note of Ex.A9 (Adangal extract), which is for a period from Fasli 1377 equivalent to 1967 to Fasli 1419 equivalent to 2009, which stood in the name of the predecessors in interest of the plaintiffs. Based on a consideration of all the documents produced on either side, the Trial Court concluded that the plaintiffs had made out their title and possession and the defendants are not able to disprove the title pleaded and proved by the plaintiffs. The claim of permissive possession set up by the defendants to justify possession of the property in the hands of the son of the first plaintiff was also disbelieved. On the above findings, the learned Additional District Munsif dismissed the suit. Aggrieved, the defendants preferred an appeal in A.S.No. 103 of 2010 on the file of the Sub-Court, Salem. The learned Sub-Ordinate Judge, upon re-consideration of the evidence on record accepted all the findings of the Trial Court and dismissed the appeal. Aggrieved, the defendants have come forward with this second appeal. Notice of motion ordered on 09.02.2014. Pursuant to the same, Mr.T.M.Hariharan had entered appearance for the respondents.

6. I have heard Mr.V.Raghavachari, learned counsel appearing for the appellants and Mr.T.M.Hariharan, learned counsel appearing for the respondents.

7. Mr.V.Raghavachari, learned counsel appearing for the appellants would vehemently contend that the approach of the Courts below is flawed. The Courts below had discussed the evidence of the defendants and had come to the conclusion that the plaintiffs have proved their title. It is his further submission that the peculiar facts namely, execution of Ex.18 (sale deed) on 14.08.1941 and the execution of Ex.B6(Mortgage deed) are from same day by the same parties, where the plaintiffs' grandfather had purchased 1.58 cents in Survey No.15/6 under Ex.A18 and he had also executed a mortgage in favour of the defendants' grandfather namely, Vendor under Ex.A18 on the same day to secure a sum of Rs.500/- towards balance of consideration under Ex.B6. According to Mr.V.Raghavachari, the effect of simultaneous execution of these two documents has not been considered by the Courts below and

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such non-consideration flawed the findings of the Courts below. It is his further contention that the effect of the mortgage under Ex.B2 dated 12.05.1928 executed by the defendants' grandfather Umapathi @ Nallappa Gounder in favour of Velmayil Chettiyar has not been considered.

8. The lower Appellate Court though concluded that the defendants have not shown that Old Survey No.97/1 has now become Survey No.15/6, Mr.V.Raghavachari relying upon the encumbrance certificate would submit that Ex.A21 filed by the plaintiffs themselves would show that it was Old No.97/1, which has now been assigned as Survey No.15/6. Therefore, according to Mr.V.Raghavachari, the Courts below had not applied their mind to the documents that had been produced in the suit.

9. Contending contra, Mr.T.M.Hariharan, learned counsel appearing for the respondents would submit that even assuming that Survey No.97/1 has now assigned as Survey No.15/6, Ex.A18 (sale deed) dated 14.08.1941 would put the title of the plaintiffs beyond doubt. Ex.A18(sale deed) has been executed by the grandfather of the defendants in favour of the grandfather of the plaintiffs, which relates to an extent of 1.58 acres in Survey No.15/6. Ex.B6 (Mortgage deed) is also on the same day where Umapathi @ Nallappa Gounder suit mortgaged in respect of the very same property. These documents would at least show that there was a conveyance of the property in Survey No.15/6 of an extent of 1.58 acres in favour of the plaintiffs' grandfather. The fact that there was a mortgage on the same day would not affect the title of the plaintiffs' grandfather to the extent of 1.58 cents in Survey No.15/6. Mr.T.M.Hariharan would also contend that the very same property was mortgaged in favour of the Co-Operative Society in 1943 under Ex.B7 would show that the mortgage of the year 1941 must have been discharged. The mortgage under Ex.B7 dated 01.04.1943 is not shown to be a second mortgage. Therefore, according to Mr.T.M.Hariharan, the mortgage dated 14.08.1941 created under Ex.B6 has discharged by the time Ex.B7 came into existence. It is also the contention of Mr.T.M.Hariharan that Ex.A9 (Adangal extracts) produced for a period from 1967 to 2009 consistently stand in the name of the plaintiffs and the purchaser in his interest, Chellappa. Therefore, the plaintiffs have proved their title and possession beyond all reasonable doubts. I have heard rival submissions.

10. It is the primary contention of Mr.V.Raghavachari that the Courts below erred in concluding that Survey No.97/1 is not equivalent to Survey No.15/6. Relying upon Ex.A21 (Encumbrance Certificate) produced by the plaintiffs, Mr.V.Raghavachari would contend that the said conclusion is erroneous. Ex.A21 would show that the New Survey number for Old survey No.97/1 is 15/6. Conceding that it is an erroneous

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finding, if we proceed to examined whether such error would affect the result of the suit, the answer is simple no. The documents produced in the case are as follows:-

"i) Ex.B1, sale deed dated 16.06.1922 executed by the grandfather of the plaintiffs in favour of the grandfather of the defendants, Umapathi @ Nallappa Gounder that deals with 78 cents in Survey No.97/1.

ii) Ex.B2 dated 12.05.1928 is a mortgage deed executed by the grandfather of the defendants in favour of the Velmayil Chettiar. The mortgage is of an extent of 1.56 acres in Survey No.97/1.

iii) On 14.08.1941, the grandfather of the defendants Umapathi @ Nallappa Gounder sold an extent of 1.58 acres in Survey No.15/6 to Pachamuthu/grandfather of the plaintiffs under Ex.A18.

iv) On the same day i.e., 14.08.1941 Pachamuthu mortgaged the property purchased by him under Ex.A18 in favour of the vendor namely, Umapathi @ Nallappa Gounder.

v) On 01.04.1943, Pachamuthu/grandfather of the plaintiffs mortgaged an extent of 1.58 cents in Survey No.15/6 to the Kondalampatty Co-operative Credit Society. Thereafter, on 11.07.1957 under Ex.A1 partition the property in Survey No.15/6 is allotted to the plaintiffs' father Chellappa Gounder.

vi) On 19.10.1978, the plaintiffs purchased an extent of 70 cents in S.No.15/6 from the heirs of Nachiappa, brother of their grandfather Chellappa."

11. The above documents explain the flow of title. The execution of Exs.B1, A18, A1 and A2 would show that the property belonged to the ancestors of the plaintiffs and they have inherited the same. Of course, Mr.V.Raghavachari would plea that the execution of Exs.A18 and B6 being on the same day and in the absence of any proof that Ex.B6 mortgage was discharged, the plaintiffs title would be defective. I am unable to accept that the said submission of the learned counsel for the appellants. There is no such pleading on the side of the defendants suggesting that no title passed under Ex.A18. In fact, in defence, the defendants only contended that the suit property was ancestral property and it continued to be in their possession as ancestral property and the first plaintiff's son Raju was put in permissive possession. I have also found that there is no evidence available in support of the contention of the learned counsel appearing for the appellants. In fact, the mortgage under Ex.B7 in 1943 would show that the mortgage of the year 1941 had been discharged. Mr.V.Raghavachari would further contend that there was no proof of discharge of Ex.B2 mortgage dated 12.05.1928 and Ex.B6 dated 14.08.1941. Ex.B2(mortgage deed) was created by the grand father of the defendants. He had chosen to sell the property under Ex.A8, even assuming that what has been sold under Ex.A18 is only the equity of redemption. It

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was for the mortgagee to have proceeded against the purchaser. There is nothing on record to show that the mortgagee proceeded as against the purchaser in order to enforce the mortgage under Ex.B2 dated 12.05.1928. Similarly, there is nothing on record to suggest that Umapathi @ Nallappa Gounder, grandfather of the defendants, who was the mortgagee under Ex.B6 had taken any proceedings to enforce the mortgage. As I have already pointed out, the execution of Ex.B7 in 1943 would certainly be a pointer to show that the 1941 mortgage was discharged. Therefore, I am unable to accept the contentions of the learned counsel for the appellants. Though it can be said that there are some minor errors in the discussions by the Courts below, the same do not have the effect of vitiating the eventual conclusion. I therefore do not see any question of law much less a substantial question of law in order to enable this Court to entertain this appeal. This appeal is dismissed without being admitted. Consequently, connected Civil Miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

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To,

1.The II-Additional Sub-Ordinate Judge,
Salem.

2.The II-Additional District Munsif Court,
Salem.
(I Additional District Munsif/Incharge of
Second Additional District Munsif)

+1cc to Mr.V.Raghavachari, Advocate SR.No.84067

+1cc to Mr.T.M.Hariharan, Advocate SR.No.83938

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