

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.924 of 2014
and M.P.No.1of 2014

1. Arumugham
2. Palanisamy
3. Mohan
4. Banu
5. Babu
6. Lakshmi

...Appellants/Respondents/Plaintiffs

Vs.

1. Annamalai
2. Rajamanickam
3. Govindammal
4. Chinnapillai
5. Rajagopal
6. Ramalingam
7. Balasubramaniam

...Respondents/Appellants/Defendants 1,2,4,7

...Respondent/Respondent/3rd Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the I Additional Sub-Court, Salem, dated 30.09.2013 in A.S.No.100 of 2012, reversing the judgment and decree of the learned II Additional District Munsif, Salem, dated 16.06.2012 in O.S.No.1131 of 2009.

For Appellant : Mr.D.Sivakumaran for
Mr.V.Sekar

For Respondents: Mr.P.Mathivanan

J U D G M E N T

The plaintiffs in O.S.No.1131 of 2009 whose suit for declaration of title, permanent injunction and declaration that the sale deed dated 30.11.2009 executed by the defendants 1 to 5 in favour of the 7th defendant is invalid and not binding on the plaintiffs was decreed by the trial Court, upon reversal of the

said decree and judgment by the lower appellate Court in A.S.No.100 of 2012 have come up with the second appeal.

2. According to the plaintiffs, the suit property originally belonged to one Palani Gounder and his son Mari Gounder who purchased the suit properties under the registered sale deed dated 23.02.1947. It is the further claim of the plaintiffs that the said Palani Gounder and Mari Gounder had executed a nominal sale deed in favour of Sidhaiya Chettiar on 30.08.1961. According to them, despite execution of the sale deed, the vendors namely Palani gounder and Mari Gounder continued in possession of the property and on their death, the property devolved on the plaintiffs 1 to 3 and one Gnanasekaran who are the sons of Mari Gounder. It is claimed that Sidhaiya Chettiar's legal heirs executed a settlement deed in favour of the 1st defendant and his wife Poongavanam on 07.11.1979.

4. Claiming under the settlement deed, the defendants 1 to 5 have sold the property to the 7th defendant under a sale deed 30.11.2009. Contending that the settlement deed executed by the legal heirs of Sidhaiya Chettiar in favorur of the 1st defendant and his wife Poongavanam is invalid and the plaintiffs 1 to 3 and the said Gnanasekaran filed a suit against the legal heirs of Sidhaiya Chettiar as well as the 1st defendant and his wife in O.S.No.1689 of 1980. The said suit ended in a compromise on 15.02.1996 and a compromise decree came to be passed, in and by which the legal heirs of Sidhaiya Chettiar conceded the plaintiffs' title in respect of the suit properties. However, the 1st defendants and his wife who were parties to the suit were not parties to the compromise and they remained exparte in the said suit. Thus, claiming under the compromise decree, the plaintiffs have now come up with the present suit, seeking reliefs stated supra.

5. The suit was resisted by the defendants contending that the compromise decree will not confer title on the plaintiff. The legal heirs of the Sidhaiya Chettiar having settled the properties on the 1st defendant and his wife Poongavanam on 07.11.1979, were not entitled to enter into the compromise giving up their rights. It is also pointed out that the 1st defendant and his wife Poongavanam in whom the title resides were not parties to the compromise. According to the defendants 1 to 5, the compromise decree is not binding on the defendants and therefore the sale by the defendants 1 to 5 in favour of the 7th defendant is perfectly valid. On the above contentions, the defendants sought for dismissal of the suit.

6. The trial Court on a consideration of the evidence on record, concluded that the plaintiffs are entitled to the suit property and are also entitled to the relief of consequential injunction against the defendants as prayed for. On the said conclusion, the trial Court decreed the suit as prayed for. Aggrieved, the defendants preferred an appeal in A.S.No.100 of 2012.

7. The lower appellate Court on re-appreciation of the evidence on record and the effect of the instrument of compromise entered into between the parties concluded that the legal heirs of Sidhaiya Chettiar having settled the properties to the 1st defendant and his wife under the settlement deed dated 07.11.1979 were not entitled to enter into a compromise conceding the title of the plaintiff that too on 15.02.1996 in O.S.No.1689 of 1980. On the said finding, the lower appellate Court concluded that the plaintiffs having failed to prove that the sale by Palani Gounder and Mari Gounder in favour of Sidhaiya Chettiar on 30.08.1961 is sham and nominal are not entitled to any relief in the suit. On the said conclusion, the lower appellate Court dismissed the suit. Aggrieved the plaintiffs have come up with this second appeal.

8. The following questions of law were framed at the time of admission:

- i. When the plaintiffs have proved that the title to the suit property was already settled in their favour as per the compromise Decree dated 15.02.1996 in O.S.No.1689 of 1980 on the file of the District Munsif Court, Salem reached among the legal representatives of the deceased Sidhaiya Chetti and the plaintiffs in the present suit, is the lower appellate Court correct in holding that the plaintiffs have not let in any evidence to prove the factum that Ex.A3 sale deed dated 30.08.1961 in favour of Sidhaiya Chetti by the said Palani Gounder and Mari Gounder (Predecessor in title of the plaintiffs) was sham and nominal?
- ii. When there is a reference about the 1st defendant and his wife, Poongavanam in Ex.A2, Compromise decree that they are trespassers in the suit property, is not the lower appellate Court perverse in misquoting Ex.A2 and is it a candid admission about their mere possession establishing their title in the suit property?
- iii. Is not the lower appellate Court to apply the rule of res judicata as against the 1st defendant, more particularly, when the 1st defendant has failed to challenge the exparte order in the earlier proceeding in O.S.No.1689 of 1980 and he has maintained silence in the present suit?

9. Mr.D.Shivakumaran, learned counsel appearing for the appellants elaborating on the questions of law would contend that the plaintiffs had acquired valid title under the compromise entered into on 15.02.1996 made in O.S.No.1689 of 1980 and now in the absence of any attempt made by the 1st defendant and his wife to have the compromise decree set aside, the lower appellate is not right in concluding that the compromise decree will not confer a right on the plaintiffs.

10. I am afraid that the said contention overlooks the effect of the compromise decree. Admittedly, the 1st defendant and his wife Poongavanam in whom the title resides as on 15.02.1996, namely, the date of the compromise, were not the parties to the compromise. Therefore, the compromise decree was entered into behind their back would not affect the right obtained by them under the settlement deed on 07.11.1979. In fact, the legal heirs of Sidhaiya Chettiyar having executed the settlement deed dated 07.11.1979 had no right over the property to concede title in favour of the plaintiffs in O.S.No.1689 of 1980. The compromise decree only records the contract entered into between the parties. If one of the parties was incompetent to enter into the contract on the date of the compromise decree, the compromise decree will not have any effect and it will not affect the right of others who are not parties to it. Therefore, the lower appellate Court is perfectly justified in concluding that the legal representatives or the legal heirs of Sidhaiya Chettiyar had no right to enter into a compromise on 15.02.1996, when they have lost the title on execution of the settlement deed dated 07.11.1979.

11. In view of the above, the 1st question of law answered to the effect that the compromise decree does not vest title in the plaintiffs and the plaintiffs cannot be allowed to claim title on the basis of the compromise decree. Similarly, the 2nd question of law is also answered against the appellants because, the compromise decree was entered behind the back of the 1st defendant and his wife. The description of the 1st respondent and his wife as trespassers in the compromise decree cannot have any effect on their title. The 3rd question of law is on the ground of res judicata. It is a common knowledge that the compromise decree does not amount to a decision on merits of an issue which directly and substantially arising in a suit so as to attract the principle of res judicata and it should have been decided on merits. In view of the compromise entered into between the colluding parties in O.S.No.1689 of 1980, there was no decision on merits in order to attract the principle of res judicata.

12. In view of the answers to the questions of law against the appellants, the appeal fails and it is dismissed, confirming the decree and judgment of the lower appellate Court. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The I Additional Sub-Judge,
Salem.
2. The II Additional District Munsif,
Salem.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to M/s.V.Sekar, Advocate Sr.95516

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and M.P.No.1 of 2014

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