

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.NO.945 OF 2019

Yasodha

.. Appellant/Plaintiff

Vs.

Pachappa (Died)
S/o.Pachivenkatappal
1.Srinivasan
2.Papamma
3.Jayamma
4.Sarojamma
5.Krishnamma
6.Narayanaswamy

..Respondents/Defendants

Prayer:

Memorandum of Second Appeal filed under Section. 100 of C.P.C.against the decree and judgment dated 28.02.2019 in A.S.No.18 of 2018, on the file of the Principal Sub-Ordinate Judge at Hosur, confirming the decree and judgment dated 16.04.2018 in O.S.No.200 of 2007, on the file of the District Munsif Court, Hosur.

For Appellant : Mr.J.D.Srikanth Varma
for Mr.K.R.Ramanatha Reddy

J U D G M E N T

The plaintiff in O.S.No. 200 of 2007, who failed in the suit filed by her for declaration of title and injunction has come forward with this appeal.

2. According to the plaintiff, the suit property originally belonged to one Ramakrishnaiah of Pannapalli Village. After the death of the said Ramakrishnaiah, his three sons namely, Venkataramaiah, Ramachandraiah and Kodhandaramaiah had divided the properties under registered partition deed dated 27.02.1956. In the said partition, the suit property had fallen into the share of Venkataramaiah. After the partition, Venkataramaiah had settled in Bangalore and he died at Bangalore leaving behind his two sons namely, Ramanathaiah and Prabhakar. It is claimed that after the death of Venkataramaiah his sons, Ramanathaiah

and Prabhakar had divided the properties, that were allotted to Venkataramaiah in the partition of the year 1956, orally. In the said oral partition, the suit schedule property was allotted to Prabhakar. The said Prabhakar had sold the suit property to the plaintiff under a registered sale deed dated 19.12.2005 and the plaintiff was also put in possession of the property pursuant to the said sale deed. On the strength of the sale deed, the plaintiff seek a declaration for permanent injunction restraining the defendants from interfering with her possession.

3. The suit was resisted by the defendants contending that after the death of Venkataramaiah, his wife Venkatalakshmi had sold the property in question for a consideration of Rs.650/- under a Muchalika dated 24.06.1968 and ever since 24.06.1968, the defendants have been in position and enjoyment of the property exercising full rights of ownership and therefore, the plaintiff who purchased the property from the son of Venkataramaiah cannot claim any right over the property. It is also claimed that the defendants had perfected title by their being in open, hostile and continuous possession for over 39 years under the Muchalika dated 24.06.1968. A Commissioner was appointed pending suit. He had also filed his report and plan setting out the physical features of the property.

4. The Courts below, upon consideration of the Commissioner's report found that the description of the property as pointed in the Commissioner's report is different from the plaint schedule. The Courts below had also considered the evidence of the Vendor of the plaintiff, who was examined as P.W.2 to conclude that the sale dated 24.06.1968 is more probable and the defendants have been in possession right from the date of the said sale. It is settled position of law that the party in possession under an invalid instrument for over the statutory period would perfect title by adverse possession. A Division Bench of this Court in Rukumani Vs. Gopalaswamy reported in 1993 (2) MLJ 598 has held that the possession under invalid instrument is adverse to that of the true owner.

5. The Courts below have found that the plaintiff's Vendor has never been in possession of the property and the claim of the plaintiff that she was put in possession by her Vendor is also incorrect. The Courts below have also taken note of the discrepancy in the description of the property in the sale deed in favour of the plaintiff dated 19.12.2005 marked as Ex.A2. On the above findings, the Courts below had dismissed the suit. Aggrieved, the plaintiff is on appeal.

6. I have heard Mr.J.D.Srikanth Varma for Mr.Ramanatha Reddy, learned counsel for the appellant.

7. The learned counsel appearing for the appellant would strenuously contend that the Courts below were not right in ignoring the registered instrument dated 19.12.2005. He would also contend that the Muchalika dated 24.06.1968 will not confer any title on the defendants.

8. No doubt true, the plaintiff claims to be a purchaser of the property under the sale deed dated 19.12.2005 marked as Ex.A2 from the son of Venkataramaiah i.e., Prabhakar, who in turn claims title under the oral partition that is said to have been taken place between him and his brother, Ramanathaiah. The defendants would admit the title of Venkataramaiah, the father of the Vendor of the plaintiff. According to the defendants, Venkatalakshmi, wife of Venkataramaiah had sold the property as early as on 24.06.1968. Pursuant to the said sale, the defendants were put in possession of the property and they continued to be in possession. This claim of the plaintiff is diluted by the evidence of P.W.2 himself wherein, he has deposed that he does not know the measurement of the property and that physical features. He had also admitted that his mother, Venkatalakshmi, during her life time, had sold certain properties. This evidence has been considered by the Courts below to conclude that the Muchalika dated 24.06.1968 is true. However, the same may not confer unimpeachable title on the purchaser, since it is an unregistered instrument. The fact that the defendants have been in possession ever since 1968 have been accepted by the Courts below. These findings, which are factual in nature cannot be interfered with in a second appeal unless it is shown that the findings are perverse.

9. The Courts below, upon consideration of the evidence on record had arrived at the above factual findings, which cannot be termed as perverse or improbable, even assuming that another view is possible. I do not think I can substitute my own conclusions to that of the Courts below particularly, in view of the restricted scope of the second appeal which is governed under Section 100 of the Code of Civil Procedure. I do not find any question of law much less a substantial question of law in order to enable this Court to entertain this appeal hence, the appeal is dismissed without being admitted. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kkn

To

1. The Principal Subordinate Judge,
Hosur.
2. The District Munsif,
Hosur.
3. The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to Mr.K.R.Ramanatha Reddy, Advocate, S.R.No.80273

S.A.No.945 of 2019

KK(CO)
CS/09/06/2020