

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.12.2019

Date of Verdict : 07.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.Nos.764 to 766 of 1996

SA.No.764 of 1996

1.Koovam Krishna Reddy
2.Munusamy
3.Subramani

...Appellants/Defendants

Vs.

1.M.Arumugam
2.M.Krishna Reddy(died)
3.K.Kannammal
4.K.Saraswathy
5.K.Saravanan
6.K.Shanmuga
7.K.Poongodi
8.K.Sandya

...Respondents/Plaintiffs

(RR3 to 8 brought on record as LR's of the deceased R2, Viz., M.Krishna Reddy vide order of court dated 19.06.2019 made in CMP.No.7198 & 7199 of 2018 in SA.No.764 of 1996(TKRJ))

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 24.11.1995, in A.S.No.75 of 1994 on the file of the Sub Court, Kancheepuram, confirming the decree and judgment dated 26.10.1993 in O.S.No.303 of 1985 on the file of the District Munsif, Tirutani.

For Appellants : M/s.Vedavalli Kumar
For Respondents
For R1 : Mr.M.Prabakar

For R3 to R8 : M/s.R.Aparna Reddy
: R2 - died

SA.No.765 of 1996

1.Koovam Krishna Reddy
2.Munusamy
3.Subramani

...Appellants/Defendants

Vs.

1.M.Arumugam
2.M.Krishna Reddy(died)
3.Muniammal
4.K.Kannammal
5.K.Saraswathy
6.K.Saravanan
7.K.Shanmuga
8.K.Poongodi
9.K.Sandya

..Respondents/Plaintiffs

(RR4 to 9 brought on record as LR's of the deceased R2, Viz., M.Krishna Reddy vide order of court dated 19.06.2019 made in CMP.No.7200 to 7201 of 2018 in SA.No.765 of 1996(TKRJ))

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 24.11.1995, in A.S.No.76 of 1994 on the file of the Sub Court, Kancheepuram, partially allowing the appeal by modifying the decree and judgment dated 26.10.1993 in O.S.No.644 of 1986 on the file of the District Munsif, Tirutani.

For Appellants : M/s.Vedavalli Kumar
For Respondents
For R1 : Mr.M.Prabakar
For R4 to R9 : M/s.R.Aparna Reddy
: R2 & R3 - died

SA.No.766 of 1996

1.Koovam Krishna Reddy
2.Munusamy
3.Subramani

...Appellants/Defendants

Vs.

1.Meppakkam Murugesan
2.Meppakkam Arumugam
3.Meppakkam Krishna Reddy(died)
4.Makkan
5.Ammaniamma
6.K.Kannammal

7.K.Saraswathy

8.K.Saravanan

9.K.Shanmuga

10.K.Poongodi

11.K.Sandya

...Respondents/Plaintiffs

(RR6 to 11 brought on record as LR's of the deceased R3, Viz., M.Krishna Reddy vide order of court dated 19.06.2019 made in CMP.No.7202 to 7203 of 2018 in SA.No.766 of 1996(TKRJ))

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 24.11.1995, in A.S.No.77 of 1994 on the file of the Sub Court, Kancheepuram, confirming the decree and judgment dated 26.10.1993 in O.S.No.388 of 1989 on the file of the District Munsif, Tirutani.

For Appellants : M/s.Vedavalli Kumar

For Respondents

For R1 : Mr.M.Prabakar

For R6 to R11 : M/s.R.Aparna Reddy

: R2, R3 & R4 - died

: R5 -No Appearance

COMMON JUDGMENT

These second appeals are arising out of common judgment and decree passed in AS.Nos.75, 76 and 77 of 1994 dated 24.11.1995 on the file of the Sub Court, Kancheepuram confirming the common judgment and decree dated 26.10.1993 passed in O.S.Nos.303 of 1985, 644 of 1986 and 388 of 1989 on the file of the District Munsif, Tiruttani.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The appellants in SA.No.764 of 1996 are the defendants in O.S.No.303 of 1985 and the case of the plaintiffs in O.S.No.303 of 1985 is that the defendants 2 and 3 are the sons of the first defendant. The first defendant and also on behalf of the second and third defendants who were minors then, executed agreement for sale in favour of the plaintiffs on 16.04.1978 and agreed to sell the suit schedule property for the sale consideration of Rs.1,050/- to the plaintiffs. The first defendant received for himself and on behalf of the defendants 2 and 3, the entire sale consideration of Rs.1,050/- on the date of agreement namely 16.04.1978. Thereafter the defendants put the plaintiffs in possession of the suit schedule property and the plaintiffs took possession and they are in possession and enjoyment of the suit schedule property by virtue of sale

agreement dated 16.04.1978 continuously. In terms of the sale agreement, the defendants agreed to register the sale deed whenever called by the plaintiffs. When the plaintiffs are ready with the sale deed for registration, the defendants postponed the same for some reasons. Therefore the plaintiffs caused legal notice to the defendants on 27.09.1985 calling upon the first defendant to execute registered sale deed in their favour in respect of the suit schedule property. The said notice was duly received by the first defendant on 30.07.1985. Even then, they failed to register the sale deed in their favour. Hence, the said suit for specific performance.

3.1. The case of the plaintiffs in O.S.No.644 of 1986 is that there are three plaintiffs. They filed the suit for declaration and injunction in respect of the well situated in the suit schedule property, wherein 3/18 share belongs to the first plaintiff, 13/18 share belongs to the second plaintiff and 2/18 share belongs to the third plaintiff. The father of the first and second plaintiff died leaving behind them and also other two brothers. Even 15 years before filing the suit, they partitioned the property orally. Accordingly, they are entitled for above respective shares in the well. While partition, 1/3 share in the well was allotted to the second plaintiff. Another 1/3 share was allotted to one Munusamy Reddy, who died intestate with three legal heirs. They were allotted 1/9 share each in the common well, in which 1/9 share which was allotted to one Maliappa Reddy, was purchased by one, Natesa Reddy, another his brother. Thereafter the said Maliappa Reddy along with share in total 2/9 share in the well, sold out to the defendants on 12.07.1984. Another 1/3 share which was allotted to the first defendant was agreed to sell to the plaintiffs for the sale consideration of Rs.1,050/- and entered into agreement for sale on 16.04.1978. As per the agreement, 1/3 share which was allotted to the first defendant was also handed over to the plaintiffs 1 and 2. Already the plaintiffs 1 and 2 filed suit for specific performance as per the agreement for sale dated 16.04.1978 in OS.No.303 of 1985. Further, 1/9 share belongs to one another brother Munusamy Reddy, and he died intestate leaving behind his mother, who also died intestate leaving behind the third defendant. Therefore, the first defendant is entitled for 3/18 share and the third defendant is entitled for 2/18 share in the common well. Therefore, the defendants have no right over the suit property. Even then, on 23.11.1986, they tried to trespass into the suit property. Hence, the suit.

3.2. The plaintiffs in O.S.No.388 of 1989 filed the suit for permanent injunction in respect of suit schedule property, and the case of the plaintiffs is that in the common well situated in the suit schedule property, the first plaintiff is entitled for 2/3 share. The plaintiffs and the defendants separately

installed oil engine and drawing water for irrigation in the respective shares. While being so, the defendant tried to interfere with the peaceful possession and enjoyment of the common well. Hence, the suit.

4. Resisting the same, the appellants / defendants filed written statement in O.S.No.303 of 1985 stating that the defendants entered into agreement on 16.04.1978 with the plaintiffs and agreed to execute the sale deed in favour of the plaintiffs all are false and fabricated one. No agreement was executed in favour of the plaintiffs by the defendants. The said agreement itself is forged one and only to grab the property of the defendants, they created the alleged sale agreement. The defendants have no obligation to execute any sale deed in favour of the plaintiffs since the agreement itself is forged one. Therefore, they prayed for the dismissal of the suit.

4.1. The appellants in SA.No.765 of 1996 who are defendants in O.S.No.644 of 1986, filed written statement stating that the common well situated in the suit property belongs to Kulandhai Reddy, Pichai Kanniappa Reddy, Palayathai Reddy, Munusamy Reddy, Lakshmana Reddy, Ramachandra Naidu, and all six are having 1/6 share in the common well. The first defendant is none other than the son of the said Lakshmana Reddy. He purchased 1/6 share from Ramachandra Naidu. Therefore, the first defendant is entitled for 2/6 share in the common well. He installed oil engine and he is drawing water and enjoying his 2/6 share in the common well. In respect of the common well, the first defendant never executed any agreement in favour of the plaintiffs or other persons at any point of time. Therefore, the suit is liable to be dismissed.

4.2. The defendants in O.S.No.388 of 1989 filed written statement stating that in respect of the well situated in the suit schedule property, the father of the first defendant has 1/3 share, and he left behind four sons. The 1/3 share of the first defendant was allotted to the third defendant. While partition, another 1/3 share was allotted to one Munusamy Reddy, who died intestate with three legal heirs. They were allotted 1/9 share each in the common well, in which 1/9 share which was allotted to one Maliappa Reddy, was purchased by one, Natesa Reddy, another his brother. Thereafter the said Maliappa Reddy along with his share in total 2/9 share in the well, sold out to the defendants on 12.07.1984. Another 1/3 share which was allotted to the first plaintiff was agreed to sell to the third defendant for the sale consideration of Rs.1,050/- and entered into agreement for sale on 16.04.1978. Already the suit for specific performance was filed as per the agreement for sale dated 16.04.1978 in OS.No.303 of 1985. Therefore, the well

belongs to third defendant, and he was also granted patta. Further while filing the suit, the plaintiffs are not in possession and enjoyment of the same. Therefore, he prayed for dismissal of the suit.

5. In support of the plaintiffs case, P.W.1 to P.W.5 were examined and twenty eight documents were marked as Ex.A.1 to Ex.A.28. On the side of the defendants D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.3 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in O.S.Nos.303 of 1985 and 644 of 1986, and dismissed the suit in O.S.No.388 of 1989. Aggrieved over the judgment and decree of the trial Court dated 26.10.1993, the defendants in O.S.Nos.303 of 1985 and 644 of 1986 and the plaintiffs in O.S.No.388 of 1989 preferred appeal suit in A.S.Nos.75 to 77 of 1994 before the Sub Court Kancheepuram. The first appellate Court on appreciating the materials placed on records, confirmed the judgement and decree passed by the trial Court in O.S.No.303 of 1985 and O.S.No.388 of 1989, and modified the judgment and decree passed by the trial court in respect of O.S.No.644 of 1986. Challenging the same, the present second appeals have been preferred.

6. At the time of admission of these appeals, following substantial questions of law were framed respectively.

S.A.No.764 of 1996

i) Is not the suit barred by limitation since it had been filed beyond the period of three years from 16.04.1978, the date on which the agreement of sale was stated to have been executed by the defendants in favour of the plaintiffs? and

ii) Is the finding regarding possession with the plaintiffs supported by any legal evidence?

SA.No.765 of 1996

i) Have not the Courts below committed an error of law in granting a decree for injunction in favour of all the plaintiffs when admittedly only one among them viz., 2nd plaintiff, if at all, is entitled to become the owner of the property forming the agreement of sale dated 16.04.1978?

ii) Have not the courts below committed in error of law in granting a decree for injunction in favour of a party who is only an agreement of sale do not create any interest in the immovable property? And

iii) Have not the Courts below erred in law in not dismissing the suit so far as it relates to the first and third plaintiff since admittedly and on finding they neither proved ownership nor showed any interest in the property forming subject matter of

the suit?

S.A.No.766 of 1996

i) Whether the judgment of the courts below is opposed to the evidence on record and therefore unsustainable? And

ii) Have not the courts below committed an error of law in trying all the suits together which has caused considerable prejudice to the appellants?

7. The learned counsel appearing for the plaintiffs and the defendants are present and they reiterated the averments set out in the plaints as well as the written statements.

8. Heard the learned counsel for the plaintiffs and the learned counsel for the defendants.

9. This Court considered the rival submissions made by the learned counsel on either side.

10. The property comprised in Survey No.99/3 including the well situated at Muthukondapuram Village, Tiruttani Taluk is the suit property, in which the second plaintiff is entitled for 1/3 share, the first defendant is entitled for 1/3 share and remaining 1/3 share is entitled by the sons of Munusamy Reddy, namely Maliappa Reddy, Natesa Reddy and Kariappa Reddy alias Munusamy Reddy. These are all admitted facts by both the parties. In the said well, 1/3 share is agreed to sell for the sale consideration of Rs.1,050/- and executed agreement for sale dated 16.04.1978, which is marked as Ex.A.1. The witness to the Ex.A.1 was examined as P.W.5. He stated that the first defendant received a sum of Rs.1,050/- from the plaintiff to sell his share of 1/3 in the well and executed the agreement for sale. The signature found in the sale agreement belongs to the first defendant. P.W.3 categorically deposed that while he was working as Secretary in Tiruvalankadu Agricultural Bank, he knows about the first defendant and applied for loan to purchase oil engine. Thereafter on so many occasions, he went for collection of loan amount from the first defendant. Therefore, both the courts below concluded that the first defendant only executed sale agreement, Ex.A1 in favour of the plaintiffs. Though the first defendant disputed the signature in the Ex.A.1, the first defendant failed to prove the same. In fact the first defendant did not even take any step to send the document for expert opinion.

10.1. Further, P.W.2 also categorically deposed that the first defendant executed sale agreement in favour of the plaintiff in respect of his 1/3 share in the well situated in the property. It is also proved that the said sale agreement was executed for valid sale consideration. After receipt of the

entire sale consideration Rs.1,050/-, though the plaintiff is ready to register the sale deed, the first defendant dragged the registration of sale deed. Since the first defendant is none other than the maternal uncle of the plaintiff and as such the plaintiffs did not take any action against the first defendant so far and finally on 29.07.1985 issued notice, which was marked as Ex.A.2. and the acknowledgment is Ex.A.3. The defendants failed to rebut the same and did not produce any piece of evidence to show the reasons for not executing the sale deed in favour of the plaintiffs. Therefore, the courts below after elaborate discussion, both oral and documentary evidence, allowed the suit in O.S.No.303 of 1985.

10.2. In respect of O.S.No.644 of 1986, the case of the plaintiff is that already the first defendant is directed to execute sale deed in favour of the plaintiffs insofar as his 1/3 share in the common well of the suit property. The said Kariappa Reddy alias Munusamy Reddy died leaving behind his only daughter Muniammal. Therefore she is entitled for 2/18 share. The first plaintiff is entitled for 3/18 share. The second plaintiff is entitled for 13/18 share. The third plaintiff is entitled for 2/18 share in the well. After filing the suit, the second plaintiff purchased the third plaintiff's share, namely 2/18 share in the well and the sale deed was marked as Ex.A.5. In this regard, there is no dispute. Therefore, the second plaintiff is entitled for 15/18 share, in which the first plaintiff is entitled for 3/18 share in the said well. Therefore, the defendants are not entitled for any share in the well. Therefore, the courts below rightly held that the plaintiffs are entitled for prayer in the suit in O.S.No.644 of 1986.

10.3. In respect of O.S.No.388 of 1989 is concerned, in view of the above discussions, the entire possession and enjoyment of the suit well is under the defendants. After agreeing to sell the share in the well in favour of the defendants, all the defendants are jointly enjoying the suit schedule property. In support of this contention, P.W.5 categorically deposed that the entire suit property are in possession and enjoyment of the defendants in O.S.No.388 of 1989. Therefore, the plaintiffs and the defendants are never jointly in possession and enjoyment of the suit property. Therefore, the courts below rightly dismissed the suit filed by the appellants in O.S.No.388 of 1989.

11. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below, since the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly. Be that as it may.

All the substantial questions of law, formulated by this Court in these Second Appeals, are answered in favour of the plaintiffs in O.S.No.303 of 1985, 644 of 1986, and in favour of the defendants in O.S.No.388 of 1989.

12. Accordingly, all the second appeals in SA.Nos.764 to 766 of 1996 are dismissed. No costs.

Sd/-
Assistant Registrar)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Court,
Kancheepuram

2. The District Munsif,
Tirutani.

3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1 cc to M/s.Vedavalli kumar, Advocate Sr.No. 1601

S.A.Nos.764 to 766 of 1996

SSV(CO)
RMP(13/10/2020)