

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE Mr. JUSTICE G.K. ILANTHIRAIYAN

S.A. No. 754 of 1997

1. Chandra
 2. Jayalakshmi
 3. V.Shamughasundaram
 4. V.Rajendran
- ...Appellants/Defendants 8 to 11

Vs.

- 1.Lakshmi Ammal (died) ..1st Respondent/1st Plaintiff
2. T.Natarajan
3. T.Paramasivam ..2nd & 3rd Respondent/2nd & 3rd Plaintiff
- 4.C.Marudappa Gounder (died) ..4th Respondent/1st Defendant
- 5.N.M.Velusamy (died) ..5th Respondent/2nd Defendant
6. Subramaniam ..6th Respondent/3rd Defendant
7. Palaniammal (died) ..7th Respondent/5th Defendant
8. Kaliammal ..8th Respondent/6th Defendant
9. Bhaggiam ..9th Respondent/7th Respondent
10. Krishnaswamy ..10th Respondent/4th Defendant

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree of the First Additional District Court cum Chief Judicial Magistrate, Coimbatore dated 30.08.1996 made in A.S.No.85/1995 confirming the judgment and decree of the Learned First Additional District Munsif, Coimbatore dated 27.03.1995 and made in O.S.No.1558 of 1981.

For Appellants : Mr.Mukunth
for
M/s.Sarvabhauman Associates

For Respondents: Mr.G.Govi Ganesan
for R2 & R3
R6 - Exparte
R8 to R10 - No appearance

JUDGMENT

This second appeal has been filed as against the judgment and decree dated 30.08.1996, passed in A.S.No.85 of 1995 on the file of the First Additional District Court, Coimbatore, confirming the judgment and decree dated 27.03.1995 passed in O.S.No.1558 of 1981 on the file of the First Additional District Munsif, Coimbatore.

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

3. The case of the plaintiff in brief is as follows :-

The suit is filed for permanent injunction. The suit property belongs to the plaintiffs. The plaintiffs 2 & 3 are the sons of the first plaintiff. The suit property was originally purchased by the husband of the first plaintiff, by registered sale deed dated 17.09.1964 and on the date of sale, the possession of the suit property was delivered to the husband of the first plaintiff. In fact, after execution of the sale deed, it was registered compulsorily. The suit property is a dry land. Later, the adjacent properties have been converted into house sites. Therefore, the plaintiffs decided to convert the suit property into house sites and they have applied for permission for laying out the suit property into house plots. Thereafter, they came to understand that the Urban Land Ceiling Act is in implementation and as such, the permission was not granted in favour of the plaintiffs. The entire suit property comprised in G.S.134/1 admeasuring an extent of 8.04 acres. The vendors namely, the defendants sold only one acre retaining the remaining extent. Apart from the defendants, one Marudakkal also got share in the property comprised in G.S.No. 135/1. Though the plaintiffs purchased the property, they did not take any steps to change the revenue records in their name and the kist was being paid only in the name of said Marudakkal, who has got share in the property comprised in G.S.No. 135/1. In fact, when the husband of the plaintiff was alive, a roof shed was put up on the suit property and after his demise, it was used as cow stables. While being so, the defendants are disturbing the possession and enjoyment of the suit property and also preventing the plaintiffs from converting the suit property into house sites. Hence, the suit.

4. Resisting the same, the defendants 1 to 4 filed a written statement stating that the first defendant is the father, the third and fourth defendants are sons. It is stated that the sale deed came to be written, but not given effect. In fact, the husband of the first plaintiff purchased the property for the sale consideration of Rs.13,000/- and had paid a sum of Rs.3,000/- as an advance. Thereafter, the husband of the first plaintiff did not come forward to execute the sale deed by paying the balance sale consideration.

5. Further he has submitted that the first defendant's elder paternal uncle's daughter, by name Marudakkal claimed title to one house of the suit property and filed a suit in O.S.No. 282 of 1961, on the file of the District Munsif Court, Coimbatore. It was decreed in favour of the first defendant by the Judgment and Decree, dated 30.06.1964. Aggrieved by the same, Marudakkal preferred an appeal suit in A.S.No. 375 of 1964 and the same was also dismissed. Therefore, the husband of the first plaintiff did not pay the balance sale consideration and abandoned his rights under the sale deed. Therefore, at no point of time, the possession was handed over

to the husband of the first plaintiff and however the sale deed was registered on compulsory registration, in favour of him. In fact, the defendants are in possession and enjoyment of the entire property and they are cultivating the property by agricultural crops. In fact, all the revenue records stand in the name of the first defendant and the defendants are paying kist to the Revenue Authorities concerned. In fact, they put up roof building, roof shed and rented out some portion to touring cinema and other portions are rented out to various persons. In fact, the plaintiffs are residing far away from the suit property and they are not in possession and enjoyment of the suit property at any point of time. Therefore, he prayed for dismissal of the suit.

6. On the side of the plaintiffs, they examined PW1 and marked Exs.A1 to A11, on the side of the defendants they examined PW1 and PW2 and marked Exs.D1 to D22.

7. Based on the materials placed on record, oral and documentary evidence submitted by the respective parties and the submissions made by both parties, the trial Court decreed the suit in favour of the plaintiffs. Aggrieved by the same, the defendants preferred an appeal suit in A.S.No. 85 of 1995 and the First Appellate Court, confirmed the Judgment and decree passed by the trial Court and dismissed the appeal suit. Aggrieved by the same, the defendants preferred this Second Appeal.

8. At the time of admission of the second appeal, the following substantial questions of law were framed :-

" i) When the plaintiffs have not produced any evidence to prove their possession on the date of the suit, whether the Courts below are right in law in decreeing the suit for injunction?

ii) Having rightly found that the sale consideration was not passed on to the deceased 1st defendant, and when the evidence on record namely Exs.B-3 to B-6 Adangal, Ex.B-7 Patta, B-8 to B-21 kist receipts and B-23 Lease agreement would establish the lawful possession of the defendant?, whether the Courts below are right in law in decreeing the suit for injunction based on a solitary recital contained in Ex.A-1 as to handing over of possession which was 17 years prior to the suit?

iii) Whether the suit for bare injunction is maintainable particularly when the title is in dispute between the parties?

iv) When the Courts below are right in law in placing reliance on Ex.A-1 particularly when a mere compulsory registration of an inchoate sale deed under the Law of Registration of documents will not satisfy the requirements of Section 54 of Transfer of property Act? "

9. Heard Mr.Mukunth, learned counsel appearing for the appellants and Mr.G.Govi Ganesan, learned counsel appearing for the first and second respondents.

10. The suit is filed for permanent injunction. The husband of the first plaintiff purchased the suit property by the registered sale deed dated 17.09.1964 which was marked as Ex.A1. The husband of the first plaintiff originally entered into an agreement for sale and paid a sum of Rs.3,000/- as advance. The remaining sale consideration of Rs.10,000/- has to be paid, at the time of execution of sale deed. Thereafter, the defendants refused to register the sale deed and after waiting for considerable time, the husband of the first plaintiff presented the document for compulsory registration. After due enquiry, the Joint Special Registrar, Coimbatore passed an order in O.E.No. 2 of 1965 for compulsory registration which was marked as Exs.A2 and A3 for enquiry. The notice was marked as Ex.A4 and the statement of Marudappa Goundar was marked as Ex.A5. In the said proceedings, the husband of the first plaintiff was the petitioner and the defendants were the respondents. Therefore, the sale deed was registered in favour of the husband of the first plaintiff on compulsory registration. Though the defendants contend that the husband of the first plaintiff entered into the agreement with their father to purchase 1.85 acres, which was marked as Ex.P1, he did not purchase the property in accordance with the said agreement. Therefore, it was cancelled. Subsequently, in fact, at the time of the said agreement, PW1 was minor and other documents stand in the name of one Marudakkal and those documents are in noway connected with the suit property. It was also seen from Ex.A1 that, the possession stands in the name of 1st plaintiff on the date of execution of the sale deed and after demise of the husband of the first plaintiff, the plaintiffs are in possession and enjoyment of the suit property.

11. Considering the facts and circumstances of the case, the trial Court decreed the suit in favour of the plaintiffs. The said Judgment and decree was also confirmed by the First Appellate Court.

12. In view of the above, this Court does not find any valid reason to interfere with the findings recorded by the Courts below. As such, this Court is of the opinion that no substantial questions of law are involved in the appeal.

13. Be that as it may, the substantial questions of law are accordingly, answered against the defendants and in favour of the plaintiffs.

14. The Second Appeal stands dismissed and the Judgment and decree of the Courts below are confirmed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

kmm

To

1. The First Additional District Judge,
-cum-Chief Judicial Magistrate, Coimbatore
2. The Learned First Additional District Munsif,
Coimbatore

Copy To

The Section Officer,
Vernacular Records,
High Court, Madras-104.

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.3965

+1cc to Mr.G.Govi Ganesan, Advocate SR.No.4018

S.A. No. 754 of 1997

RSK (CO)
GMY (20/11/2020)

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