



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :02.12.2020

Pronounced on :08.12.2020

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CORAM:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.60 of 1997

and

C.M.P.Nos.1895 of 2008 and 780 of 1997

1.Thiruchitrambalam(died)

2.Ayyappan

3.Sundararasu

4.Pushpavathy @ Lalitha

(Appellants 2 to 4 brought on record
as LRS of the deceased sole appellants
viz., Thiruchitrambalam vide order
of Court dated 20.01.2020 made in
C.M.P.Nos.24619 and 24621 of 2019
in S.A.No.60/1997(GKIJ))

..Plaintiff/1st Respondent/Appellants

/versus/

1.Rajangam @ Manjini(died)

2.Pounambal(died)

..Defendants 3 & 4/Appellants 1 & 2/Respondents 1 & 2

3.Ganapathy(died)

4.Amudha

..Defendants 1 & 2/Respondents 2 & 3/Respondents 3 & 4

5.Kasthuri

6.Shanmugam

7.Kalyani

8.Ganesan

(RR5 to 8 brought on record as LRS of
the deceased R1 vide order of Court dated
27.07.2010 made in C.M.P.Nos.8324 to 8326/2000).

9.G.Velu

10.Revathi

(RR1 and R2 died. RR5 to 8 are recorded as LRS of
the deceased RR1 and 2. RR9 and 10 brought on
record as LRS of the deceased R3 viz., Ganapathy
vide order of Court dated 23.09.2020 made in
C.M.P.No.2092/2020 in S.A.No.60/1997 (DR.GJJ))

..Respondents



Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 17.06.1996 made in A.S.No.46 of 1996 on the file of the First Additional Subordinate Judge of Pondicherry in reversing the judgment and decree dated 31.01.1992 made in O.S.No.794 of 1990 on the file of the First Additional District Munsif of Pondicherry.

For Appellants :Mr.AR.Nixon
For Respondents :R1,2,3,4-died(steps taken)
R5,8,9,10-no appearance

J U D G M E N T

(The case has been heard through Video Conferencing)

The second appeal has now been pursued by the legal representatives of the deceased plaintiff in the suit filed for declaration of title and permanent injunction. The trial Court found in favour of the plaintiff. In appeal, the first appellate Court held against the plaintiff and reversed the finding of the trial Court.

2.The case of Thiruchitrambalam the plaintiff is that, the suit property was purchased by him on 26/05/1983 from one Ganapathy who is the first defendant in the suit. In the suit property, he is keeping his cattle and enjoying it peacefully. The first defendant, after alienating the suit property for valuable consideration to the plaintiff, now along with other defendants trying to disturb the plaintiff's peaceful possession and enjoyment. On 01/02/1990, the defendants and their henchmen came to the suit property, threatened and abused the wife and son of the plaintiff in filthy language. Police has registered a case against defendants 3 and 4 and also against the wife and son of the plaintiff under Section 160 IPC for rioting. The plaintiff issued lawyer notice to the defendants calling upon them not to disturb his peaceful possession of the suit property. Apprehending disturbance from the defendants, initially the plaintiff filed suit for bare injunction, later amended his prayer for declaration of title and consequential injunction.

3.The third defendant contested the suit, that the alleged sale of the suit property by the first defendant to the plaintiff is not true. The suit property belongs to the third defendant Rajagam @ Manjini. He purchased the suit property from one Visalakshi Ammal under the sale deed dated 21/08/1969. Since then he is in enjoyment of the property. In the suit property, his brother Srinivasan @ Narayanasamy was permitted to put up construction and he occupied as permissive occupier. When



Srinivasan @ Narayanasamy vacated the property, he sold the superstructure on it to this defendant through a registered sale deed dated 24/04/1982. The suit property has never been with the plaintiff or with the other defendants in the suit. As the absolute owner of the property, he has sold a portion of the property to one Kannan. The criminal case referred in the plaint is due to petty quarrel between the plaintiff and the first defendant family members. The said criminal case has no relevancy to the title suit under consideration.

4.The first defendant in his written statement has supported the case of the third defendant, who is none other than his brother. He denied execution of sale deed in favour of the plaintiff. According to the first defendant, some were in the year 1983, the plaintiff took him to the Sub-Registrar Office to attest a document as witness. He was offered money to drink and when he was in exuberance state, he was asked to sign. Without knowing the content, believing it, he is witness to the document signed it along with three others. He did not consciously signed the document, he did not receive any money as consideration and the document obtained by him by fraud to cheat him and his brother.

5.The trial Court framed the following six issues which have been recasted on 03.07.1991 relevant for deciding the suit.:

(1)Whether the plaintiff is in possession of the suit property?

(2)Whether the plaintiff is entitled for the injunction as prayed for?

(3)Whether the suit has been undervalued? If valued property whether it would takes away the jurisdiction of this Court?

(4)Whether the 1st defendant has no right to sell the suit property to the plaintiff?

(5)Whether the plaintiff is the absolute owner of the suit property?

(6)To what relief is the plaintiff entitled?

6.Before the trial Court, five witnesses on behalf of the plaintiff were examined. Five exhibits were marked in support of the plaintiff. Three witnesses on behalf of the defendants were examined. Ten exhibits were marked in support of the defendants.

7.The trial Court accepting the tax receipts Ex.A-2 and the evidence of VAO PW-3, held that the plaintiff pursuant to the sale deed Ex.A-1, is in possession of the suit property and paying tax for it. The sale deed Ex.B-1 relied by the 3rd defendant held not proved, since he did not examine his vendor. The tax receipts Ex.B-2 to Ex.B-6 produced by third defendant



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were rejected by the trial Court on the ground that they do not relate to the suit property. The evidence of PW-3 regarding patta to the property, which is not in the name of the third defendant, but stands in the name of the Ganapathy, Rajangam and Narayanamoorthy and the fact that the first defendant Ganapathy has not taken any steps to set aside the sale deed Ex.A-1 executed by him in favour of the plaintiff on the ground of fraud or undue influence, are the reasons given by the trial Court to allow the suit. The trial Court also held that the first defendant, who is the vendor of the plaintiff, have 1/3rd share in the entire extent of 4 acres land and he has sold only 2 kuzi and 3 ½ veesam, out of 8 kuzi and 14 veesam to the plaintiff. Hence, his alienation to the plaintiff is valid.

8. On appeal by the third and fourth defendants, the first appellate Court reversed the trial Court's finding. The first appellate Court, on examining Ex.B-1 sale deed dated 21/08/1969 held that the entire 4 acres of land purchased by the third defendant. While so, the plaintiff, who claim title from one of the brothers of third defendant, should have proved the right of his vendor over the property. The presumption that though the property stands in the name of the third defendant, it is common property of all the three brothers, is contrary to Section 91 of the Indian Evidence Act, 1872.

9. The first appellate Court considering Ex.B-10 dated 24/04/1982, the sale deed executed by Srinivasan (Narayanamoorthy) the brother of the third defendant in respect of the superstructure built in the suit property, held that there is a candid recognition of 3rd defendant's absolute ownership of entire land. As a permissive occupier, he has sold the superstructure build by him to the land owner. If really the suit property was common property of the brothers and was division among them, then in Ex.B-10 entered between the two brothers, the said fact would have certainly reflected in the recital.

10. Ex.B-10 is anterior to Ex.A-1. A stranger to the family cannot canvass the theory of common family property. Particularly, his own vendor has disowned the execution of the deed by consent and for consideration. The witnesses to the plaintiff and evidence relied by him does not prove the factum of valid conveyance of the suit property.

11. Holding that patta is not a document of title, taking judicial notice of the fact that in Pondicherry during 1970's, while carrying out Re-survey, the concept of patta emerged. Prior to that, it was cadastre records. It is not clear, whether the joint patta referred in the deposition of PW-3 is proposed patta (utessa patta) or real patta. The copy of the patta is



not produced by the plaintiff for the Court perusal. The photocopy of the tax receipt marked as Ex.A-2 is not legible to decipher its content. PW-3(VAO) admits, in the revenue records the suit property is classified as 'punja land', whereas the tax is paid for "natham land". The said confounding circumstances does not render support to the case of the plaintiff to decide his title. After giving reasons in detail, the first appellate Court allowed the appeal and set aside the trial Court 's judgment.

12.The second appeal was admitted to decide the following Substantial Question of Law:-

Whether in law the plaintiff is entitled to the suit property on the basis of Ex.A-1 sale deed, dated 26/05/1983 executed by the first defendant in favour of the plaintiff when the first defendant had valid title to convey the suit property and when the defendants plea of fraud in the execution of Ex.A-1 sale deed has been negative by the Courts below ?

13.The learned counsel for the appellants submitted that the first appellate Court erred in reversing the considered judgment of the trial Court. On the basis of Ex.A-1 to Ex.A-5, it should have dismissed the appeal and confirmed the trial Court judgment. The first appellate Court erred in not considering the unregistered release deed dated 06/09/1969 as in-admissible in evidence and relying upon for the limited purpose of considering the admission of the 3rd respondent that the property purchased by him under Ex.B-1 is the joint family property purchased out of the joint family fund. Based on the admission made by the 3rd respondent in the unregistered release deed, the first appellate Court ought to have held that the 1st respondent have title to convey his 1/3rd share in the property covered under Ex.B1. The suit property is vacant land and the possession follows the title. So, the first appellate Court should have granted the declaration decree and consequential injunction.

14.Heard the learned counsel for the appellants. Records perused.

15.It is the burden of the plaintiff, who seek relief of declaration of title. In the instant case, he has relied upon 5 documents to prove his title and possession. Five witnesses were examined on his side. The trial Court has opined that the plaintiff has discharged the burden and declared the title. Whereas, the first appellate Court opined otherwise. Therefore, the Substantial Question of Law formulated to find out whether the appellants have discharged the necessary burden.



16.Ex.A-1 is the sale deed dated 26/05/1983, based on which, the appellants claim title. The vendor of the sale deed, namely, Ganapathy, who is the first defendant in the suit has disowned the valid execution and passing off consideration. PW-4 [Mayakrishnan], who is one of the attestors to Ex.A-1 sale deed had deposed that Rs.1000/- was passed on to Ganapathy the vendor (first defendant) in his presence. In the cross examination, he admits that Rajangam (third defendant), who is the brother of the vendor, told him that Ganapathy has no share in the property, but Ganapathy asserted his share. He is not aware whether the purchaser applied for encumbrance for the property before purchase and he does not know the total sale consideration mentioned in Ex.A-1.

17.Ex.A-2 is the photocopy of the tax receipt. As pointed by the first appellate Court, the document Ex.A-2 is not legible and readable. It is tax for natham land. The suit land is punja land. There is no evidence, when the punja land (agricultural land) was converted into natham (residential sites). PW-4, who is the VAO of that area, has not explained about this anywhere in his deposition. He candidly admits that the revenue receipts given by them to the plaintiff are only based on Ex.A-1.

18.Ex.A-3-FIR in respect of case booked against the plaintiff's family members and first defendant's family members have no iota of relevancy for deciding the title dispute. Like wise, the other two documents Ex.A-4 and Ex.A-5, which are the lawyer notice and acknowledgement issued prior to the suit.

19.The recital in Ex.A-1 says that the property under conveyance is the ancestral property of Ganapathy (first defendant) and he is the absolute owner of the property. He had conveyed the property for a consideration of Rs.2,000/-. First of all, the suit property is neither his property nor his ancestral property. Next, the sale consideration shown in Ex.A-1 is Rs.2,000/-. Whereas, PW-4 the attestor to Ex.A-1 says, he saw Ganapathy receiving Rs.1,000/- at the time of executing the sale deed and there was no prior agreement between the parties.

20.On perusal of Ex.B-1, the sale deed dated 21/08/1969 in favour of the third defendant Rasangam @ Manjini Gounder, we find, he had purchased a total extent of 8 acres 11 10/16 cents from Visalakshmi and her minor children. She has traced her title from her late husband Chinnathambi gounder, who purchased it under the sale deed dated 25/02/1943. It is contended that, the patta to this property stands in the name of three brothers. The first appellate Court has given reason, why this part of PW-4 evidence should not be given much weightage, without production of the patta copy. Further, patta is not a document



for title. The practise in Union Territory of Pondicherry during 1970's has also been recorded by the learned Judge for arriving at such conclusion.

21. Thus, it is clearly established that Ex.A-1 is silent about the antecedent title. A vague mentioning in the recital that it as ancestral property also found to be incorrect in the light of Ex.B-1. The attesting witness admits that the 3rd defendant informed him that vendor Ganapathy have no right in the property. Despite that, the plaintiff has chosen to get the deed Ex.A-1 registered. The passing of full consideration also not proved, beside the denial of very execution of the sale deed with knowledge and consent.

22. Next, the alleged release deed among the brothers on 06/09/1969 cannot be looked into for any purpose. For the simple reason, the release deed is not mentioned in Ex.A-1. It has not emanated from the parties to the release deed. It cannot be relied for any purpose, when the recital of Ex.A-1 in unambiguous term says the property is ancestral property of Ganapathy, which is contradictory to the proven facts.

23. Therefore, it is not difficult to hold that the plaintiff had got Ex.A-1 executed by a person, who had no title to convey the suit property. In addition, the said conveyance is shredded with cloud of suspicion. The first appellate Court had examined the evidence on record at length and arrived at a reasoned conclusion. Not proved to have been duly executed. Also, not proved to have been executed by the person who have valid title to convey. The first appellate Court finding is based on cogent and binding documents of title. This Court, therefore answer the substantial question of law against the appellants.

24. In the result, the second appeal is dismissed. The first appellate Court judgment and decree is confirmed. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To:

1. The First Additional Subordinate Judge,
Pondicherry.



2.The First Additional District Munsif,
Pondicherry.

+1 CC to Mr.AR.Nixon, Advocate sr 39703.

S.A.No.60 of 1997
&
C.M.P.Nos.1895 of 1980
and 780 of 1997

AP (CO)
SP (16/08/2021)