

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.01.2020

Date of Verdict : 24.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.371 of 1997

1.Kandasamy Kounder

2.Dhanapal Kounder ..Appellants/Appellants/Plaintiffs

Vs.

1.Govindasamy Kounder

2.Abdul Rahim

3.Alli

4.Ramu

5.Ambujam

6.Ganga

7.Majid

..Respondents

(RR3 to 6 are brought on Record as LRS of the deceased R1 vide order of Court dated 11.12.2014 made in CMP No.1138 to 1140/10)

(R7 brought on record as the LRS of the deceased R2 vide order dated 25.03.2015 made in CMP NO.121 to 123/15)

Prayer: Second Appeal filed under Section 100 of C.P.C. to set aside the decree and judgement passed in A.S.No.97 of 1992 on the file of the Sub-Ordinate Judge, Villupuram dated 29.07.1994, confirming the judgement and decree passed in O.S.No.660 of 1990 on the file of Additional District Munsif, Villupuram, dated 29.11.1991.

For Appellants : Mrs.V.Srimathi

For R1 & R2 : Died

For R3 to R7 : Notice Served
No appearance.

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J U D G M E N T

This second appeal is preferred as against the judgement and decree dated 29.07.1994, passed in A.S.No.97 of 1992 on the file of the Subordinate Judge, Villupuram, confirming the judgment and decree dated 29.11.1991 passed in O.S.No.660 of 1990 on the file of the Additional District Munsif, Villupuram.

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

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

3.1. The suit is filed for declaration and injunction. The plaintiffs and the first defendant are brothers. There was a partition in respect of their family properties along with the suit property by the partition deed dated 12.08.1977 under which the suit property was allotted to the plaintiffs under schedule B & C. Accordingly, the plaintiffs are entitled to have 15 cents each. The original sale deed dated 29.08.1973 was also handed over to the plaintiffs. In pursuance of the partition, the respective shares enjoyed by the plaintiffs. They are also paying kist and other revenue dues. While being so, there was enmity between the plaintiffs and the first defendant. The second defendant is having his mill adjacent to the suit property, approached the plaintiffs to sell their share to him. The plaintiffs refused to sell their property and even then, the second defendant tried to get the sale in his favour through the first defendant. Therefore, the plaintiffs caused notice dated 21.09.1987 to the defendants. Again on 11.07.1990, the second defendant threatened to trespass into the suit property and when the plaintiffs questioned the same and prevented him and thereafter they came to understand that the first defendant executed a sale deed in favour of the second defendant on 28.12.1989 as though he has got title over the suit property. On the strength of the sale deed, the second defendant on 05.08.1990 tried to trespass into the suit property. Hence the plaintiffs filed the suit for declaration and injunction.

4. The first defendant resisted the plaintiffs' case and filed written statements stating that the family property along with the properties purchased in the name of first defendant and also properties purchased in the name of the plaintiffs are jointly enjoyed by them to avoid misunderstanding between their issues, they decided to sell the property admeasuring 12 acres 90 cents in favour of Thanthai Periyar Transport Corporation. Accordingly, on 09.05.1986, the second plaintiff executed a sale deed admeasuring 4.30 1/6 acres of land for the sale consideration of 2,79,175/-. The first plaintiff also executed a sale deed for the land allotted to him admeasuring 4.30 1/6

acres for the sale consideration of Rs.2,79,175/-. Likewise, the first defendant also executed the sale deed in favour of Thanthai Periyar Transport Corporation for the land allotted to him admeasuring 4.30 1/6 acres for the sale consideration of Rs.2,79,175/-. Though the plaintiffs had the respective share of 4.07 1/2 acres and 4.11 acres they executed sale deed for 4.30 1/6 acres. Therefore, the first defendant was allotted 4 acres and 56 cents. Accordingly, the compensation amount paid by the Thanthai Periyar Transport Corporation shared by them and for remaining balance he can enjoy the more extent of property. The above said partition is only to avoid the dispute between their legal heirs and as such they never enjoyed the property separately except the suit property, the property which was sold out in favour of Thanthai Periyar Transport Corporation and also other properties were kept vacant without cultivation. Therefore, those lands laid out into house flats and sold out. When the first defendant demanded the amount for the excess land sold out by him from the plaintiffs, the property which was allotted to the plaintiffs was picked up in favour of the first defendant before the Panchayatara. Thereafter, the plaintiffs refused to execute sale deed in favour of the first respondent as agreed by them in front of the Panchayatara. In fact, the plaintiffs also relinquished their right in favour of the first defendant in respect of the property which was intended to sell in favour of the second defendant. Only thereafter, the first defendant executed sale deed in favour of the second defendant and also handed over the possession and enjoyment of the suit property admeasuring 30 cents comprised in Survey No.302/1. Thereafter, the remaining portion of land admeasuring 38 cents comprised in R.S.No.302/2 purchased in the name of first defendant was intended to sell the same by the plaintiffs in which the plaintiffs and their sons have executed the sale deed as requested by the plaintiffs. Suppressing the said facts, the present suit is filed with false averments. When accepted the sale deed executed in favour of the second defendant and only thereafter, the sale deed executed by the first defendant in favour of the third parties as requested by plaintiffs, they are estopped from claiming the property which was sold out in favour of the second defendant. Therefore, prayed for dismissal of the suit.

5. The second defendant also filed separate written statement and stated that denying the fact of partition in respect of the family properties including the suit property by means of partition list dated 12.08.1977 under which suit property was allotted to the plaintiffs. The suit property originally belonged to the first defendant and believed the words of the first defendant, the second defendant purchased the suit property by the registered sale deed dated 28.12.1989 for the valid consideration of 24,000/-. Therefore, the second

defendant is a bonafide purchaser and he has been put in possession and enjoyment of the suit schedule property. Therefore, the suit itself is not maintainable, since the second defendant is in possession and enjoyment of the suit property. Further, the plaintiffs are estopped from questioning the title of the second defendant because the plaintiffs have actively taken part in the sale transaction transpired between the defendants. Though the second defendant repeatedly requested for original parent deed, at the time of filing this suit, the plaintiffs marked the parent document of the suit property and it clearly shows the collusion between the plaintiffs and the first defendant. Therefore, prayed for dismissal of the suit.

6. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and nine documents were marked as Ex.A.1 to Ex.A.9. On the side of the defendants, they examined DW.1 to DW.4 and were marked as Ex.B.1 to Ex.B.11. Based on the materials placed on record, both the oral and documentary evidences adduced by the respective parties and the submissions made by the learned counsel, the trial Court dismissed the suit. Aggrieved by the same, the plaintiffs filed an Appeal Suit in A.S.No.97 of 1992 and the same was also dismissed. Aggrieved by the same, the plaintiffs preferred this appeal.

7. At the time of admission of this second appeal, the following substantial questions of law were formulated for consideration:

"i) Whether the Courts below are right in holding that Ex.B9 can confer title on the second respondent, when the first defendant had failed to prove and establish his absolute claim over the property?

ii) Whether the Courts below should not have seen that the second defendant is not a bonafide purchaser got value as the plaintiffs have disputed the first respondent's right to deal with the property by issue of a lawyer's notice (Ex.A4) and whether the Courts below should not have disbelieved the second respondent's case of having purchased the property since it stands in the name of the first defendant? And

iii) Whether the Courts below should not have held that there is no estoppel arising out of Ex.B1 especially when the first defendant had failed to prove and establish any panchayat having been held among the parties?"

8. The learned Senior Counsel appearing for the plaintiffs is present and reiterated the averments set out in the plaint as well as the written statement.

Heard Mrs.V.Srimathi, learned counsel appearing for the

plaintiffs.

9. The plaintiffs and the first defendant are brothers. According to the plaintiffs, by the partition list dated 12.08.2017, there was a partition in respect of the family properties comprising the suit property by means as under which the suit property was allotted to the plaintiffs under Schedule B & C each admeasuring 15 cents. Accordingly, they are in possession and enjoyment of the suit property and they are also paying kist and other remaining dues. Therefore, the first defendant has no title or right over the suit property. Kist receipts were marked as Ex.A.2 and the sale deed was marked as Ex.A.3 in respect of the suit schedule property. In fact, the sale deed stands in the name of the first defendant. During their partition, the sale deed was handed over to the plaintiffs in respect of their share. In fact, the second defendant wants to purchase the said property, when the plaintiffs refused to sell the property, the second defendant approached the first defendant and obtained sale deed in his favour.

10. The plaintiffs are younger brothers of the first defendant. Originally the land admeasuring 4 acres belonged to their father and thereafter they purchased 30 acres of land. Between them no partition was held and by oral each of them has entitled for their respective shares. While being so, 12.90 acres of land was acquired for the Thanthai Periyar Transport Corporation in which 4.56 acres from the share of the first defendant, 4.11 acres belong to first plaintiff and 4.09 acres belongs to second plaintiff. Since, excess land from the first defendant was acquired by the Thanthai Periyar Transport Corporation and he was told that remaining property also to be acquired by the Thanthai Periyar Transport Corporation at that time more compensation will be paid. Thereafter, no acquisition was made by the Corporation and such an award amount equally shared by the plaintiffs and the first defendant. In fact all the three have executed separate sale deed in favour of Thanthai Periyar Transport Corporation which were marked as Ex.B.2 to B.4. Therefore, it is clear that there was no partition held between them and as such a suit property was never allotted to the plaintiffs. Though the plaintiffs stated that there was a partition between them and accordingly, they executed sale deed in favour of Thanthai Periyar Transport Corporation, they did not mark any partition list. They also admitted that the compensation amount for the acquisition of land shared equally by them. It is seen from the Exs.B.2 to B4 the excess land was acquired from the first defendant for which a sum of Rs.31,000/-, to be compensated in favour of the first defendant. Therefore, before the panchayatars, the plaintiffs agreed to compensate the said amount while selling the remaining land admeasuring 68 cents. Thereafter, they also agreed to sell an extent of 30 cents by the first defendant and the remaining

portion of 38 cents can be sell by the plaintiffs. Accordingly, the first defendant sold out the suit property in favour of the second defendant. In fact, the xerox copy of the parent deed was handed over to the first defendant and on the strength of the same, the sale deed was executed in favour of the second defendant. Thereafter, the remaining property admeasuring 38 cents along with the plaintiffs, the first defendant executed the sale deed in favour of one Mangalam Ammal, at the instance of plaintiff which was marked as Ex.B.1. Therefore, it is very clear that only after the sale deed executed in favour of the second defendant, the Ex.B.1 was executed by first defendant along with plaintiff in favour of Mangalam Ammal. Therefore, the plaintiffs had full knowledge about sale deed executed in favour of the second defendant. The DW.2 categorically deposed that the land admeasuring 12.90 acres belong to the plaintiffs and the first defendant and the same was acquired by the Thanthai Periyar Transport Corporation and paid compensation. The said compensation amount was shared by them equally, while acquisition. The excess land was executed by the first defendant for which there was a Panchayat held between them. Accordingly, the remaining land admeasuring 68 cents / 38 and 30 cents in which 30 cents of the land was allotted to the first defendant and permitted him to sell the same. Accordingly, the first defendant with a knowledge of the plaintiffs, sold out the suit property in favour of the second defendant. The remaining property admeasuring 38 cents was sold out in favour of one Mangalam Ammal by the plaintiffs as well as the first defendant. It is also corroborated by the evidence of PW.1 and he also categorically admitted that the second defendant is in possession and enjoyment of the suit property from the date of sale namely 28.12.1989. Though the original parent deed was not marked by the first defendant which was marked by the plaintiffs as Ex.A.3 since the remaining extent of 38 cents in the total extent of 68 was sold out subsequent to the sale deed executed in favour of the second defendant and as such, the copy of the said document was handed over at the time of sale by the first defendant. It is also categorically admitted by PW.2. Thus, it is clear that the suit property which was allotted to the first defendant and the remaining property in the same survey number was allotted to the plaintiff. Thereafter, with the full knowledge of the plaintiff and consent, the first defendant executed sale deed in favour of the second defendant by Ex.B.9 and the remaining property admeasuring 38 cents was sold out in favour of Mangalam Ammal by the first defendant along with plaintiffs which was marked as Ex.B.1 on 31.01.1990. Therefore, the Courts below rightly concluded that the plaintiffs have no title over the suit property and dismissed the suit.

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 for upholding the case of the defendants. Accordingly, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, all the substantial questions of law, formulated by this Court in this Second Appeal, are answered as against the plaintiffs and in favour of the defendants.

12. In fine, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

Pns

To:-

1. The Sub-Ordinate Judge,
Villupuram
2. The Additional District Munsif,
Villupuram
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.V.Raghavachari, Advocate SR.No.4979

S.A.No.371 of 1997

GMR(CO)

GMV(21/08/2020)

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