

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.01.2020

Date of Verdict :12.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.243 of 1999
and
C.M.P.No.678 of 2020

1. Sakunthala Ammal (Deceased)

2. Palraj ...Appellants/ Defendants

(Appellant 2 brought on record as LR of the deceased sole appellant vide Court order dated 09.02.2017 made in C.M.P.Nos. 2215 to 2217/2017 in S.A.No. 243 of 1999).

Vs.

Kothandam ...Respondent/Plaintiff

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 18.02.1997, in A.S.No.161 of 1996 on the file of the District Munsif Senior Division at Kallakurichi confirming the Judgment and Decree dated 30.09.1991 made in O.S.No. 82 of 1986 on the file of the Additional District Munsif Court, Kallakurichi.

For Appellants : Ms.MythiliSuresh
for M/s.Sarvabhauman Associates

For Respondent : Ms.V.Srimathi

JUDGMENT

This appeal has been filed as against the Judgment and Decree dated 18.02.1997, passed in A.S.No.161 of 1996 on the file of the Civil Judge (Senior Division), Kallakurichi, confirming the Judgment and Decree dated 30.09.1991 made in O.S.No.82 of 1986 on the file of the District Munsif Court, Kallakurichi.

2. For the sake of convenience, the parties are referred to as per their ranking before 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 suit property was purchased by the plaintiff from the

mother of the defendant about 20 years ago for valid sale consideration of Rs.90/-. Thereafter, the patta and all revenue records were transferred in his name and he was in possession and enjoyment of the suit property. In fact, he was in possession and enjoyment of the property over the period that law prescribed. As such, he is entitled for adverse possession of the suit property. Therefore, the defendant has no right or title over the suit property. Unfortunately, the sale being oral and therefore, the defendant claimed right over the suit property.

4. Resisting the same, the defendant filed a written statement stating that the plaintiff never purchased the suit property from her mother before 20 years, for sale consideration of Rs.90. Therefore, the plaintiff has no right or title over the suit property. In fact, before 30 years, the parent document of the suit property was mortgaged with the plaintiff's brother, by the defendant's father for a sum of Rs. 100/- and after a period of 5 or 6 years, the entire amount has been settled. Thereafter, the property stood in the name of the defendant's mother and patta has also been issued in her favour. In fact, except 4 1/2 cents in the suit property, remaining property, were already conveyed to five other different persons, by way of sale deed dated 11.12.1985. Therefore, she prayed for dismissal of the suit.

5. On the side of the plaintiff, two witnesses were examined as PW1 & PW2 and four documents were marked Ex.A.1 to Ex.A.4. On the side of the defendants, one witness was examined as DW1 and eleven documents were marked as Ex.B.1 to Ex.B.11. On perusal of the evidence and documents on record and on considering the oral & documentary evidence adduced by the respective parties and the submission made by the learned counsel on either side, the trial Court decreed the suit in favour of the plaintiff. Aggrieved over the same, the defendant preferred an appeal suit in A.S.No.161 of 1996 and the First Appellate Court, dismissed the appeal by confirming the Judgment and Decree passed by the Trial Court. Challenging the same, the defendant has preferred this second appeal.

6. At the time of admission of the second appeal on 04.03.1999, the following substantial questions of law were framed :-

" a) Whether the Lower Appellate Court is correct in law in deciding the appeal without framing points for determination, as envisaged by Order 41 Rule 31 of the Civil Procedure Code?

b) Whether the Courts below are correct in law entertaining two mutually destructive pleas of the plaintiff/respondent contrary to imperative legal principles?"

7. The learned counsel for the defendants submitted that the First Appellate Court without even following the procedure contemplated under Order 41 Rule 31 of the Code of Civil Procedure, has simply confirmed the findings of the trial Court and negatived the claim of the defendant. The First Appellate Court has further concluded that the sale consideration, even according to the plaintiff, was valued only for a sum of Rs.90, whereas the defendant's father mortgaged the suit property for a sum of Rs.100/-, even 30 years before. As such, the sale consideration and patta obtained by the plaintiff are not believable one and the plaintiff has not effectively proved the oral sale executed by the defendant's mother. Unfortunately, the First Appellate Court has failed to consider the documents produced by the defendants and without any evidence, confirmed the findings of the trial Court.

8. The learned counsel for the defendant in support of his contention referred to the following decisions of the Hon'ble Apex Court and this Court;

1. Muthukaruppan Sampan Vs Muthu Samban (1914(LW)754)
2. Kathari Narasimha Raju Vs Bhupati Raju Raghunadha Raju & others (1915(LW)964)
3. Musigadu alias Munnigadu @ Munnidagu Vs Maneam Gopalu Reddy (1921 (LW) 400)
4. K.R.Mohan Reddy Vs M/s.Net Work Inc Rep.Tr.M.D. dated 26.09.2007.

9. Heard, Ms.Mythili Suresh, the learned counsel appearing for the appellant/defendant and Ms.V.Srimathi, learned counsel appearing for the respondent/plaintiff.

10. The suit is filed for declaration and injunction in respect of the suit property comprised in S.No. 102/4C admeasuring an extent of 28 cents. According to the plaintiff, he purchased the suit property for valid sale consideration of Rs.90/- from the mother of the defendant and at the time of purchasing the said property, the mother of the defendant handed over the parent documents of the suit property. Whereas, the defendant has stated that the suit property was never sold out by her mother.

11. In fact her father Lakshmana Narayana Chettiyar mortgaged the said property 30 years back, for a sum of Rs.100/-. Thereafter, he has also settled the entire amount within a period of 5 or 6 years. The parent document of the suit property was marked as Ex.A4. In fact, the plaintiff sent a legal notice dated 28.11.1984, which was marked as Ex.A1, to the defendant not to interfere with the possession and enjoyment of the suit property. The defendant replied vide reply notice, which was marked as Ex.A3 dated 09.12.1984, in which, she stated that Ex.A4-parent document was handed over

by her father at the time of borrowing loan from the brother of the plaintiff. The said mortgage was redeemed after 5 or 6 years, after settling the entire amount. In fact, so far as the possession of the suit property is concerned, there was no mention about the mortgage and redemption of the land documents in Ex.A3. The defendant also failed to state anything about the parent document in the written statement as well as in the reply notice.

12. Further, according to the defendant, except some extent of the suit property, remaining extent of the property was already sold out to five various persons, vide order dated 11.12.1985. But the defendant failed to produce even one of the documents to show that the remaining property was sold to five various persons, whereas the plaintiff marked receipts standing in his name pertaining to Fasali years 1385, 1379 as Exs.B5 & B6. Further, the defendant's mother also executed an oral sale to many persons and it is proved that she used to sell the properties by oral sale. Though, the defendant denied the oral sale by her mother, she did not produce any piece of evidence to prove her possession and enjoyment of the suit property, but has marked Exs. B5 to B10 for the Fasali year 1370 in the name of defendant's husband and Patta No.648. But in the patta, it is not clearly mentioned about the extent to which the patta was issued and no specific survey number has been mentioned in the receipts for the larger extent of land. Therefore, the defendant has failed to prove her possession and enjoyment of the suit property. Therefore, the trial Court has rightly decreed the suit in favour of the plaintiff. The principles of law outlined in the above said decision, relied by the learned counsel appearing for the defendant, are taken into consideration and followed as applicable to the case on hand.

13. In view of the above discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts below for upholding the case of the defendant. as such, 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 are answered in favour of the plaintiff and as against the defendant.

14. In fine, the second appeal stands dismissed by confirming the judgment and decree passed by the Courts below. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

Sd/-

Assistant Registrar(insp cell)

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Sub Assistant Registrar

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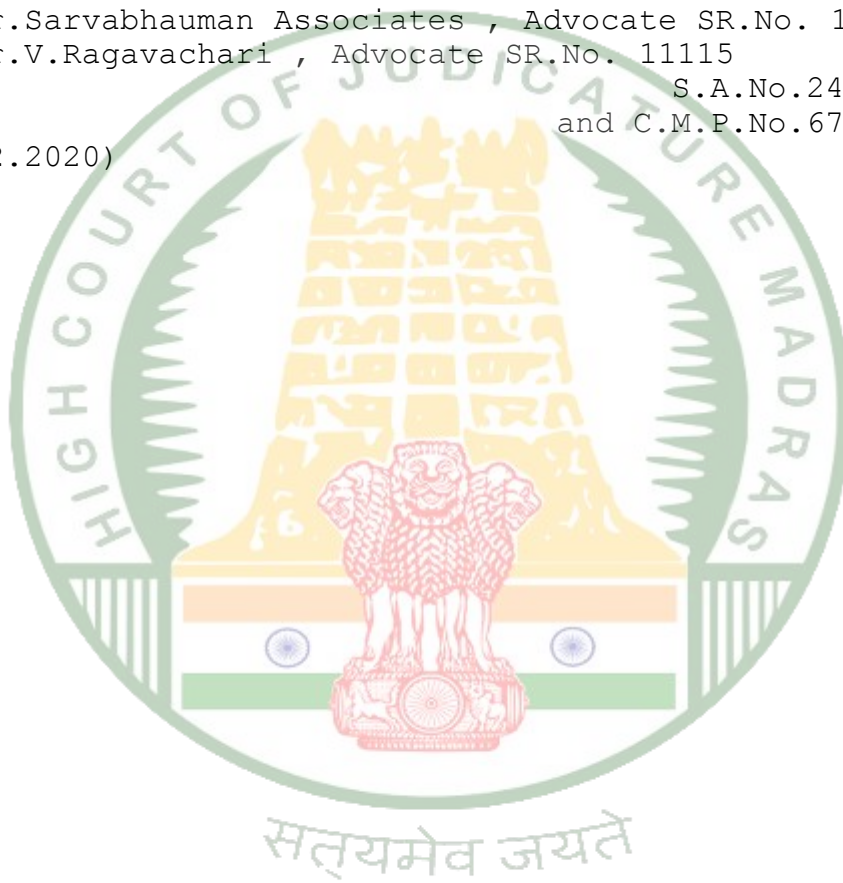
1. The District Munsif Senior Division,
Kallakurichi.
2. The Additional District Munsif Court,
Kallakurichi.
3. The Section Officer,
V.R Section,
Madras High Court,
Chennai.

+1cc to Mr.Sarvabhauman Associates , Advocate SR.No. 11119

+1cc to Mr.V.Ragavachari , Advocate SR.No. 11115

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A.SK(29.12.2020)



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