

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2020

Date of Verdict : 06.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1585 of 1999 and  
CMP.No.17362 of 1999

1.Amaravathi  
2.Vadamalai  
3.Sivakumar

....Appellants/Defendants 3 to 5  
Vs.

1.Jayalakshmi Ammal ..1<sup>st</sup> Respondent/Plaintiff  
2.Desingu  
3.Thirumalai ...Respondents 2 and 3/Defendants 1 & 2

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 12.03.1999, in A.S.No.84 of 1996 on the file of the Additional District Court, Villupuram, confirming the decree and judgment dated 07.08.1996 in O.S.No.349 of 1995 on the file of the Principal District Munsif, Ulundurpet.

For Appellants : M/s.V.Srimathi

For Respondents

For R1 : Mr.N.Suresh

R2 & R3 : Dismissed vide court order  
dated 20.01.2020

JUDGMENT

This second appeal is directed as against the judgment and decree dated 12.03.1999, in A.S.No.84 of 1996 on the file of the Additional District Court, Villupuram, confirming the decree and judgment dated 07.08.1996 in O.S.No.349 of 1995 on the file of the Principal District Munsif, Ulundurpet.

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 permanent injunction along with the alternative prayer of recovery of possession and mesne profits. The suit properties along with the other properties originally belonged to the sons of Thenthali by name, Mannangatti and Govindan and his daughter by name, Kuppayee Ammal. The sons of the said Mannangatti, by name, Ganesan and Ramalingam and the sons of Govindan by name, Desingu and Thirumal are defendants 1 and 2 and one son of Perumal have been in possession and enjoyment of the suit properties. All the eight persons have sold the suit property to the plaintiff by registered sale deed dated 04.07.1985 and from the date of purchase, the plaintiff was put in possession and enjoyment of the suit property. Though the sale deed was executed on 04.07.1985, it was registered on 25.10.1985. In fact, the defendants 1 and 2 are also the executants to the sale deed. While being so, the defendants 3 to 5 attempted to purchase the suit property from the vendors and failed. Therefore, they attempted to grab the suit property and they have got sale deed from the sons of Govindan and attempted to trespass into the suit property on 11.07.1991. However, it was successfully prevented by the plaintiff. The defendants 3 to 5 have absolutely no right over the suit property and the execution of the sale deed by the defendants 1 and 2 in favour of the defendants 3 to 5 is not valid, since the defendants 1 and 2 have absolutely no right over the suit property. Hence, the suit.

4. The defendants 3 to 5 resisted the plaintiff's case by filing written statement stating that the suit property belonged to one, Govindan and he was in possession and enjoyment and borrowed a sum of Rs.400/- from the fourth defendant and executed receipt in favour of the fourth defendant. On the date itself, the suit properties were handed over to the fourth defendant for cultivation in lieu of interest payable by the said Govindan. Thereafter, on 02.02.1984, the said Govindan executed an agreement for sale with regards to item Nos.1 to 3 of the suit property on receipt of Rs.2,000/- as an advance. On the date of agreement itself, the possession was handed over to the defendants 3 to 5, since the said Govindan was seriously ill and the defendants 1 and 2 also received the balance sale consideration of Rs.3,000/- and executed the sale deed in their favour by the registered sale deed dated 19.06.1990. In fact, the said property was for more than 12 years possessed by the defendants 3 to 5 and as such the defendants 3 to 5 have prescribed title by way of adverse possession. In respect of the fourth item of the suit property, the defendants have no interest and they did not claim any right over the same and prayed for dismissal of the suit insofar as the suit item Nos.1 to 3 are concerned.

5. In support of the plaintiff's case, P.W.1 to P.W.3 were examined and seven documents were marked as Ex.A.1 to Ex.A.7. On the side of the defendants D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.8 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 favour of the plaintiff as prayed for. Aggrieved over the judgment and decree of the trial Court, the defendants 3 to 5 alone preferred an appeal suit in A.S.No.84 of 1996 before the Additional District Court, Villupuram. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Challenging the same, the defendants 3 to 5 have come forward with the present second appeal.

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

a) Whether the lower courts are right in coming to the conclusion that the plaintiff had proved her title over the suit properties?

b) Whether the lower courts are right in misplacing the burden of proof on the defendants when the plaintiff had not discharged the burden of proof in establishing her title?

c) Whether the lower Courts are right in upholding Ex.A.1 when the due execution by Govindan and defendants 1 and 2 remains unproved?

7. The learned counsel appearing for the defendants 3 to 5 and the plaintiff are present and they reiterated the averments set out in the plaint as well as the written statement.

8. Heard M/s.V.Srimathi, learned counsel appearing for the defendants 3 to 5 and Mr.N.Suresh, learned counsel appearing for the plaintiff.

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

10. According to the plaintiff, they have purchased the suit property from defendants 1 and 2 and six other legal heirs of the predecessors in title of the property by the registered sale deed dated 04.07.1985. Though the sale deed was executed on 04.07.1985, it was registered on 25.10.1985. On the date of

sale deed, the plaintiff was put in possession and enjoyment of the suit property. The sale deed was marked as Ex.A.1. Thereafter the revenue dues were paid in the name of the plaintiff and the receipts were marked as Ex.A.4 to Ex.A.6. The sale agreement dated 09.06.1985 was marked as Ex.A.7, whereas the case of the defendants is that the suit property belonged to one, Govindan alone and he had received a sum of Rs.400/- and handed over the suit property for cultivation purposes to the fourth defendant in lieu of interest. Thereafter the same was discharged and the said Govindan entered into an agreement for sale with the third defendant for selling the properties for the total consideration of Rs.5,000/- and also received a sum of Rs.2,000/- as an advance. In pursuant to the said agreement, the sons of the said Govindan, namely Desingu and Thirumal executed the registered sale deed in favour of the third defendant, which was marked as Ex.B.1 dated 19.06.1990. Therefore, the plaintiff's vendor had no title to execute any sale deed and as such Ex.A.1 is not valid.

11. Admittedly, the sale deed executed in favour of the plaintiff was prior to the sale deed executed in favour of the third defendant. The said Thenthali is the common ancestor and also the first and second defendants are the sons of the said Govindan. The first and second defendants are also the parties to the sale deed executed in favour of the plaintiff, Ex.A.1. In the suit, the defendants 1 and 2 remained absent and were set ex-parte. Therefore, they did not deny their signatures in Ex.A.1. To prove their possession and enjoyment of the suit property, the plaintiffs marked Ex.A.2 to Ex.A.5 of the kist receipts. Though the defendants pleaded that the property is a self acquired property of Govindan and marked Ex.B.4 patta stands in the name of Govindan, it would not confer any exclusive title in favour of the said Govindan. That apart, the fourth item mentioned in the suit is not conveyed in favour of the third defendant and also they did not dispute the same. Further the defendants specifically pleaded that there was an agreement between the defendants and the said Govindan and it was also not marked before the trial court. Further, while executing the sale deed in favour of the third defendant, the said Govindan was very much alive, and when it being so, the first and second defendants had absolutely no right over the property to execute the sale deed in favour of the third defendant.

12. Even according to the defendants, the property is self acquired by the said Govindan and as such the sale deed executed in favour of the third defendant is not valid one. Though the defendants take a stand that at the time of execution of sale deed, the said Govindan was bedridden and even then, he would have given power to the first and second defendants to execute

sale deed. Therefore, the first and second defendants had no title to execute any sale deed in favour of defendants 3 to 5. The learned counsel for the defendants submitted that in the evidence of P.W.1, she herself has not supported her case. There is absolutely no suspicious circumstances to conclude that the executants were impersonated by the plaintiff and when the first and second defendants were conveniently absent before the trial court and remained ex-parte. The plaintiff being an illiterate lady, is not aware of the details and is unable to narrate the details of execution and registration of the sale deed properly. Therefore, it would not in any way effect the execution of sale deed and effect the genuineness of the said deed. As such, the plaintiff is entitled for the prayer of declaration and injunction in respect of the suit property. Accordingly, both the courts below rightly decreed the suit in favour of the plaintiff.

13. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such 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 and decreed the suit filed by the plaintiff. Accordingly, this Court is of the considered opinion that no substantial questions of law are involved in this second 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 defendants and in favour of the plaintiff.

14. In the result, this Second Appeal is dismissed and consequently the judgment and decree dated 12.03.1999 passed in A.S.No.84 of 1996 on the file of the Additional District Court, Villupuram and the judgment and decree dated 07.08.1996 passed in O.S.No.349 of 1995 on the file of the Principal District Munsif, Ulundurpet are confirmed. Consequently, connected miscellaneous petition is closed. No order as to costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Judge  
Villupuram

2. The Principal District Munsif,  
Ulundurpet.

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

+1 CC to Mr.V.Raghavachari, Advocate sr 9367

+1 CC to Mr.M. Suresh, Advocate sr 10511.

S.A.No.1585 of 1999

KS(CO)  
SP(17/09/2020)



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