

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 03.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.2063 of 2000
and
C.M.P.No.20187 of 2000

1.Deivayanai Ammal(Died)
2.Kumaraswamy (Died)
3.Mannangatti
4.Aruthal
5.Palaniammal
6.Subramanian
7.Chinnaponnu
8.Malar
(Appellants 2 and 3 recorded as
LRs of the deceased 1st Appellant
vide order of Court dated 09.02.2012
made in Memo dated 26.09.2005)
(Appellants 4 to 8 brought on record as
LRs of the deceased 2nd appellant
viz., Kumaraswamy
vide order of Court dated 02.01.2020
made in C.M.P.Nos.24036,24034 and
24037 of 2019 in S.A.No.2036 of 2000).

... Appellants/Defendants

versus

1.Ramaswamy(Died)
2.Ayyammal
3.Suseela
4.Kolanji
5.Murugan
(Respondents 3 to 5 brought on record
as LR of the deceased R1 viz., Ramaswamy
vide order of Court dated 04.02.2020
made in C.M.P.No.1034 of 2018 in S.A.No.2063 of 2000).

... Respondents / Plaintiffs

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 30.11.1999 passed in A.S.No.48 of 1997 by the learned Subordinate Judge, Kallakurichi, reversing the Judgment and Decree dated 30.08.1996 passed in O.S.No.1149 of 1990 by the Additional District Munsif, Kallakurichi.

For Appellants : Mrs.Mythili Suresh
for Sarvabhauman Associates

For Respondents : R1 Died (Steps taken)
R2 Died (Steps due)
R3 to R5 - No Appearance

JUDGMENT

The defendants who were successful before the trial Court in a suit for declaration of title and for permanent injunction, but, suffered a reversal before the First Appellate Court in A.S.No.48 of 1997, have approached this Court with this second appeal. Parties would be referred to by their rank before the trial Court.

2.The facts in this case falls within a very narrow space and they are stated only to the extent required;

- There are two plaintiffs, of who the first plaintiff is the husband of the second plaintiff. The suit properties are described as agricultural lands, measuring an extent of 1.09 a in Sy.No.167/3. According to the plaintiffs, the first plaintiff purchased the eastern 54.5 cents from one Arunachala Moopar Vide Ex.A1 sale deed dated 12.11.1987. So far as the western half of 54.5 cents is concerned, it belonged to one Ramasamy Moopanar. He is the father of the second plaintiff. On 07-09-1987, under Ext.A-2 settlement deed, he settled the said property in the name of his daughter, the second plaintiff. Together, they form the two schedules of suit properties. As they faced some obstruction to their title from the defendants, the suit was laid.

3. The defence taken in the written statement are two folds:

- a) On 29.07.1978, under Ext.B1, the entire property of 1.09 a was sold by Ramaswamy Moopar and his heirs to the first defendant.
- b) That executant of Ext.A1, namely Arunachala Moopar, did not have any right over the property he sold.

4.Before the trial Court, both sides produced oral and documentary evidence, and of the documentary evidence, the critical ones are Exts.A1 and A2 (both of which have already been referred to earlier), and Ext.A3, patta pass book pertaining to the suit property. For their part the defendant produced Ext.B1 and Exts.B2 to B4 tax receipts. The trial Court, dismissed the entire suit on the ground that the tax receipts produced by the defendants were earlier to Exts.A1 and A2. The plaintiffs duly preferred first appeal and the first appellate court, took a different view and decreed the suit. Its line of

reasoning is that Ext.B1 was not adequately stamped and no evidentiary value can be granted to it. Hence, this Second Appeal came to be preferred.

5. This appeal was admitted on the following substantial questions of law.

''(i) Whether the lower Appellate Court is right in holding that Sections 35 and 36 of the Stamp Act operates a bar to take Ex.B.1 dated 29.7.1978 though the same had been taken on file and marked as a document after collecting the stamp duty with penalty payable thereto and the same had become final?

(ii) Whether the lower Appellate Court is right in holding that the appellants had no title to the suit property when it is proved that they had purchased the same and being in possession from 1978 onwards?''

6. During the pendency of the appeal, the appellants 1 and 2 have died and their legal representatives were duly impleaded but, none represented them. The second respondent is also dead and his legal heirs are already on record as respondents 3 to 5. A Memo to this effect has been filed. The said Memo is recorded.

7. The learned counsel for the appellants submitted that the first appellate court went wrong in concluding that Ext.B1 sale deed was not stamped for rejecting its evidentiary value. He submitted that stamp penalty has been paid for it before the trial Court itself. Ext.B1 shows an endorsement as if it is a sale agreement. Secondly, the first appellate Court has taken an exception to the effect that the defendants have obtained UDR patta by corrupt practices, something to which, DW1 has made an admission during his cross-examination. The learned counsel for the appellants argued that once the stamp penalty was received for Ext.B1, the Court can look into the document under Section 36 of the Indian Stamp Act, but, the first appellate court has overlooked the endorsement made by the trial Court in Ext.B1 regarding the same.

8. The learned counsel further argued that the alleged admission of DW1 that UDR patta was obtained in the name of her mother, by corrupt practices, at the best, can take away the effect of UDR patta issued to her, but cannot affect her possession. In this regard, the learned counsel brought to the notice of this Court the relevant portion in the cross-examination of PW1 where he has made a candid statement that pursuant to Exts.A1 and A2, the plaintiffs have not demanded possession from the defendants' mother Deivanai.

9. This Court perused the entire records. First, the allegation in the written statement is that Arunachala Moopar, executant of Ext.A1 sale deed did not have any title vested in him to convey it to the 1st plaintiff. In this regard, PW1 was confronted during cross-examination about the relationship between Ramaswamy Moopar and Arunachala Moopar, and he would say that Ramaswamy Moopar's father Natesan and Arunachalam's paternal grandfather Kesavan are brothers. Secondly, it was also confronted to him as to whether both Ramaswamy Moopar and Arunachala Moopar were pattadars under Patta No.6. Ext.A3 is the patta pass book, and Patta No.6, is stated to have been issued to Ramaswamy and others. Therefore, it is only established that the said Arunachalam would well fall under "others". Necessarily, the defendants cannot object to Arunachalam's title. This apart, the defendants themselves had suggested during the cross-examination of PW1, that the said Arunachalam was a joint pattadar. It now becomes apparent that the defendant had admitted Arunachalam's title to the suit property covered under Ext.A-1 sale deed.

10. Turning to the second item of property, Ramaswamy Moopar along with his son were alleged to have executed a sale deed under Ext.B1, dated 29.07.1978. But, the same Ramaswamy Moopar had executed Ext.A2 settlement deed in favour of the 2nd plaintiff about a decade after the execution of Ext.B1. The point which now arises is, whether Ext.B1 has the efficacy to nullify the effect of Ext.A2.

11. Turning to Ext.B1, as rightly contended by the learned counsel for the appellants/defendants that deficiency in stamp duty has been paid. In the written statement, the defendants have characterised this document as a sale agreement, but, this Court perused the entire documents only to find that it has all the characteristic features of a completed sale, but it still was not registered. Given the fact that the sale consideration is Rs.2,700/-, the document has to be registered under Section 17 of the Registration Act r/w. Section 54 of the Transfer of Property Act. Inasmuch as it is not so registered, no title will get conveyed to the purchaser therein. This would imply that the defendants cannot resist plaintiffs' claim of title under Exts.A1 and A2.

12. Turning to the prayer for injunction, it is pointed out by the learned counsel for the defendants/appellants that the 1st plaintiff in his cross-examination has admitted that he has not demanded possession from the defendants. This Court does not see any assertion on his part that the possession is already with him. Here, the findings of the trial Court is to the effect that the 1st plaintiff has not produced any documents in his favour to infer that the plaintiffs have not produced any evidence to

prove their possession becomes significant. On reading Ext.B1 and the cross-examination of P.W.1, this Court necessarily has to conclude that possession of the suit-properties continue with the appellants/defendants.

13. To conclude, this Appeal is partially allowed and this Court modifies only the prayer of permanent injunction granted by the first appellate court, but confirms its judgment and decree 30.11.1999, made in A.S.No.48 of 1997, declaring the title of the respondents -plaintiffs to the suit property. If the plaintiffs/respondents are interested to secure their possession, they may have to workout their remedy separately in an independent suit for delivery of possession. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

ssn

To

1. The Subordinate Judge,
Kallakurichi.
2. The Additional District Munsif,
Kallakurichi.

Copy To

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

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.18695

S.A.No.2063 of 2000
and
C.M.P.No.20187 of 2000

SAI (CO)
GMY (19/08/2021)