

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.01.2020

Date of Verdict : 17.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.Nos.1838 and 1839 of 2001

Vasanthakumari

...Appellant/Appellant/
3rd Defendant in
both SAs.

Vs.

1. K.Rajeswari (Died)

...1st Respondent/1st Respondent /
Plaintiff in S.A 1838 of 2001

2. Iswar Hemnani

3. N. Pandurangan

...Respondents 2 and 3 in S.A.No.1838
of 2001/Respondent 2 & 3/
Defendants 1 & 2

4. K.Kumaraiya

5. K.Suresh

6. K.Ramesh

7. C.Maheswari

(Respondents 4 to 7
brought on record as
legal heirs of the deceased
first respondent vide order
of the Court dated 27.08.2019
made in C.M.P.No. 273 of 2009
in S.A.No.1838 of 2001)

...Respondents 4 to 7 in
S.A.No.1838 of 2001

8. Irudhayamarie Celine Preseilda

...1st Respondent/1st
Respondent/Plaintiff 2 & 3
in S.A.No.1839 of 2001

9. Iswar Hemnani

10. N. Pandurangan

...Respondents in
S.A.No.1839 of
2001/Respondents
2 & 3/Defendants 1 & 2

Prayer in both SAs:- These Second Appeals are filed under Section 100 of Civil Procedure Code against the judgment and decrees dated 03.09.2001, made in A.S.Nos.34 & 33 of 2000 on the file of the District Court, Nilgiris at Uthagamandalam,

confirming the decrees and judgment dated 05.09.2000 made in O.S.Nos.25 & 26 of 1997, respectively, on the file of the District Munsif Court, Uthagamandalam.

For Appellant
in both SAs : Mr.M.Sriram

For Respondents
in S.A.1838/2001

R1 : Died
For R2 : Notice served
R3 : Not ready in notice
For R4 to R7 : Mr.K.V.Sanjeev Kumar

For Respondents
in S.A.1839/2001

For R1 : Mr.K.V.Sanjeev Kumar
For R2 : Notice served
R3 : Not ready in notice

COMMON JUDGMENT

These Second Appeals have been filed as against the common judgment and decree dated 03.09.2001, passed in A.S.Nos.34 & 33 of 2000 by the learned District Judge, Nilgiris at Uthagamandalam, confirming the common judgment and decree dated 05.09.2000 made in O.S.Nos.25 & 26 of 1997, respectively, by the learned District Munsif, Uthagamandalam.

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

S.A.No.1838 of 2001

3. The case of the plaintiff in O.S.No.25 of 1997 in brief is as follows :-

3.1. The suit is filed for permanent injunction. The suit property belonged to the plaintiff and she has been in enjoyment and possession there on. Originally the suit property along with other properties allotted to one Nallusamy Naidu and he died intestate on 22.08.1984, by executing a Will dated 22.08.1979 in favour of the second defendant. The plaintiff purchased 6 cents by a registered sale deed dated 01.12.1993. On the strength of the lease agreement, the defendants with ulterior motive are trying to trespass into the suit property. Hence the suit.

4. Resisting the same, the first defendant filed written statement stating that the third defendant has been in exclusive possession and enjoyment of the suit property and she has leased

out the same to the first defendant. The sale deed as mentioned by the plaintiff has not admitted and the plaintiff has no title or interest over the suit property, once the lease agreement is true and genuine one. While being so, the plaintiff is attempted to trespass into the suit property and prayed for dismissal of the suit.

5. The third defendant filed separate written statement by stating that the plaintiff's vendors had no title, right or interest over the suit property. The said Nallusamy Naidu died intestate is admitted and the allegation that he bequeathed the land to the second defendant is false. Further the plaintiff is not in possession and enjoyment of the suit property. Therefore, she prayed for dismissal of the suit.

S.A.No.1839 of 2001

6. The case of the plaintiff in O.S.No.26 of 1997 in brief is as follows :-

6.1. The suit property belonged to the plaintiff and she has been in enjoyment and possession there on. Originally the suit property along with other properties allotted to one Nallusamy Naidu and he died intestate on 24.08.1984 by executing a Will dated 22.08.1979 to the second defendant. The plaintiff purchased 10 cents from various parties on 07.02.1996. On the strength of the lease agreement, the defendants are trying to trespass into the suit property. The defendants have no title or right over the suit property. Hence the suit.

7. Resisting the same, the first defendant filed separate written statement and stated that the third defendant has been in exclusively possession and enjoyment of the suit property and she leased out the suit property to the first defendant. The sale deed produced by the plaintiff has not admitted and she has no title and interest over the suit property. Therefore, prayed for dismissal of the suit.

8. The third defendant filed separate written statement by stating that the plaintiff's vendors had no title, right or interest over the suit property. The said Nallusamy Naidu died intestate is admitted and the allegation that he bequeathed the land to the second defendant is false. Further the plaintiff is not in possession and enjoyment of the suit property. Therefore, she prayed for dismissal of the suit.

9. The trial Court conducted separate trial in the above two suits. In O.S.No.25 of 1997 on the side of the plaintiff, she examined P.W.1 and were marked Ex.A.1 to Ex.A.2. On the side of the defendants, no one was examined and marked Ex.B.1. In O.S.No.26 of 1997, on the side of the plaintiff, she examined

P.W.1 and were marked Ex.A.1 to Ex.A.5. On the side of the defendants, no one was examined and marked Ex.B.1. On perusal of the evidence and documents on records and on considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed both the suits in favour of the plaintiff. Aggrieved over the same, the third defendant alone filed two appeal suits in A.S.Nos.33 and 34 of 2000 as against the judgment and decree passed in O.S.No.26 & 25 of 1997 respectively. The first appellate Court passed a common judgment, thereby dismissed both the appeals by confirming the judgment and decree passed by the trial Court. Aggrieved by the same, the third defendant came forward with the present second appeals.

10. At the time of admission on 07.12.2001, in both the second appeals in S.A.Nos.1838 & 1839 of 2001, the following substantial questions of law were formulated for consideration:-

"(1) Whether the Courts below are justified in not appreciating the oral evidence properly which resulted in decreeing the suit?

(2) Whether the Courts below were correct in granting the decree for permanent injunction against the appellant when neither in the pleadings nor in the evidence had the plaintiff made any allegations regarding the attempt by the appellant to interfere with her possession?"

11. The learned counsel appearing for the third defendant submitted that there is absolutely no cause of action as against the third defendant to file the present suit. Even according to the plaintiffs, the first defendant alone attempted to trespass into the suit property. Both the plaintiffs did not state proper measurement in respect of the suit property except mentioning about the extent viz., 6 cents and 10 cents respectively. Further the second defendant is the son of one Nallusamy Naidu and the said Nallusamy Naidu executed Will in favour of his grandson viz., P.Prasad, who is none other than the husband of the third defendant. The second defendant was given only life interest as such, he has no absolute title over the suit property to sell the same in favour of the plaintiffs' vendors. Therefore the plaintiffs have no semblance of title or interest over the suit property. As such, there is cloud over the title and the suit for bare injunction is not at all maintainable without the prayer of declaration. In support of his contention, he relied upon the judgment as follows :-

(i) (2008) 4 SCC 594 - Anathula Sudhakar Vs. P.Buchi Reddy (dead) by Lrs and ors.

(ii) 2012-1-L.W.80 - R.C.Church rep by its Manager Vs.

K.Seeranga Gounder
(iii) (2016) 1 LW 337 - S.Shanmugam & ots Vs.
Chandrasekarn

12. Heard Mr.M.Sriram, learned counsel appearing for the appellant/third defendant and Mr.K.V.Sanjeev Kumar, learned counsel appearing for the respondents/plaintiffs in both the second appeals.

13. According to the plaintiffs, they purchased the suit property by the registered sale deeds and from the date of sale, they have been in possession and enjoyment of the suit property. In the suit in O.S.No.26 of 1997, the husband of the plaintiff was examined as P.W.1 and he deposed that he purchased the suit property ad measuring 10 cents by the registered sale deed dated 07.02.1996, which was marked as Ex.A.1. Originally, the suit property was owned by three persons and the plaintiff in O.S.No.26 of 1997 purchased 2-½ cents each from them and their title documents were marked as Ex.A.2 to Ex.A.5. In the said documents, it was clearly mentioned about the bequeath made by the said Nallusamy Naidu in favour of his i.e., the second defendant herein.

14. In the suit in O.S.No.25 of 1997, the husband of the plaintiff was examined as P.W.1 and he deposed that he has purchased the suit property on 27.08.1996, from one Gana saraswathi. The supporting document viz., the sale deed was marked as Ex.A.1. From the date of purchase, the plaintiff and her vendors are in possession and enjoyment of the suit property. In both the suits, the defendants marked Ex.B.1, the plaint of the suit in O.S.No.115 of 1997 and the defendants did not examine anybody.

15. The learned counsel appearing for the appellant/third defendant vehemently contented that both the plaintiffs did not produce any of the documents to prove their possession and enjoyment of the suit property. It is seen from the sale deed that both the plaintiffs purchased the suit property in the year 1996 and immediately, they filed the present suit in the year 1997. Therefore, it is not at all possible for the plaintiffs to mutate the revenue records in favour of them as such, they could not file any document except the sale deed. Though the third defendant stated that a lease deed executed in favour of the first defendant and the first defendant was in possession and enjoyment of the property, they did not produce piece of evidence to show that they are in possession and enjoyment of the suit property and they did not produce the alleged lease deed before the trial Court.

16. Further the learned counsel appearing for the third defendant submitted that insofar as the third defendant is

concerned, there is no cause of action to file the suit. Even according to the plaintiffs, they did not lodge any complaints as against the third defendant. It is pertinent to note that the third defendant is the daughter-in-law of the second defendant. According to the first defendant, the property was leased out by the third defendant and thereafter all of them jointly in possession and enjoyment of the suit property. Therefore, there is cause of action against all the defendants. Hence the suit for injunction is very much maintainable against all the defendants.

17. Further there is absolutely no cloud over the suit property, since the sale deed executed in favour of the plaintiffs have been marked before the trial Court. Though the defendants disputed the said sale deeds, they did not produce any of the documents to show that the vendors of the plaintiffs have no right or title over the suit property to execute the sale deeds. Therefore, the judgments relied by the learned counsel appearing for the appellant are not helpful to the case of the third defendant. It is true that whenever there is a cloud over the title, the suit has to be filed for declaration with consequential injunction. In the case on hand, there is no cloud over the title of the suit property as such, the contention of the third defendant cannot be considered and liable to be rejected.

18. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below for upholding the case of the defendants in both the suits. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in these appeals. Be that as it may, all the substantial questions of law, formulated by this Court in both the Second Appeals, are answered in favour of the plaintiffs and as against the defendants.

19. In fine, both the Second Appeals are dismissed by confirming the judgment and decree passed by the Courts below. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The District Judge,
Nilgiris at Uthagamandalam.
2. The District Munsif,
Uthagamandalam.

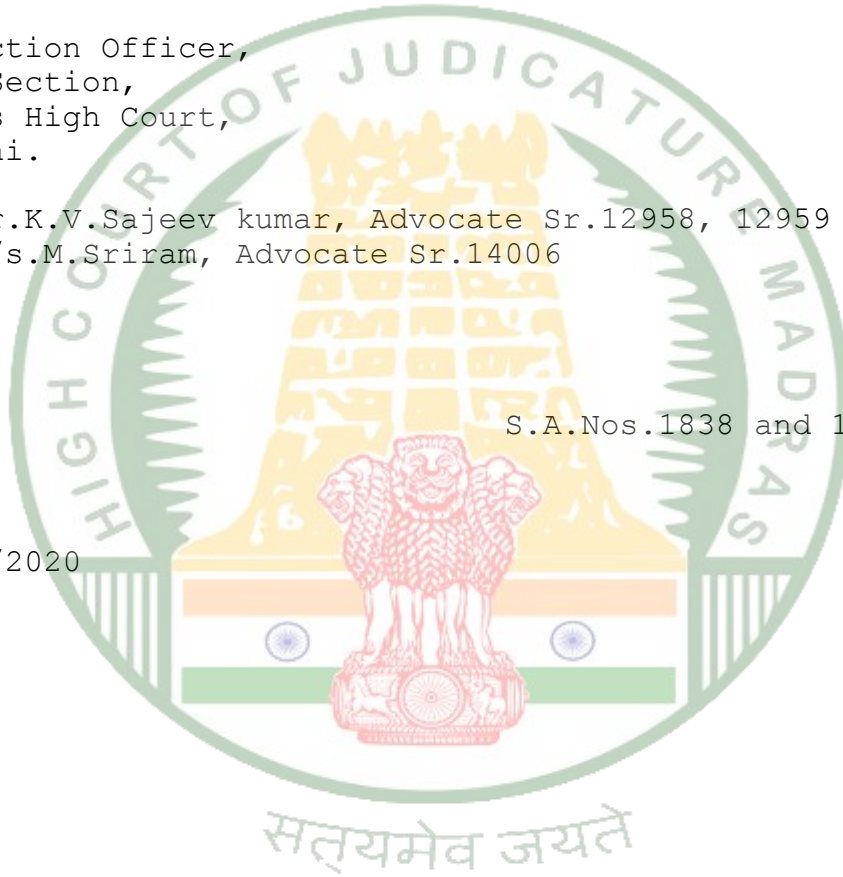
Copy to

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

+2cc to Mr.K.V.Sajeev kumar, Advocate Sr.12958, 12959
+2cc to M/s.M.Sriram, Advocate Sr.14006

S.A.Nos.1838 and 1839 of 2001

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srg 28/08/2020



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