

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserved : 17.02.2020
Date of Verdict : 03.07.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.Nos.2161 of 2001 & 143 of 2002
and
C.M.P.No.22699 of 2001 & 1083 of 2002

Francis XavierAppellants in both Appeals

Vs.

Salmon Udayar (Deceased)

1.Savariammal
2.Arul Francis
3.Jesuraj
4.James Sagayaraj
5.Louis Irudayaraj
6.Motcha Raghini (Died)
7.Lourthu Mary
8.Arokkia Lima Rose
9.Adaikalasamy Udayar
Micheal Udaiyar (Deceased)
10.Innasi Ammal
11.Periyanayagam
12.Santhosa Mary
13.Santhanasamy
14.Arul Babu

....Respondents in S.A.No.2161 of 2001

1.Savariammal
2.Arul Francis
3.Jesuraj
4.James Sagayaraj
5.Louis Irudayaraj
6.Motcha Raghini (Died)
7.Lourthu Mary
8.Arokkia Lima Rose
9.Santhanasamy
10.Arul Babu

...R9 & R10 brought LRs of R6 vide order
dated 23.06.2014 in C.M.P.No.845 to
847/2009 in S.A. No. 143/2002

...Respondents in S.A.No.143 of
2002/LR's of Respondent/LR's of Defendant

Common Prayer: Second Appeal filed under Section. 100 of C.P.C. against the judgments and decrees dated 15.07.1998 passed in A.S.Nos.91 & 106 of 1992 by the Learned Subordinate Judge Ariyalur, confirming the Judgments and Decrees dated 30.04.1992 in O.S.Nos.489 & 491 of 1986 passed by the Learned District Munsif, Jayankondan.

For Appellant : Mr.R.Siddharth in both appeals

For Respondents

R1, R3 to R5,

R7 to R12

: Notice served

R6

: Died (steps taken)

R2

: Not ready in Notice

R13 & R14

: M/s.R.Radha for M/s.S.Senthilnathan
..in S.A.No.2161/2001

For Respondents

R1 to R4 & R8

: M/s.R.Radha for M/s.S.Senthilnathan

R5, R7

: Notice served

R6

: Died (steps taken)

R9, R10

: Not ready in Notice

..in S.A.No.143/2002

COMMON JUDGMENT

S.A.No. 2161 of 2001

This appeal has been filed as against the judgment and decree dated 15.07.1998 passed in A.S.No. 91 of 1992 on the file of the learned Sub-Ordinate Judge, Ariyalur confirming the judgment and decree dated 30.04.1992 passed in O.S.No. 489 of 1986 by the learned District Munsif, Jayankondam.

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

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

3.1 The suit is filed for permanent injunction with alternative prayer of recovery of possession. The second defendant is the father of the first defendant. The second plaintiff purchased the suit property and he was in possession and enjoyment of the suit property for the past 10 years by paying Kist and also obtained Patta. The property was purchased from one Irudhaya Samy Reddiar in which the first defendant has no title over the property. While being so, the second defendant sold out the suit property. On receipt of the sale consideration of Rs.11,000/- by two installments and by a sum of Rs.5,000/- on 25.06.1981 and sum of Rs.6,000/- on 17.10.1986 executed a sale deed in favour of the plaintiff on 17.10.1986. On the date of execution of sale deeds, the possession of the

suit property was handed over to the plaintiff. Thereafter, the plaintiff cultivated the suit property and he is in possession and enjoyment of the suit property. While being so, the 3rd defendant, being son of the first defendant also created encumbrance over the property. The first and third defendant are attempted to trespass into the suit property and also interfering with the possession and enjoyment of the suit property. Further, the first and third defendants threatened the second defendant and compelled him to execute settlement deed in respect of the suit property concerned in favour of the third defendant. Hence, the suit.

4. Resisting the same, the first defendant filed written statement stating that the entire averments and allegations made in the plaint is false and frivolous. The suit property belonged to the defendants. The second defendant executed a settlement deed dated 10.10.1986 in favour of the third defendant who is being the son of the first defendant by appointing the first defendant as guardian. On the date of execution of the settlement deed, the suit property handed over to the first and third defendants and the first defendant is being the guardian of the third defendant, he is in possession and enjoyment of the suit property. The second defendant is taken care of by the first and third defendants and he is living with them. In fact, the suit property was purchased only from the income of the first defendant, since the second defendant has no separate income. No sale deed was executed by the second defendant in favour of the plaintiff as alleged in the plaint. In fact, while the second defendant intended to execute settlement deed in his wife's name, the plaintiff has also accompanied with him. Utilizing the said opportunity and circumstances, obtained signature from the second defendant and executed the sale deed in his favour. Therefore, the second defendant never sold the suit property in favour of the plaintiff. As such, the third defendant filed a suit in O.S.No. 491 of 1986 for declaration and permanent injunction in respect of very same property against the plaintiff and prayed for dismissal of the suit.

S.A.No. 143 of 2002

5. This appeal has been filed as against the judgment and decree dated 15.07.1998 passed in A.S.No. 106 of 1992 by the learned Sub-Ordinate Judge, Ariyalur, confirming the judgment and decree dated 30.04.1992 in O.S.No. 491 of 1986 passed by the learned District Munsif, Jayankondam.

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

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

The suit is filed for declaration and injunction. The suit property originally belonged to Micheal udaiyar. He executed settlement deed in favour of the plaintiff who is the grandson born through his son, Adaikalasami by the settlement deed dated 10.10.1986. His father is a guardian of the plaintiff and after the settlement deed, they were in possession and enjoyment of the suit property. The settlement deed was also acted upon and they were put in possession and enjoyment of the suit property. While being so, in respect of other properties, his grandfather intended to settle the properties in favour of his wife for which he sought for help from the defendant. Utilizing the said opportunity, the defendant prepared a sale deed in respect of the suit property as if grandfather sold out the same in his favour for the sale consideration of Rs.10,000/- and executed sale deed in his favour. Therefore, the sale deed executed in favour of the defendant is voidable one. On the strength of the said sale deed, the defendant also filed suit in O.S.No. 489 of 1986. Hence, the suit for declaration and injunction.

8. Resisting the same, the defendant filed written statement and stating that the suit property was purchased by him by the sale deed dated 17.10.1986 for the total sale consideration of Rs.11,000/-. The case of the plaintiff in O.S.No. 489 of 1986 is the written statement in this case. The Trial Court conducted joint trial. During trial, on the side of the plaintiff in O.S.No. 489 of 1986 and defendants in O.S.No.491 of 1986 examined P.W.1 to P.W.5 and were marked Exs.A1 to A5. On the side of the defendants in O.S.No. 489 of 1986 and plaintiff in O.S.No. 491 of 2014 examined D.W.1 to D.W.1 and were marked Exs.D1 to D3. The Advocate Commissioner's report and plan were marked as Ex.C1 and C2. On perusal of evidence on record, the Trial Court decreed the suit in favour of the plaintiff in O.S.No.489 of 1986 and dismissed the suit in O.S.No. 491 of 1986. Aggrieved by the same, the defendant in O.S.No. 489 of 1986 and the plaintiff in O.S.No. 491 of 1986 preferred two appeal suits in A.S.No. 91 of 1992 and 106 of 1992. The first Appellate Court dismissed both the appeals and confirmed the judgments and decree passed by the Trial Court. Aggrieved by the same, these two second appeals.

9. At the time admission, the following substantial questions of law were framed for consideration:-
S.A.No. 2161 of 2001

i) Whether the Courts below have properly considered and construed the Ex.A1 and Ex.B1?

ii) Whether the Courts below have properly appreciated the documentary and oral evidence adduced by both the parties ?

S.A.No. 143 of 2002

i) Whether the Courts below ignored the weight of preponderating circumstances?

ii) Whether the judgments of the Courts below are on assumptions and presumptions without considering the entire evidence?

iii) Whether the judgments of the Courts below are based on Surmise and conjuncture?

10. The learned counsel appearing for the appellant in both the appeals submitted that the suit itself is not maintainable for the reason that the prayer of injunction with the alternative relief of recovery of possession cannot be prayed together. Mere execution and registration of sale deed would not confer any title on the plaintiff and there is no passing of consideration and possession was also never handed over to the plaintiff. Further, he contended that the plaintiff filed a suit on the strength of unregistered sale deed and while contending the suit, it has been sent for compulsory registration without even considering the objections raised by the second defendant. He relied upon the judgment reported in 2020(1) CTC 416 Lakshmanaperumal Raja @ Alagar Raja Vs. Muthulakshmi and others and Kaliaperumal Vs. Rajagopal and another reported in 2009 (4) SCC 193 to substantiate his contention.

11. Per contra, the learned counsel appearing for the respondents submitted that since the sale deed was duly executed by the second defendant and failed to register the same. Therefore, the Trial Court rightly sent the sale deed for compulsory registration. The District Registrar after conducting due enquiry with the second defendant and only thereafter, registered the sale deed in favour of the plaintiff. He also submitted that the settlement deed executed in favour of the third defendant is not valid one in the eye of law. Since the stamp paper purchased on various dates that too by fabricated one and also purchased in various places. Whereas, the said document was registered at the office of Sub-Registrar, Meensututty and as such on the date of alleged settlement deed dated 10.10.1986 was never in existence. Therefore, both the Courts below rightly held in his favour and prayed for dismissal of the appeals.

12. Heard Mr.R.Siddharth, learned counsel for the appellants in both the appeals. Though notice served to R1, R3 to 5 and R7 to R12, none appeared. R6 died and steps have been taken. R2, not ready in notice. Mrs. R.Radha for Mr. S.Senthilnathan for R13 & R14.

13. The plaintiff in O.S.No.486 of 1986 filed a suit for injunction with alternative prayer of recovery of possession on the strength of the sale deed dated 17.10.1986 executed in favour of the plaintiff by the second defendant for the valid sale consideration of Rs.11,000/-. The sale consideration was paid on two dates namely, on 25.06.1986 and 17.10.1986. The sale deed was marked as Ex.A1. Thereafter, the plaintiff was put in possession and enjoyment of the suit property. The plaintiff also mutated the revenue records in his favour and paid Kist for the suit property which were marked as Exs.A2 and A3. The P.W.1 categorically deposed that after receipt of sale consideration by the second defendant, the second defendant came to the registrar office to register the sale deed in his favour. At that juncture, he was forcibly accompanied by the defendants 1 and 3 along with others. It is also corroborated by the other evidence. Further, the plaintiffs also proved that the sale consideration was duly received by the second defendant for his family expenses. Though the defendant took a stand that while the second defendant intended to execute settlement deed in favour of his wife, the plaintiff was taken to registrar office for his assistance. Therefore, he utilized the circumstances and executed a sale deed in his favour. But, to prove the same, the defendants did not produce any document to show before the Trial Court. Further, the second defendant already executed settlement deed dated 27.07.1979 in favour of his wife, Innasi Ammal which was marked as Ex.A4.

14. On perusal of the records, when the second defendant was taken by the other defendants without registering the sale deed in favour of the plaintiff, immediately the plaintiffs filed a suit. Therefore, the Trial Court sent the document for registration. On receipt of the same, the District Registrar duly followed the procedures contemplated under law and conducted enquiry. In the enquiry, the second defendant gave his statement, which was marked as Ex.A5. On perusal of the said statement, he categorically deposed that he received the sale consideration from the plaintiff. Further, the statement of the second defendant completely against the case of the plaintiff in O.S.No. 491 of 1986. Therefore, the plaintiff filed a suit for injunction and also with alternative prayer of recovery of possession. In this regard, the learned counsel appearing for the appellant relied upon the judgment reported in 2020 (1) CTC 416 in Lakshmanaperumal Raja @ Alagar Raja Vs. Muthulakshmi and others, in which the head note is extracted hereunder:-

"Specific Relief Act, 1963 (47 of 1963), Sections 22 & 34 - Suit for Declaration of Title and Injunction - Alternative prayer for recovery of possession - Maintainability of Plaintiffs not specific whether they are in possession or not - Plaintiffs did not

plead that Defendants trespassed into Suit property on particular date - Admittedly, 1st Defendant runs business in Suit property - Documents establish that 1st Defendant paying Property Tax and EB charges and having building in Suit property - Held, claim for relief of Injunction and alternative prayer for recovery of possession, not sustainable - Lower Appellate Court erred in granting relief of Recovery of possession, when there was no specific allegation of encroachment - Judgment and Decree of Lower Appellate Court set aside - Judgment and Decree of Trial Court dismissing Suit, confirmed - Second Appeal allowed."

15. In view of the above discussion, the judgment cited by the learned counsel for the appellant is not helpful to the case on hand. Since the entire facts of the case on hand is fully different and this Court held on different circumstances. Further, both the Courts held concurrently and as such nothing appears to interfere with the findings of the Courts below by this Court. The learned counsel relied upon the judgment of the Hon'ble Supreme Court in (2017) 13 SCC 705 in Dagadabai (dead) by legal representatives Vs. Abbas @ Gulab Rustum Pinjari had held as follows:-

"13. First, when the Trial Court and the first Appellate Court concurrently decreed the plaintiff's suit by recording all the findings of facts against the defendant enumerated above, then, in our opinion, such findings of facts were binding on the High Court. It is also for additional reasons that the findings were neither against the pleadings nor evidence and nor against any provisions of law. They were also not perverse on facts to the extent that no average judicial person could ever record. In this view of the matter, we are of the opinion that the second appeal did not involve any question of law much less substantial question of law within the meaning of Section 100 of the code to enable High Court to admit the appeal on any such question much less answer it in favour of the defendant.

14. Second, the question which was formulated by the High Court did not involve any question of law much less substantial question of law within the meaning of section 100 of the code requiring interference in the first Appellate Court's judgment.

21. It is for the aforementioned reasons, the impugned judgment is held legally unsustainable and hence deserves to be set aside.

22. The appeal thus succeeds and is accordingly allowed. The impugned judgment is set aside and that of the Trial Court and the first Appellate Court is restored."

16. The above judgment squarely applies to the case on hand, since, the substantial questions of law formulated by this Court did not involve any question of law much less substantial question of law within the meaning of Section 100 of C.P.C requiring interference in the judgment of the Courts below. Therefore, 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 plaintiff in O.S.No. 486 of 1986 and the defendant in O.S.No.491 of 1986. As such this Court is of the considered opinion, no substantial questions of law are involved in these appeals. Be that as it may, the substantial questions of law are accordingly answered against the defendant in O.S.No. 486 of 1986 and the plaintiff in O.S.No. 491 of 1986. In fine, both the second appeals are dismissed and the judgment and decree of the Courts below are confirmed. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:-

1. The Learned Subordinate Judge, Ariyalur.

2.The Learned District Munsif, Jayankondam.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

S.A.Nos.2161 of 2001 & 143 of 2002

SVI (CO)
SP(08/02/2021)