

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.02.2020

Date of Verdict : 27.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.781 of 2006

1. Rajagopal Odaiyar (Died)
2. Gandhimathi
3. Manickam
4. Alamelu
5. Padma

(Appellants 2 to 5
brought on record as
legal heirs of the deceased
sole appellant vide order
of the Court dated 18.06.2019
made in M.P.Nos. 4 to 6 of
2013 in S.A.No.781 of 2006) ...Appellants

Vs.

Kuppuswamy Odaiyar (Died)

1. Parvathammal (Died)
2. Iniyasi
3. Soundararajan
4. Amudha
5. Vijaya
6. Pandiyan
7. Devaki
8. Gnanavel

(Respondents 3 to 8
brought on record as
legal heirs of the deceased
first respondent vide order
of the Court dated 19.12.2019
made in M.P.Nos. 1 to 3 of
2013 in S.A.No.781 of 2006) ...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 06.03.2006 made in A.S.No.5 of 2003 on the file of the Additional District and Sessions Court, Fast Track Court at Kallakurichi, confirming the judgment and decree dated 01.07.1992 made in O.S.No.500 of 1987 on the file of the Additional District Munsif Court, Kallakurichi.

For Appellants : Mr.P.Jagadesan

For Respondents

R1 : Died

For R2 : Notice served

For R3, R5 to R8: Mr.V.Srimathi

R4 : Dismissed as abated vide

Court order dated 10.12.2019

JUDGMENT

This second appeal is directed as against the judgment and decree dated 06.03.2006 made in A.S.No.5 of 2003 on the file of the Additional District and Sessions Court, Fast Track Court at Kallakurichi, confirming the judgment and decree dated 01.07.1992 made in O.S.No.500 of 1987 on the file of the Additional District Munsif Court, Kallakurichi.

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 is as follows :-

3.1. The suit is filed for declaration and recovery of possession. The suit property absolutely belonged to the plaintiff. He was also issued patta under the land records updating scheme in patta No.70 in respect of the suit properties. While being so, the first defendant interfered with the peaceful possession and enjoyment of the suit property, described under item No.1. Therefore, the plaintiff filed suit in O.S.No.890 of 1974 for declaration and injunction and it was decreed in his favour. Thereafter, the first defendant also filed suit against the plaintiff in respect of the first and other items in O.S.No.268 of 1981 and the same was dismissed for default, by an order dated 14.02.1985. Thereafter, the plaintiff had lost his son and as such he left the village. At that juncture, the first defendant trespassed into the suit property in the year 1986. While the plaintiff returned to his village, he demanded the first defendant to deliver the possession of the suit property. The second defendant is the daughter of the first defendant and the third defendant is a stranger. Thereafter, the first defendant created documents in respect of the suit property in favour of the second and third defendants. Hence the suit.

4. Resisting the same, the first defendant filed written statement stating that the plaintiff has no manner of title or possession of the suit property. The first defendant purchased the first item of the suit property by a registered sale deed dated 19.10.1960, for valuable sale consideration of Rs.700/- from the plaintiff. The second item of the suit property is an ancestral property of the first defendant. He executed settlement deed in respect of the suit property in favour of the second defendant on 01.12.1982. Thereafter, the

first and second defendants have been put in possession and enjoyment of the suit property more than 20 years. Therefore, they also acquired title by adverse possession of the suit property. The proceedings in O.S.No.890 of 1974 and O.S.No.268 of 1981 are collusive proceedings in view of the insolvency proceedings. Those proceedings will not interrupt the adverse possession of the defendants. Therefore, he prayed for dismissal of the suit.

5. On the side of the plaintiff, he himself examined as P.W.1 and were marked Ex.A.1 to Ex.A.18. On the side of the defendants, they examined D.W.1 and were marked Ex.B.1 to Ex.B.7. Based on the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff preferred an appeal suit in A.S.No.5 of 2003 and the first appellate Court also dismissed the appeal by confirming the judgment and decree of the trial Court. Aggrieved by the same, the plaintiff preferred this present second appeal.

6. At the time of admission of this second appeal on 11.08.2006, the following substantial question of law was formulated for consideration:-

"i) Is not the plaintiff proved his title to the suit properties especially when the plaintiff's title was declared earlier by a competent Civil Court in O.S.No.890 of 1974 (Ex.A.3 and O.S.No.268 of 1984 (Ex.A.4)?"

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

8. Heard Mr.P.Jagadesan, learned counsel appearing for the appellants/legal heirs of the plaintiff and Ms.V.Srimathi, learned counsel appearing for the respondents/defendants.

9. Admittedly, the first defendant is none other than own brother-in-law of the plaintiff. The first item of the suit schedule property was sold out in favour of the first defendant by the plaintiff by a registered sale deed dated 19.10.1960, which was marked as Ex.B.1, to settle the loan. Thereafter, the first defendant executed settlement deed dated 01.12.1982 in favour of the second defendant, which was marked as Ex.B.5. In the said sale deed, there is a specific clause that the first defendant should settle the loan, which was borrowed by the plaintiff from the various persons. In fact the first defendant did not settle the creditors and he filed insolvency petition in I.P.No.1 of 1976 before the Subordinate Court, Cuddalore. Therefore, the plaintiff had title over the

property as such he filed suit in O.S.No.890 of 1974 in respect of the first item of the suit property and it was declared in his favour.

10. After the insolvency petition, the first defendant settled all the loans, which were borrowed by the plaintiff. Though the suit property brought for sale in pursuant to the insolvency petition in I.P.No.1 of 1976, it was not taken place and the first defendant is in possession and enjoyment of the suit property, since he settled the entire loan amount. Subsequently, by the sale deed dated 10.06.1974, the very same first item of the suit property was sold out in favour of one Periyammal by the plaintiff. Whereas the plaintiff took a specific stand that the first item of the suit property was deleted from the auction sale after showing the decree passed in O.S.No.890 of 1974 before the official receiver. When the plaintiff executed sale deed in favour of the first defendant on 19.10.1960, without canceling the said sale deed, the plaintiff cannot execute another sale deed in favour of the said Periyammal. After the sale deed in favour of the first defendant, he also settled the property in favour of the second defendant. They also proved their continuous possession and enjoyment of the suit property. Therefore, both the Courts below dismissed the suit filed by the plaintiff and concurrently hold in favour of the defendants.

11. 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. Therefore, 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 defendants and as against the plaintiff.

12. In fine, the second appeal stands dismissed by confirming the judgment and decree passed by the Courts below. There is no order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

rts

To

1. The Additional District and Sessions Judge,
Fast Track Court at Kallakurichi,

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Additional District Munsif,
Kallakurichi.

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

+1cc to Mr.P.Jagadesan, Advocate SR.No.17297

+1cc to Mr.V.Raghavachari, Advocate SR.No.17039

S.A.No.781 of 2006

RSV(CO)
GMY(27/08/2020)



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