

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2020

Date of Verdict : 28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.2034 of 2004
and
C.M.P.No.17353 of 2004

Raja Gopal Gounder (Died) ...1st Defendant

1.S.Raman (Died)

2.R.Vajravelu

3.R.Doraiswamy (Died)

4.R.Srinivasan

5.R.Mahalakshmi

6.R.T.Sundari

7.R.Shanthi

8.R.Nandhini

9.R.Chitra

(Appellants 5 to 9 brought on record
as LR's of the deceased first appellant
viz., R.Raman vide order of Court dated
20.09.2019 made in C.M.P.Nos.19487,
19488 and 19490 of 2019)

10.D.Malarvizhi

11.D.Sathyaseelan

12.R.Roopavathy

(Appellants 10 to 12 brought on record
as LR's of the deceased third appellant
viz., R.Doraiswamy vide order of Court
dated 20.09.2019 made in C.M.P.Nos.
19493, 19489 and 19491 of 2019)

... Appellants/ Appellants/ 1st Defendant

Vs.

1.Shanmugam

2.Munusamy

3.Perumal

4.Varadan

5.Yasodammal

6.Vinayagam

7.Sankar

.. Respondents1 to 7/ Respondents/Plaintiff 1 to 7

8.Lakshmi Ammal...8th Respondent/ Respondents/ 2nd Defendant

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.48 of 2001 dated 20.12.2002 on the file of the Subordinate Court, Ranipet confirming the judgment and decree passed in O.S.No.55 of 1994 dated 28.09.2001 on the file of the District Munsif Court, Ranipet.

For Appellants : Mr.P.Ganapathy
for M/s.Margabandhu

For RR5 to 7 : Mr.P.Mani
for Mr.P.Guru Ramachandran

For RR1 to 4, 8: Died (steps due)

JUDGMENT

This second appeal is directed as against the Judgment and Decree dated 20.12.2012 passed in A.S.No.48 of 2001 on the file of the Subordinate Court, Ranipet confirming the Judgment and Decree dated 28.09.2001 passed in O.S.No.55 of 1994 on the file of the District Munsif Court, Ranipet.

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

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

3.1. The suit is filed for declaration and permanent injunction. The plaintiffs 1 to 4 are the brothers, the fifth plaintiff is the wife of the deceased brother, namely, Srinivasan. The sixth and seventh plaintiffs are the sons of the fifth plaintiff. Their father Gowrappa Reddy purchased the suit properties by way of three separate sale deeds. By the registered sale deed dated 15.08.1959, the land ad-measuring 1.33 cents was purchased from the first defendant's father, namely, Vadamalai Gounder and from the second defendant. In fact, the said sale deed was duly attested by the first defendant and his brother. Another property ad-measuring 86 ½ cents was purchased by one Sambasiva Gounder from Munirathna Gounder by registered sale deed dated 15.03.1964. In turn, the said Sambasiva Gounder sold out the said property in favour of the father of the plaintiffs 1 to 4, namely, Gowrappa Reddy by registered sale deed dated 15.06.1971. Another property ad-measuring 86 ½ cents was sold out by the Munirathna Gounder in favour of Gowrappa Reddy by registered sale deed dated 19.03.1964. Therefore, totally the father of the plaintiffs 1 to 4 purchased property ad-measuring 3 acres and 6 cents.

3.2. After demise of Gowrappa Reddy, the suit property devolved into the plaintiffs and they are in possession and

enjoyment of the suit property. The patta also issued in their name. Thereafter, they also paid kist to the suit property and they are in continuous possession and enjoyment of the suit property. While being so, the defendants have no manner or right or any interest over the suit property, and they are trying to interfere with the peaceful possession and enjoyment of the suit property by the plaintiffs. Hence, the suit is filed for declaration and permanent injunction.

4. Resisting the plaintiffs' case, the first defendant filed written statement stating that the suit property was the ancestral property of one Vajravelu Gounder, the grand father of the first defendant and father of Vadamalai Gounder. The father of the first defendant was not the owner of the suit property and he had six sons and he was leading a wayward and immoral life. He created a sham and nominal document dated 19.03.1958 in favour of one Lakshmi Ammal. In respect of the suit properties and also other properties, though the first defendant and his brother were major, they did not join in the execution of the sale deed. Therefore, the said sale deed dated 19.03.1958 was not maintain on the sons of Vadamalai Gounder. Thereafter, the said Lakshmi Ammal executed a re-conveyance agreement in favour of Vadamalai Gounder. Since the said Lakshmi Ammal had no absolute right over the property, she cannot execute any sale deed in favour of Gowrappa Reddy, namely, the father of the plaintiffs 1 to 4. Therefore, the sale deed executed by the said Lakshmi Ammal is not valid and it never confers any right to the plaintiffs. He further stated that the said Vadamalai Gounder never joined in the execution of the sale deed. In any event, the first defendant and his brothers did not execute any sale deed in respect of the suit properties to anybody. In fact, the first defendant filed a suit in O.S.No.281 of 1982 on the file of the District Munsif Court, Ranipet against the second defendant for specific performance. It was decreed and the learned District Munsif executed the sale deed in favour of the first defendant on behalf of the second defendant. In pursuance of the sale deed, the first defendant had taken delivery of possession through Court on 11.01.1994. Therefore, the said decree is very much binding on the plaintiffs. The first defendant and his brothers are in possession and enjoyment of the suit properties. The plaintiffs cannot acquire any title in the right of the decree passed in O.S.No.281/1982 and prayed for dismissal of the suit.

5. In support of the plaintiffs' case, P.W.1 and P.W.2 were examined and marked Exs.A1 to A71. On the side of the defendants D.W.1 was examined and marked Exs.B1 to B5. 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 plaintiffs. Aggrieved over the judgment and decree of the trial Court, the first defendant alone preferred an appeal suit in A.S.No.48 of 2001 before the Subordinate Judge,

Ranipet and the first Appellate Court dismissed the appeal and confirmed the judgment and decree passed by the trial Court. Challenging the same, the first defendant has 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 registration will prove execution?

b) Whether Section 90 of the Evidence Act is made applicable to a document which is not signed by the party?

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

8. Heard Mr.P.Ganapathy, learned counsel appearing for the appellants and Mr.P.Mani, learned counsel appearing for the respondent Nos.5 to 7.

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

10. The suit property originally belonged to one Vadamalai Gounder and Lakshmi Ammal. The father of the plaintiffs 1 to 4, namely, Gowrappa Reddy purchased the suit property from them by the registered sale deed dated 15.08.1959 for the property ad-measuring 1.33 acres, which was marked as Ex.A1. By the registered sale deed dated 15.03.1964, one Sambasiva Gounder purchased another property ad-measuring 86 ½ cents from one Munirathna Gounder, which was marked as Ex.A2. In turn, by the registered sale deed dated 19.03.1964, the said Munirathna Gounder executed sale deed in favour of Gowrappa Reddy, which was marked as Ex.A3. Another property was purchased by the Gowrappa Reddy ad-measuring 86 ½ cents from the Sambasiva Gounder, which was marked as Ex.A4. Therefore, by the three sale deeds, the said Gowrappa Reddy purchased the property ad-measuring 3.06 acres. After his demise, his sons are in possession and enjoyment of the said property and they were also issued joint patta, which was marked as Ex.A5. The kist receipts were marked as Exs.A6 to A10. The patta issued in favour of the plaintiffs was marked as Ex.A11. Further, separate patta was issued in favour of the plaintiffs 1 to 4, which was marked as Exs.A12 to A16. In fact, the said Gowrappa Reddy filed a suit in O.S.No.536 of 1970 for specific performance against Sambasiva Gounder and the same was decreed in his favour. The said decree was marked as Ex.A70. Therefore, the specific stand of the first defendant is that his father Vadamalai Gounder was leading the wayward and immoral life and to meet his immoral needs, he

created sham and nominal document dated 19.03.1958 in favour of one Lakshmi Ammal. Therefore, she executed sale agreement in favour of the Vadamalai Gounder and on the strength of the sale agreement, the first defendant and his brothers filed the suit in O.S.No.281 of 1982 for specific performance and the same was decreed in his favour. Accordingly, he also filed Execution Petition in E.P.No.12 of 1994 and through Court executed sale deed in his favour. The possession of the property also handed over to him. The Judgment and Decree were marked as Exs.B1 and B2. The possession receipt was marked as Ex.B4. The sale deed was marked as Ex.B3. Further, deposed that his father as well as the Lakshmi Ammal have no title over the suit property to execute any sale deed. Therefore, both the Courts below concurrently held that the plaintiffs proved their case and decreed the suit in their favour. In these circumstances, this Court does not find any substantial questions of law to interfere with the concurrent findings of both the Courts below.

11. In view of the above, this Court does not find any valid reason to interfere with the reasoning and 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 plaintiffs. Accordingly, 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 in this Second Appeal, are answered in favour of the plaintiffs and as against the defendants.

12. Accordingly, this Second Appeal stands dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते Sd/-

Assistant Registrar(co mdu)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,Ranipet.

2.The District Munsif,Ranipet.

Copy to:

The Section Officer, VR Section, High Court,Madras.

in S.A.No.2034 of 2004

and

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