

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2020

Date of Verdict : 25.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1065 of 2005

1. N.Kasiba Rao
2. A.Navaneethi Rao ... Appellants/Appellants/
Plaintiffs

Vs.

1. Lakshmi Bai
2. Shanmugam ... Respondents/Respondents
Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 22.06.2005, in A.S.No.56 of 2004 on the file of Subordinate Court, Tirupattur, confirming the judgment and decree dated 17.09.2004 in O.S.No.142 of 1998 on the file of the District Munsif cum Judicial Magistrate Court, Vaniyambadi.

For Appellants : Mrs.V.Srimathi

For Respondents: Ms.Veena Suresh
for Mr.T.R.Rajaraman

JUDGMENT

This second appeal is directed as against the judgment and decree dated 22.06.2005, in A.S.No.56 of 2004 on the file of Subordinate Court, Tirupattur, confirming the judgment and decree dated 17.09.2004 in O.S.No.142 of 1998 on the file of the District Munsif cum Judicial Magistrate Court, Vaniyambadi.

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. Originally, the suit properties and other properties belonged to the joint family properties of Rama Rao and Sengalva Rao. There was a oral partition in which, the respective shares of Rama Rao and Sengalva Rao were allotted in their favour and they were in possession and enjoyment of the same. The said Rama Rao died leaving behind him his sons, namely, Santhoji Rao and Lakshmana Rao and there was a partition between them in respect of the properties, which was allotted in favour of Rama Rao.

3.2. In the suit schedule property, 'A' schedule property was allotted to Santhoji Rao and thereafter the patta was also issued in his favour and he is paying all revenue dues to the concerned authorities. After the death of the said Santhoji Rao, his son Babu Rao was in possession and enjoyment of the said property and he was paying kist in respect of the property. The patta also issued in his favour. The said Babu Rao and his minor son and daughters sold out the suit property to the plaintiffs for valid sale consideration for a sum of Rs.37,000/- vide registered sale deed dated 30.05.1990 and also delivered the possession of the suit properties to the plaintiffs. After the sale deed, the plaintiffs are in possession and enjoyment of the said property and also paying Kists in their name. The patta also issued in their favour in respect of 'A' schedule property and they become the absolute owner of the said property. The 'B' schedule properties are the ancestral joint family properties of Vengoba Rao, Srinivasa Rao, Narayana Rao and Krishnaji Rao and they were in possession and enjoyment of the same. While being so, the Narayana Rao died leaving behind him his wife and son and there was a registered partition deed dated 01.03.1983 between them. Thereafter, the respective portions were allotted to them. Accordingly, they are in possession and enjoyment of their respective share and joint patta issued in favour of them. While being so, three of them, namely, Vengopa Rao, Srinivasa Rao and Krishnaji Rao have jointly sold out the properties to the first plaintiff for valid sale consideration of Rs.1,03,000/- by the registered sale deed dated 22.04.1998 and also delivered possession of the same. Therefore, both the plaintiffs have become absolute owner of the 'A' and 'B' schedule of the suit properties. The defendants have no right, title or interest over the suit property and they were never in possession and enjoyment of the same. Since from the date of purchase of the suit property, the plaintiffs are in possession and enjoyment of the suit property and as such they also have acquired title by adverse possession. While, being so, the first and second defendants appear to have executed a sale agreement in respect of certain properties in favour of the third

defendant. Thereafter, they attempted to commit tress pass the suit properties. Hence, the plaintiffs filed the suit for declaration and permanent injunction as against the defendants.

4. Resisting the same, the second and third defendants filed written statements stating that the entire averments and allegations made in the plaint as false and frivolous. The property ad-measuring 5.47 acres were originally belonged to Rama Rao and Sengalva Rao, in which, the property ad-measuring 30 cents comprised in S.No.199, the property ad-measuring 5.17 acres comprised in S.No.200. The property situated on the western side ad-measuring 2.74 acres comprised in S.No.200 was allotted in favour of Rama Rao and the property situated on the eastern side ad-measuring 2.43 acres comprised in S.No.200 and the property ad-measuring 30 cents comprised in S.No.199 were allotted to Sengalva Rao. After demise of Rama Rao, his legal heirs Santhoji Rao and Lakshmana Rao partitioned the share of the Rama Rao, in which, the land ad-measuring 1.37 acres comprised in S.No.200 was allotted to Santhoji Rao and the Eastern side of the said share, the property ad-measuring 1.37 acres comprised in S.No.200 was allotted to Lakshmana Rao. The property, which was allotted in favour of Santhoji Rao was sold out in favour of one Mukuntha Rao by a registered sale deed dated 14.11.1948. Therefore, the Santhoji Rao sold out his entire share in favour of Mukuntha Rao and he had no property. Therefore, after demise of Santhoji Rao, the 'A' schedule property was never enjoyed by the Babu Rao, namely, the son of Santhoji Rao and he had no title over the 'A' schedule property. The boundaries mentioned for the 'A' schedule property also not correct and it was never allotted even in favour of Santhoji Rao. Therefore, the sale deed dated 30.05.1990 executed by the Babu Rao and his daughter in favour of the first plaintiff is not correct and it is false. The sale deed dated 30.05.1990 itself is a concocted one and fabricated one.

4.1. In respect of 'B' schedule property, it never belonged to Vengoba Rao, Srinivasa Rao, Narayana Rao and Krishnaji Rao. Originally, 'B' schedule property belonged to Mukuntha Rao comprised in S.No.200 ad-measuring 1.06 acres and the land ad-measuring 30 cents comprised in S.No.199. In fact, in the land comprised in S.No.200, there was a Well and Coconut trees in which, he had 1/4th share. On the western side of the Mukuntha Rao's land, ad-measuring 1.37 acres was allotted to Munusamy Rao by the partition deed dated 01.03.1983. Therefore, they never executed any sale deed dated 22.04.1998 in favour of the first plaintiff and the so called vendors had no title over the property. The 'A' schedule property belonged to Mukuntha Rao by sale deed and 'B' schedule property was allotted in his favour

by partition. Therefore, the land ad-measuring 2.73 acres comprised in S.No.200 and Well along with the Coconut trees are belonged to the said Mukuntha Rao and the entire property was mortgaged by the said Mukuntha Rao in favour of Mallappa Chetty and Munusamy. Thereafter, the said Mukuntha Rao's wife and his daughters have become absolute owner of the suit properties. The second defendant, one of the daughter of the said Mukuntha Rao has become absolute owner of the 'A' schedule property, since her mother and another sister died without any issues. In respect of the second item of the suit property comprised in S.No.200 ad-measuring 1 acre 6 cents and the land ad-measuring 30 cents comprised in S.No.199 and 1/4th share in Well along with three Coconut trees, she agreed to sale in favour of the third defendant by agreement dated 03.04.1998. Thereafter on the strength of the agreement, the third defendant filed a suit in O.S.No.74 of 1998 on the file of the Subordinate Court, Tirupattur. In pursuant to the order, by registered sale deed dated 30.04.1999, the 1/4th share of the 'B' schedule property conveyed in favour of the third defendant. The third defendant also took possession of the property by order dated 01.12.1999 on the file of the Subordinate Court, Tirupattur and enjoying the same. Therefore, the 'A' schedule property belongs to second defendant and 'B' schedule property belongs to third defendant and they are in possession and enjoyment of the same. Therefore, the plaintiffs are not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 to P.W.3 were examined and twenty documents were marked as Ex.A.1 to Ex.A.20. On the side of the defendants D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.12 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit filed by the plaintiffs. Aggrieved over the judgment and decree of the trial Court, the plaintiffs preferred an appeal suit in A.S.No.56 of 2004 before the Subordinate Judge, Tirupattur and the first Appellate Court also dismissed the appeal and confirmed the judgment and decree passed by the trial Court. Challenging the same, the plaintiffs have 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) When the vendors to the defendant have no title to the property, whether the Courts below are justified in conferring title upon the 3rd defendant on the basis of

the decree in O.S.No.74/98?

b) When the earlier document under Ex.A18, 19, B2 and B4 speaks about the property of Munusamy Rao as one of the owners of a boundary, whether the Courts below are justified in ignoring boundary recitals?

c) Whether the suit for specific performance is one for title and whether the decree in such a suit could confer unimpeachable right upon the 3rd defendant?

7. The learned counsel appearing for the appellants/plaintiffs 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 Ms.V.Srimathi, learned counsel appearing for the appellants and Ms.Veena Suresh, learned counsel appearing for the respondents.

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

10. The suit is filed for declaration and permanent injunction. The 'A' schedule suit property was allotted in favour of Rama Rao. After his demise, the said property devolved into his sons Santhoji Rao and Lakshmana Rao. They partitioned the property and after demise of Santhoji Rao, his son Babu Rao inherited the share, which was allotted in favour of Santhoji Rao. Thereafter, 'A' schedule property was purchased by the sale deed dated 30.05.1990 from the said Babu Rao and from his minor children and from the date of sale, the plaintiffs are in possession and enjoyment of the 'A' schedule suit property. The 'B' schedule property originally belonged to Vengoba Rao, Srinivasa Rao, Narayana Rao and Krishnaji Rao is a joint family property. After the death of Narayana Rao, there was a partition among the family members and the share of Vengoba Rao, Srinivasa Rao, and Krishnaji Rao was sold out by the registered sale deed dated 22.04.1998 in favour of the first plaintiff and thereafter, the plaintiffs are in possession and enjoyment of the suit properties. According to the defendants, the said Rama Rao had two sons Santhoji Rao and Lakshmana Rao. The Rama Rao's brother Sengalva Rao had two sons, namely, Munusamy Rao and Mukuntha Rao. The share of the Rama Rao was partitioned by his sons Santhoji Rao and Lakshmana Rao for the property ad-measuring 1.37 acres. The said property was sold out to Mukuntha Rao by registered sale deed dated 14.11.1948, which was marked

as Ex.A19 and also marked as Ex.B2 by the defendants. Therefore, the said Santhoji Rao have no title over the 'A' schedule property and as such the sale deed executed in favour of the first plaintiff in respect of 'A' schedule property is not valid, since the said Santhoji Rao himself had no title over the property after the sale deed dated 14.11.1948 executed in favour of Mukuntha Rao. It is also categorically admitted by P.W.1, while purchasing the 'A' schedule property, he did not perused any revenue documents insofar as 'A' schedule property such as patta, chitta and encumbrance certificate.

11. The Vengoba Rao, Srinivasa Rao, Narayana Rao and Krishnaji Rao are brothers and sons of one Munusamy Rao. The said Munusamy Rao is none other than the own brother of Mukuntha Rao. The said Munusamy Rao and Mukuntha Rao have partitioned their property and the property ad-measuring 1.37 acres were allotted in favour of Munusamy Rao and 1.36 acres were allotted in favour of Mukuntha Rao. Therefore, the property, which was allotted in favour of Munusamy Rao can be partitioned and P.W.1 admitted the partition between the Munusamy Rao and Mukuntha Rao. Accordingly, the legal heirs of Munusamy Rao partitioned the property, which was marked as Ex.A3. The second defendant, who is the daughter of Mukuntha Rao executed a sale agreement insofar as the 'B' schedule property dated 03.04.1998 in favour of the third defendant. Thereafter, the third defendant filed a suit in O.S.No.74 of 1998 and in pursuant to the decree passed in the said suit, the sale deed dated 30.04.1999 was executed in favour of the third defendant. Though the plaintiffs also claimed that they are lease right holders of the suit property, they did not marked any documents to prove the same. Hence, the Courts below have rightly dismissed the suit filed by the plaintiffs.

12. Therefore, this Court does not find any valid reason to interfere with the reasonings 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 dismissed 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 defendants and as against the plaintiffs.

13. Accordingly, this Second Appeal stands dismissed. No order as to cost.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

- 1.The Subordinate Judge,
Tirupattur.
- 2.The District Munsif cum Judicial Magistrate,
Vaniyambadi.
- 3.The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1 cc to Mr.V.Raghavachari Advocate sr16032
+1 cc to Mr.T.R.Rajaraman Advocate sr16067

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