

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2020

Date of Verdict : 19.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No. 1466 of 2005
and
C.M.P.No. 19127 of 2005

Ayyasamy ...Appellant/Plaintiff

Vs.

1. Mannankatti Ammal (Deceased)
2. Ranganathan ...Respondents/Defendants

(second respondent is recorded as legal heirs of the deceased first respondent vide order this Court, dated 29.01.2020 made in S.A.No.1466 of 2005 as per memo dated 20.12.2019)

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.08.2005, in A.S.No.83 of 2004 on the file of the Additional District Judge, (Fast Track Court), Kallakurichi, reversing the decree and judgment dated 14.10.1999 in O.S.No.1038 of 1995, on the file of the II Additional District Munsif Court, Kallakurichi.

For Appellant : Ms.Mythili Suresh
For M/s.Sarvabhauman Associates
For Respondents: Mr.A.G.Rajan (For R2)
R-1 Died

JUDGMENT

This second appeal has been preferred by the plaintiff as against the judgment and decree dated 31.08.2005, passed in A.S.No.83 of 2004, on the file of the Additional District Judge (Fast Track Court), Kallakurichi, reversing the judgment and decree dated 14.10.1999 in O.S.No.1038 of 1995,

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 Permanent Injunction.

3.2. The suit property belonging to the plaintiff and he is in possession and enjoyment of the same. The said property was originally belonged to one Ayyankutty who is husband of the 1st defendant and father of the 2nd defendant herein. The said Ayyankutty borrowed loan from one Palaniyapillai, for his family expenses and he did not repay the loan and as such, the said Palaniyapillai filed a suit for recovery of money in O.S.No.1136/1972, on the file of the District Munsif Court, Kallakurichi. It was decreed in favour of Palaniyapillai and later Ayyankutty died leaving behind him, the defendants as his legal heirs. Thereafter, the said Palaniyapillai executed a decree against the defendants and by court auction, that the suit property was purchased by him on 07.11.1983 and the same was confirmed on 11.01.1984. Thereafter, he had taken delivery of possession of the suit property and he sold out the said property along with other properties to one Kovilan by the registered sale deed dated 10.07.1984. In turn, he sold the property to one Sadaya Moopar by a registered Sale Deed dated 01.11.1985. In turn, the said Sadaya Moopar sold the property by way of registered sale deed dated 27.02.1989, in favour of the plaintiff. Therefore, the plaintiff has become absolute owner of the suit property and he is in possession and enjoyment of the same. Thereafter, patta was also issued in favour of the plaintiff on 17.06.1991. Therefore, the defendants have no title or possession over the suit property and infact, they are the parties to the execution proceedings initiated by the said Palaniyapillai in O.S.No.1136 of 1972 and had full knowledge about the sale. Even then, the defendants are interfering with the possession and enjoyment of the suit properties by the plaintiffs. Hence, the suit.

4. The defendants resisted the plaintiff's case and filed a written statement stating that originally the suit property was belonged to Ayyankutty but they had no knowledge about the loan borrowed from one Palaniyapillai and the suit in O.S.No.1136 of 1972, was filed by him for recovery of money. The defendants also do not know about subsequent sales and the suit property was purchased by the plaintiff. He further stated that the suit property is in possession and enjoyment of the defendants. The husband of the 1st defendant had a 1st wife by name Sellayee and her son-in-law has obtained signatures from the defendants for the purpose of applying loan to dig up a well. Utilizing those papers, he entered their appearance in O.S.No.1136 of 1972 and got an exparte

decree.

4.1. Therefore, they had absolutely no knowledge about the suit proceedings initiated as against the husband of the 1st defendant and the execution proceedings. Therefore, the plaintiff is 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 and P.W.2 were examined and five documents were marked as Ex.A.1 to Ex.A.5. On the side of the defendants, D.W.1 and D.W.2 were examined and no documents were marked on their behalf. Ex.C.1 and Ex.C.2 were marked as Court documents. 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 plaintiff. Aggrieved over the judgment and decree of the trial Court, the defendants preferred an appeal suit in A.S.No.83 of 2004, before the Additional District Judge, (Fast Track Court), Kallakurichi. The First Appellate Court, on appreciating the materials placed on records, allowed the appeal by reversing the judgement and decree passed by the trial Court. Challenging the same, the plaintiff has come forward with the present second appeal.

6. At the time of admission of the second appeal on 25.01.2006, the following substantial questions of law were framed :-

a) When the appellant had clearly proved his possession on the date of the suit by virtue of Exs.A1 to A5 namely Sale Deeds, Court proceedings and Patta, whether the Lower Appellate Court is correct in law in denying the relief of permanent injunction?

b) Whether the Lower Appellate Court is justified in law in reversing the Trial Court judgment, without specifically advertng to and setting aside the findings rendered by the Trial Court, especially when it is incumbent on the First Appellate Court to do so?

c) Whether the Lower Appellate Court is correct in law in holding that the respondents had perfected title by adverse possession, particularly when there is neither plea nor proof regarding the same?

7. The learned counsel appearing for the appellant submitted that the suit property was purchased on the Court auction sale by one Palaniyapillai in O.S. No.1136 of 1972, pursuant to the decree in the E.P proceedings from the defendants. In fact, they were parties to the execution proceedings and they had full knowledge about the Court auction and purchase of the suit property by the said Palaniyapillai. Even then, they did not take any steps to set aside the said sale executed in favour of the said Muthiahpillai. Thereafter, the said Muthiahpillai executed the sale deed in favour of one Kovilan who in turn sold out the property to one Sadaya Moopar. The plaintiff purchased the suit property from the said Sadaya Moopar by the registered Sale Deed dated 27.02.1989, which was marked as Ex.A1. In fact, the earlier sale deeds were also marked as Exs.A2 and A3 and the execution proceedings was marked as Ex.A4. After the sale, the plaintiff was issued patta and the same was marked as Ex.A5. He further submitted that though the defendants claimed adverse possession over the suit property they did not mark even a single piece of evidence to prove their said contention. Therefore, the Trial Court, rightly decreed the suit in favour of the plaintiff. Unfortunately, the First Appellate Court, reversed the findings only on the ground that the defendants were in continuous possession and enjoyment of the suit property and as such they had perfected title by adverse possession. Further, the First Appellate Court concluded that the judgment and Court auction would not bind on the defendants, and prayed to decreed the suit.

8. Per contra, the learned counsel appearing for the respondents submitted that the title deeds of the suit property is disputed and as such, the plaintiff cannot maintain the suit only for injunction and the plaintiff ought to have filed the suit for declaration along with the prayer for injunction. Further, D.W.1 has categorically, stated about their continuous possession and enjoyment of the suit property and as such they have perfected title by adverse possession and the First Appellate Court had rightly dismissed the suit filed by the plaintiff's and prayed for dismissal of the appeal.

9. Heard M/s. Mythili Suresh, for M/s.Sarvabhauman Associates learned counsel appearing for the appellant and Mr.A.G.Rajan, learned counsel appearing for the 2nd respondent.

10. This Court considered the rival submissions made by the learned counsel on either side.

11. The suit is filed for permanent injunction. One Palaniyapillai purchased the suit property by court auction sale in the execution proceedings in E.P. No.251/1983 in O.S.No. 1136 of 1972, on the file of the District Munsif

Court, Kallakurichi, and the sale deed was marked as Ex.A1. The E.P proceedings was marked as Ex.A4 and in pursuance of the same, he was also issued patta and the same was marked as Ex.A5. Subsequent, to the purchase, the said Palaniyapilalai sold out the suit property to one Kovilan by way of registered sale deed dated 10.07.1984. In turn, the said Kovilan sold out the suit property in favour of one Sadaya Moopar, by the registered sale deed dated 01.11.1985. Both were marked as Exs. A2 and A3.

12. In turn, the said property was purchased from Sadaya Moopar by plaintiffs the registered Sale Deed dated 27.02.1989 and from the date of purchase onwards, the plaintiffs are in possession and enjoyment. Though, the defendants contented that they are in possession and enjoyment of the suit property and also claimed adverse possession, they did not produce any single piece of evidence before the Trial Court, to prove their contention.

13. The husband of the 1st defendant viz., D.W.2, had also deposed that he did not support the contention of the defendants. Therefore, the Trial Court, rightly decreed the suit in favour of the plaintiffs. Unfortunately, the First Appellate Court reversed the findings of the Trial Court for the reason that the plaintiffs have failed to prove their possession and enjoyment of the suit property. Though one Palaniyapillai purchased the suit property through court auction, the plaintiffs have failed to produce any piece of evidence to prove the possession taken by the said Palaniyapillai, pursuant to the auction sale. Further, the Appellate Court concluded that the defendants are in possession and enjoyment of the suit property and therefore they have perfected their title by adverse possession. It is to state here that the defendants did not mark any document before the Trial Court except their oral evidence. Though, they deposed that they are in possession and enjoyment of the suit property, to support of their case, they did not mark any documents. Whereas, the plaintiffs produced all the documents in respect of the Court auction sale and also the sale deeds purchased by his father. In fact, patta was also issued in favour of his father. Therefore, the plaintiff has categorically proved his case and findings of the First Appellate Court are perverse and against the evidence on record.

14. In these circumstances, this Court constrained to interfere with the findings of the First Appellate Court. This Court finds valid reason to interfere with the reasoning and findings of the First Appellate Court. Accordingly, the substantial questions of law formulated by this Court are answered in favour of the plaintiff and against the defendants.

15. In fine, this Second Appeal stands allowed and the judgment and decree of the First Appellate Court are set aside and subsequently, the judgment and decree of the Trial Court are restored with costs. Consequently, connected miscellaneous petition is closed. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge, (Fast Track Court),
Kallakurichi,
2. The II Additional District Munsif Court,
Kallakurichi.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to M/s.Sarvabhuman Associates SR.14420

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