

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2020

DATE OF VERDICT : 03.07.2020

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

S.A.NOS.1521 & 1522 OF 2005

AND

C.M.P.NOS.19690 & 19691 OF 2005

S.A.No.1521 of 2005

1.Ayyan
2.Manjamuthu
3.Velu @ Velmurugan
4.Veerammal
5.Chinna Pillai Ammal

... Appellants/Defendants

Vs.

1.Arumugam (Died)
2.Rangammal
3.Tangarasu
4.Dhanasekaran
5.Sundaramoorthy
6.Viswanathan
7.Kamaraj
8.Sampath
9.Venmathi

... Respondents/Plaintiffs

(R2 to R9 brought on record as legal heirs of the deceased R1 viz., Arumugam vide order of Court dated 20/12/2019 made in C.M.P.No.27139, 27144 and 27148 of 2019 in S.A.No.1521/2005)

Prayer in S.A.No.1521 of 2005:

Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree made in A.S.No. 49 of 2004 on the file of the Principal Sub-Judge, Virudhachalam dated 27.01.2005 confirming the judgment and decree made in O.S.No.808 of 1995 on the file of the II-Additional District Munsif Court, Virudhachalam dated 30.12.2003.

S.A.No.1522 of 2005

1.Chinnapillai (Died)
2.Ayyan
3.Veeramal

... Appellants/Plaintiffs

(Appellants 2 and 3 brought on record as legal heirs of the deceased sole Appellant viz., Chinnapillai, vide order of Court dated 20.12.2019 made in C.M.P.No.27279, 27282 and 27285 of 2019 in S.A.No.1522 of 2005)

Vs.

1.Arumugam (Died)
2.Murugesan
3.Rangammal
4.Tangarasu
5.Dhanasekaran
6.Sundaramoorthy
7.Viswanathan
8.Kamaraj
9.Sampath
10.Venmathi

... Respondents/2nd Defendants

(R3 to R10 brought on record as legal heirs of the deceased R1 viz., Arumugam vide order of Court dated 20/12/2019 made in C.M.P.No. 27142, 27145, 27147 of 2019 in S.A.No.1522/2005)

Prayer in S.A.No.1522 of 2005:

Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree made in A.S.No. 50 of 2004 on the file of the Principal Sub-Judge, Virudhachalam dated 27.01.2005 confirming the judgment and decree made in O.S.No. 1229 of 1994 on the file of the II-Additional District Munsif Court, Virudhachalam dated 30.12.2003.

For Appellants in both appeals : Mrs. P.Mahalakshmi

For Respondents 2 to 9 in
S.A.No.1521 of 2005
and Respondents 3 to 10 in
S.A.No.1522 of 2005 : Mr.S.Krishnasamy

: 2nd Respondent in S.A.No.1522
of 2005 - Notice served

: R1- Died Steps taken

C O M M O N J U D G M E N T

S.A.No.1521 of 2005

This appeal has been filed as against the judgment and decree dated 27.01.2005 passed in A.S.No. 49 of 2004 confirming the judgment and decree dated 30.12.2003 passed in O.S.No. 808 of 1995 on the file of the II-Additional District Munsif Court, Virudhachalam.

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

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

3.1. The suit is filed for declaration and injunction. The case of the plaintiff is that the suit property originally belonged to one Raghavan, son of Ayyan. He had two sons namely, Manjan and Arumugam. The 5th defendant, Chinnapillaiammal is the wife of the said Manjan. The first defendant is the son of said Manjan. The 4th defendant is the daughter of the said Manjan. The second defendant is the husband of the 4th defendant. The 3rd defendant is the son of the 4th defendant. While the said Raghavan was alive in the year 1951, the said Manjan died. While his death, the 4th defendant was aged about 4 years. The first defendant was also new born child. Therefore, the said Raghavan executed a settlement deed dated 02.07.1951 in favour of the 5th defendant namely, daughter-in-law. As per the settlement deed, the 5th defendant was given life estate and after her life time, the first and fourth defendants are entitled to have absolute right over the suit property. Accordingly, the 5th defendant was in possession and enjoyment of the suit property. While being so, on 09.05.1974, the defendants 1, 4 and 5 executed sale deed in respect of the suit property for a valid sale consideration of Rs.3,000/-. After purchase, the plaintiff was put in possession and enjoyment of the suit property and Patta was also issued in his favour. Apart from that, from the date of purchase, the plaintiff is in possession and enjoyment of the property and as such, he prescribed the title by the adverse possession also. While being so, the 5th defendant, through her power of the attorney, filed a suit in O.S.No.1229 of 1994 for injunction in respect of the very same property. Hence, the plaintiff filed the present suit for declaration and injunction.

4. Resisting the same, the defendants filed a written statement and stating that the plaintiff is never put in

possession and enjoyment of the suit property at any point of time. The defendants are illiterates. The plaintiff cheated the 5th defendant as if he has given money a sum of Rs.3,000/- and mortgaged the suit property and had taken defendants 1, 4 and 5 and executed the alleged sale deed in favour of the plaintiff. Except the suit property, the defendants have no other property and as such they never intended to sell the suit property in favour of the plaintiff. Therefore, the plaintiff executed sale deed in his favour by cheating the defendants and as such it is not valid in the eye of law. In fact, the mortgage amount of Rs.3,000/- was also settled on 01.12.1993. Therefore, the Patta also changed in favour of the 5th defendant for which the plaintiff had no objection. In fact, the possession and enjoyment of the suit property is with the defendants at no point of time, the plaintiff is in possession and enjoyment of the suit property. Therefore, prayed for dismissal of the suit.

S.A.No.1522 of 2005

This appeal has been filed as against the judgment and decree dated 27.01.2005 made in A.S.No.50 of 2004 on the file of the Principal Sub-Judge, Virudhachalam, confirming the judgment and decree dated 30.12.2003 made in O.S.No.1229 of 1994 on the file of the II-Additional District Munsif Court, Virudhachalam.

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

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

3.1. The suit is filed for bare injunction. The suit property originally belonged to plaintiff's father-in-law, Raghavan. He executed settlement deed dated 02.07.1951 in favour of the plaintiff. As per the settlement deed, the 5th defendant along with her family members are in possession and enjoyment of the suit property. While being so, the defendants are trying to trespass into the suit property. Hence, the suit.

4. Resisting the same, the first defendant filed a written statement stating that the suit property originally belonged to father-in-law of the plaintiff, Raghavan. He had two sons namely, Manjan and Arumugam. The said Manjan got married with the plaintiff. They gave birth to a male child and a female

child namely, Ayyan and Veerammal. The another son Arumugam gave birth to three sons namely, Duraiyan @ Duraisamy, Murugesan and Selvaraj in which, Murugesan is the second defendant in the present suit. In the year 1951, the said Manjan died and while his death, his daughter aged about 4 years and the plaintiff was pregnant. While being so, on 02.07.1951 her father-in-law namely, the said Raghavan executed settlement deed in respect of the suit properties. As per the settlement deed, the plaintiff has got her life estate and after her life time her issues can have absolute right over the suit property. Thereafter, part of the property was sold out in favour of one Mottaiyan and part of the other properties were also conveyed in favour of one Arumugam on 14.07.1954 and 27.03.1957. Thereafter, the other part of the property was also mortgaged in favour of Arumugam by the mortgage deed dated 27.12.1962. Likewise, some of the property were purchased by the second defendant. In respect of the property comprised in Survey No.74/5 admeasuring 0.80 cents, the property comprised in Survey No.74/2 admeasuring 31 ½ cents and the property comprised in Survey No.74/4 admeasuring 0.3 ½ cents along with ½ share in the common well were purchased by the sale deed dated 09.05.1974 from the plaintiff's son and daughter namely, Ayyan and Veerammal. At the time of purchase her son was aged about 23 years and her daughter was aged about 27 years. From the date of purchase, the first defendant was put in possession and enjoyment of the suit property. Thereafter, the entire revenue records were mutated in his name and also paid Kist to the suit properties. Therefore, prayed for dismissal of the suit.

5. Both the suits clubbed together and joint trial was conducted by the Trial Court. The plaintiff in O.S.No.1229 of 1994 is the 5th defendant in O.S.No. 808 of 1995. The first defendant in O.S.No.1229 of 1994 is the plaintiff in O.S.No.808 of 1995. After filing the suit in O.S.No. 1229 of 1994, the first defendant filed a suit in O.S.No. 808 of 1995 adding all the family members of the plaintiff in O.S.No.1229 of 1994. On the side of the plaintiff in O.S.No.1229 of 1994 and the defendants in O.S.No. 808 of 1995 examined P.W.1 and P.W.2 and were marked Exs.A1 to A17. On the side of the first defendant in O.S.No. 1229 of 1994 and the plaintiff in O.S.No. 808 of 1995 examined D.W.1 to D.W.3 and were marked Exs.B1 to B14. The Commissioner's report and rough sketch were marked as Exs.C1 and C2. 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 in O.S.No.1229 of 1994 and decreed the suit in O.S.No. 808 of 1995.

Aggrieved by the same, the plaintiff in O.S.No. 1229 of 1994 and the defendants in O.S.No. 808 of 1995 preferred an appeal in A.S.No. 50 & 49 of 2004 respectively. The first Appellate Court

dismissed both the appeals and confirming the judgment and decree passed by the Trial Court in both the suits. Aggrieved by the same, the plaintiff in O.S.No. 1229 of 1994 and the defendants in O.S.No. 808 of 1995 filed these second appeals. 1

6. While admitting the second appeals, this Court formulated the following substantial questions of law for consideration:-

S.A.No.1521 of 2005

"i) Whether Courts below erred in law in decreeing the suit in O.S.No. 808 of 1995 by holding that the respondent herein has perfected title by adverse possession especially when there was no such plea of adverse possession was ever raised before the Courts below or issue framed to that effect or parties had let in evidence in that context?

ii) Whether the Courts below erred in law in decreeing the suit in O.S.No. 808 of 1995 having found that the Appellants herein are entitled to relief of injunction in O.S.No. 1229 of 1994 in respect of other items based on Ex.A1, Settlement Deed dated 02.07.1951?

iii) Whether the Courts below erred in law in not rejecting the claim of the title over the suit properties by the respondents herein based on Sale deed Ex.B1 especially when such sale deed was against the intention of the settler of Ex.A1 dated 02.07.1951 more so, when Settlee viz., Chinna Pillai Ammal was having only life interest ?"

S.A.No.1522 of 2005

"i) Whether Courts below erred in law in dismissing the suit in O.S.No. 1229 of 1994 and decreeing the suit in O.S.No. 808 of 1995 by holding that the respondent herein has perfected title by adverse possession especially when there was no such plea of adverse possession was ever raised before the Courts below or issue framed to that effect or parties had let in evidence in that context?

ii) Whether the Courts below erred in law in not rejecting the claim of the title over the suit properties by the respondents herein based on Sale deed Ex.B1 especially when such sale deed was against the intention of the settler of Ex.A1 dated 02.07.1951 more

so, when Settlee viz., Chinna Pillai Ammal was having only life interest ?

iii) Whether the Courts below erred in law in not considering the Exhibits marked by the plaintiff in a proper and perspective manner especially in a suit in O.S.No. 1229 of 1994 for bare injunction where the consideration of the Court should be only in respect of the possession of the suit properties on the date of the suit and while other factors are only secondary?"

7. The plaintiff filed a suit for permanent injunction against the defendants 1 and 2 in which the first defendant is the plaintiff in O.S.No. 808 of 1995 and the second defendant is her husband's brother's son. According to the plaintiff, her father-in-law, Raghavan executed settlement deed in her favour and accordingly she was given life estate and after her life time, the suit property goes to her issues with absolute right. While being so, the defendants are trying to trespass into the suit property hence, she filed a suit for permanent injunction. The settlement deed was marked as Ex.A1. The Patta issued in her favour dated 05.09.1993 was marked as Ex.A5 in respect of the suit properties. The plaintiff and her family members are illiterate and as such they have been cheated and executed various deeds and lease deeds in favour of third parties. Therefore, she filed a suit in O.S.No. 1357 of 1973 for injunction and declaration, declaring that the lease deed, mortgage deed and other documents executed by them in favour of third parties are invalid. The judgments were marked as Ex.A17.

Her son deposed as P.W.1 and said that they never executed any sale deed in favour of the first defendant on 09.05.1974. They borrowed a sum of Rs.3,000/- for which he wanted to execute mortgage deed in his favour. But the first defendant cleverly executed sale deed in his favour and claimed a title over the suit properties. On receipt of the summons from the suit filed by the plaintiff, the first defendant filed suit for declaration and injunction in O.S.No. 808 of 1995 as against the plaintiff in O.S.No. 1229 of 1994 and other family members. The first defendant is the son, the second defendant is the son-in-law, the 3rd defendant is the son of the second defendant, the 4th defendant is a daughter and 5th defendant is the mother namely, the plaintiff in O.S.No. 1229 of 1994.

8. According to the plaintiff in O.S.No. 808 of 1995, he purchased the suit property by the registered sale deed dated 09.05.1974 which was duly executed by the defendants 1 and 4 in respect of the suit property in Item Nos. 1, 2 and 4, which was marked as Ex.B1. In the said suit, the defendants filed a

written statement stating that the suit property was never sold out in favour of the plaintiff and they mortgaged the said property and received a sum of Rs.3,000/-. Thereafter, in the year 1993, the entire amount was settled and the plaintiff was never put in possession and enjoyment of the suit property whereas, the 5th defendant filed a suit in O.S.No. 1229 of 1994 in which she never whispered about the mortgage in favour of the plaintiff in O.S.No. 808 of 1995 and also never whispered about the sale deed dated 09.05.1974. In respect of that, she simply stated that under the settlement deed dated 05.07.1951 she was in possession and enjoyment of the suit property and filed a suit for bare injunction. That apart, the plaintiff filed a suit in O.S.No. 1357 of 1973 which were decreed in her favour in respect of mortgage deed and other deeds were declared as null and void. After the decree, the defendants in O.S.No. 808 of 1995 executed sale deed in favour of the plaintiff in respect of Item 1 to 4 of the suit properties by the registered sale deed dated 09.05.1974. Therefore, the decree passed in favour of the 5th defendant is nothing to do with the present suit and also the Item 1 to 4 of the suit properties. Immediately, after purchase of the suit properties, the plaintiff in O.S.No. 808 of 1995 mutated the records in his name and the Patta was also issued in his favour. The said Patta was also marked as Ex.B14 dated 26.07.1974 and other documents were marked in respect of the payment of Kist to the suit properties. Therefore, sale deed was executed in favour of the plaintiff on 09.05.1974 and the revenue records were mutated in his name. Even then, the plaintiff did not file a suit for declaration challenging the sale deed executed in favour of the first defendant and filed a suit only for bare injunction that too without even whispering about the alleged mortgage deed or the sale deed executed in his favour. In fact, in the year 1993, the 5th defendant obtained Patta in her name in respect of the suit properties by mutating records in her name. Thereafter, it was cancelled and Patta issued in favour of the plaintiff. Therefore, the plaintiff in O.S.No. 1229 of 1994 filed a suit by suppressing various facts and they did not prove their possession and enjoyment of the suit properties. Further, when there is a cloud over the property in respect of the title, the plaintiff ought to have filed a suit for declaration challenging the sale deed executed in favour of the first defendant. Whereas, the first defendant rightly filed a suit for declaration and injunction in respect of the suit Items 1 to 4 against all the defendants namely, the entire family members. Therefore, both the Courts below rightly decreed the suit in O.S.No. 808 of 1995 and dismissed the suit in O.S.No. 1229 of 1994.

9. In view of the above discussions, this Court does not find any perversity to interfere with the judgment and decree of the Courts below, and no substantial questions of law are involved in these appeals. Be that as it may, all the substantial questions of law are accordingly answered in favour of the respondents. Hence, both the second appeals are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

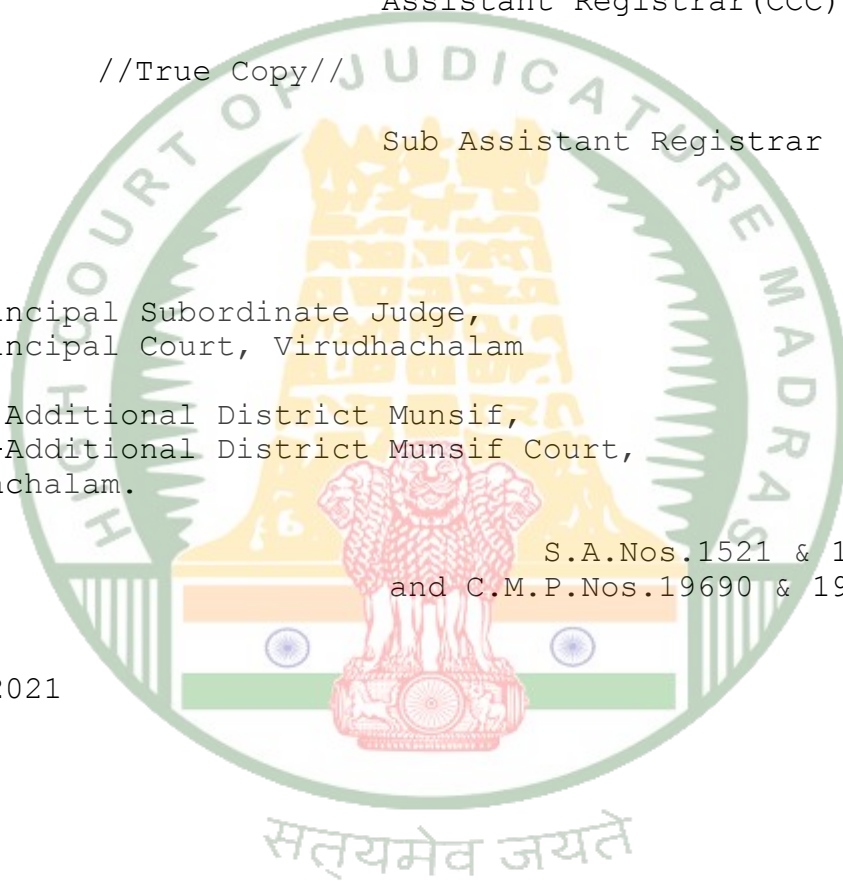
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To:-

1. The Principal Subordinate Judge,
The Principal Court, Virudhachalam
2. The II Additional District Munsif,
The II-Additional District Munsif Court,
Virudhachalam.

S.A.Nos.1521 & 1522 of 2005
and C.M.P.Nos.19690 & 19691 of 2005

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