



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
18.11.2020

Delivered on
27.11.2020

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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 394 of 2020
and
C.M.P.No. 7795 of 2020

The Head Master,
St.Augustine Higher Secondary School,
Thangalkarai Village,
Gingee Taluk, Villupuram District.

... Appellant/Appellant/2nd Defendant

-vs-

1.Gopalakrishnan

... Respondent 1/Respondent 1/Plaintiff

2.Fransican Sisters of Saint Allocious
Konseka Society (Regn No. 7/1973),
Rep. By its President,
Having Office at No.6,
Sanit Thaz Street, Puducherry.

... Respondent 2/Respondent 2/1st Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C, against the judgment and decree dated 30.01.2020 made in A.S.No. 17 of 2016, on the file of the Sub-Ordinate Court, Gingee confirming the judgment and decree dated 29.01.2014 made in O.S.No. 436/2005 on the file of the Additional District Munsif Court, Gingee.

For Appellant : Mr.D.Ravichander

J U D G M E N T

The second defendant in O.S.No. 436 of 2005 having suffered a decree for declaration and recovery of possession at the hands of the Courts below has come up with this second appeal.

2. The suit was laid by the plaintiff claiming that the suit property comprising Northern 6 cents in Survey No. 197/1-B belonged to Valliammal who died intestate about 40 years prior



to the filing of the suit leaving behind her only son Mannupillai. The said Mannupillai, who was in possession of the property as a heir of Valliammal died leaving behind his wife Thaiyalnayagiammal, who inherited the said property. Recognizing the title and possession of Thaiyalnayagiammal, Patta was also granted to Thaiyalnayagiammal in respect of 6 cents in Survey No. 197/1-B. Thaiyalnayagiammal had sold the lands that belonged to her in Survey No. 198/1 and 198/2 to one Elumalai under a sale deed dated 05.10.1977, retaining the lands in Survey No. 197/1-A5 and 197/1-B.

3. Upon discovering the fact that the defendants had encroached the suit property and put up construction, Thaiyalnayagiammal convened a Panchayat wherein, the defendants claimed that they had purchased the property from Elumalai the purchaser of lands in Survey No:198/1&2 from Thaiyalnayagiammal. Subsequently, Thaiyalnayagiammal sold the suit property along with the property in Survey No. 197/1-A5 and 197/1B to the plaintiff for a valuable consideration of Rs.15,000/-, since she required money for her medical expenses.

3. Upon purchase, the plaintiff issued a notice on 13.10.2005 requiring the defendants to remove the super structure and handover possession. The defendants issued a reply notice on 02.11.2006 claiming that they have purchased the property on 11.12.1995 from one Gowri and four others. Contending that Gowri and others namely, the vendors under sale deed dated 11.12.1995 had no right to convey the suit property to the defendants, the plaintiff sued for declaration and recovery of possession.

4. The suit was resisted by the defendants primarily contending that the defendants had put up construction even 12 years prior to the suit. It was also claimed that the plaintiff was aware that the defendants had purchased the land, on which the school has been constructed, from various persons and the plaintiff had purchased the suit property with an intention to creat trouble. They would also contend that Thaiyalnayagiammal herself was aware of the construction put up even at the time when the construction was in progress therefore, according to the defendants, the sale by the Thaiyalnayagiammal in favour of the plaintiff is not valid. While accepting the fact that Elumalai had not purchased the land in Survey No. 197/1-B, the defendants were content with assailing the sale by Thaiyalnayagiammal in favour of the plaintiff.

5. At trial, the plaintiff was examined as P.W.1 and one Anbazhagan was examined as P.W.2. Exs. A1 to A8 were marked. On the side of the defendants, one Poulin was examined as D.W.1 and Exs. B1 to B15 were marked. The Trial Court, upon a



consideration of the evidence on record concluded that the Vendor of the defendants, Elumalai or Gowri and others had no right over the land in Survey No. 197/1-B and therefore, they could not have conveyed valid title in the said lands to the defendants. The learned Trial Judge also concluded that the defendants have not produced any documents to show that the 6 cents of land in Survey No. 197/1-B namely, the suit property was purchased by them. On the other hand, the Trial Court found that the title of Thaiyalnayagiammal has been established by the plaintiff and the sale by Thaiyalnayagiammal in favour of the plaintiff is also undisputable. On the said findings, the learned Trial Judge decreed the suit.

6. Aggrieved, the second defendant preferred an appeal in A.S.No. 17 of 2016 on the file of the Sub-Court, Gingee. The learned Sub-Ordinate Judge on a reconsideration of the evidence on record concurred with the findings of the Trial Court and confirmed the decree. Aggrieved, the second defendant has come up with this second appeal.

7. I have heard Mr.D.Ravichander, learned counsel for the appellant.

8. Mr.D.Ravichander, learned counsel for the appellant would vehemently contend that the purchase by the plaintiff itself was with the malafide intention to give trouble to the defendants. He would also point out that the other properties surrounding the suit property were acquired by the defendants for construction of the school and the school has been constructed in the area including the suit property. Therefore, the plaintiff as well as Thaiyalnayagiammal, who were aware of the on goings had entered into the sale transaction in the year 2005 only with a view to give trouble to the defendants. Mr.D.Ravichander would also contend that in any event the defendants would be entitled to the value of improvements in view of Section 51 of the Transfer of Property Act. I have considered the submissions of the learned counsel for appellant.

9. The fact that the sale deeds in favour of the predecessors in interest of the defendants do not relate to the suit property is admitted. The fact that the suit property belonged to Valliammal, on her death it devolved on her son Mannupillai and upon his death it devolved on his wife Thaiyalnayagiammal is also proved by the plaintiff by producing relevant revenue records as well as the "A" Register. In fact, the defendants themselves would claim under Elumalai, who in turn purchased the property from Thaiyalnayagiammal. Therefore, the sale by Thaiyalnayagiammal in favour of the plaintiff stands proved. Unless the defendants are able to show better title or that they have perfected title by adverse possession, they would



not be entitled to seek dismissal of the present suit.

10. Even, according to the defendants, they had purchased the property in and around the suit property only in 1995 and suit itself has been laid within 12 years in 2005 therefore, there is no question of the defendants perfecting title by adverse possession. The suit is one for possession therefore, the suit cannot be dismissed or rejected on the ground of acquiescence. Hence, I do not see any merit in the first submission of the learned counsel for the appellant.

11. As regards the second submission regarding the entitlement to the value of the improvements, there is neither evidence nor pleading in this regard. In order to claim improvements, the defendants will have to plead and prove that improvements were effected and the value of the improvements also. Despite his best efforts, Mr.D.Ravichander, learned counsel for the appellant is unable to point out any evidence or pleading regarding the improvements effected by the defendants.

12. Mr.D.Ravichander would however invite my attention to the cross-examination of P.W.1 wherein, he had admitted that the construction had commenced even prior to his purchase and he had not objected for the said construction. The said evidence cannot be held against the plaintiff particularly, in a suit for recovery of possession.

13. The learned counsel for the appellant would contend that this Court must take a sympathetic view in as much as the appellants are involved in education of the rural students. This Court, while considering a similar claim in State of Tamilnadu rep.by its Secretary to Government and Others Vs. Shanmuga Arts, Science, Technology and Research Academy (SASTRA), Deemed to be University and another, which sought regularization of its encroachment over government land had held as follows:-

"52. I would like to add that teachings and preachings made, standing on encroached soil, would only soil the values and ethics of such teachings and preachings. The respondents must realise that the officials, who granted permission to construct buildings, who turned a blind eye at the encroachment made by them are officials who have actually acted to the direct detriment of the values, which the respondents proclaim to adhere."

14. The above observations of this Court also apply to the appellant herein. I therefore, do not find any question of law much less a substantial question of law in order to enable me to



entertain the appeal. This appeal therefore fails and it is accordingly dismissed without being admitted. Consequently, connected miscellaneous petition is closed. No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:-

- 1.The Additional District Munsif,
Gingee.
- 2.The Subordinate Judge,
Gingee.

Copy to:

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

+1cc to Mr.D.Ravichander, Advocate SR.No.38350

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EV(CO)
B.VC(13.08.2021)