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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.02.2021

PRONOUNCED ON : 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1291 of 2008

1.M.Parvathy
2.V.Subramaniam
3.M.A.Kumaresan
4.M.A.Velu

...Appellants /Respondents/Defendants

Vs.

1.T.Kothandaraman,
2.T.Dhandapani
3.Jothi ramalingam
4.Ramachandran
5.Vijayakumar

... Respondents/Appellants/Plaintiffs

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 02.11.2007 passed in A.S.No.56 of 2005 on the file of the Subordinate Court, Tiruvelllore, reversing the Judgment and Decree dated 29.04.2005 passed in O.S.No.35 of 2001 on the file of the District Munsif Court, Pallipattu (Tiruttani - O.S.No.383 of 1993).

For Appellants : Mr.R.Krishnaswamy

For Respondents : Mr.P.Selvaraj

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 02.11.2007 passed in A.S.No.56 of 2005 on the file of the Subordinate Court, Tiruvelllore, reversing the Judgment and Decree dated 29.04.2005 passed in O.S.No.35 of 2001 on the file of the District Munsif Court, Pallipattu (Tiruttani - O.S.No.383 of 1993).

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

3.The defendants 1, 3 to 5 are the appellants in the second appeal.



4. Suit for declaration and permanent injunction.

5. The case of the plaintiffs in brief is that the plaint 'A' schedule property belonged to the plaintiffs' father Thiruvengada Mudali by way of an oral sale for a sum of Rs.143/- from the deceased Narayanavanam Kanniappa Mudali on 20.05.1947, who in turn purchased the same from the deceased Muthappa Mudali for a sum of Rs.45/- by way of the registered sale deed dated 25.07.1906 and since the date of purchase, Thiruvengada Mudali has been in the possession and enjoyment of the abovesaid property by putting up a thatched house and subsequently, modified it as tiled house and also paying house tax. The plaintiffs are the sons of Thiruvengada Mudali and they had been enjoying the plaint 'A' schedule property along with her father continuously and uninterruptedly from the date of purchase and the plaintiffs' father died in the year 1992 and before his demise, on 20.12.1991 he has left a Will bequeathing the plaint 'A' schedule property in favour of his wife Bagamma, who in turn executed a registered settlement deed dated 26.04.1992 in favour of the plaintiffs and thus the plaintiffs became absolute owner of the plaint 'B' schedule property. After the marriage, the plaintiffs were forced to live in different places and by the consent of all the plaintiffs, the 4th plaintiff was allowed to live in the suit property and look after the same and after his marriage in the year 1983, the 4th plaintiff brought his mother-in-law Osurammal and permitted her to stay with him as she has no male issue. The plaintiffs have also perfected their right and title to the suit property by way of the adverse possession. The first defendant has no manner of right, title or interest over the suit property but attempted to interfere with the plaintiffs' peaceful possession and enjoyment of the plaint 'B' schedule property during August, 1992 and the plaintiffs issued the legal notice dated 21.08.1992 and despite the same, the defendants had been attempting to interfere with the plaintiffs' possession and enjoyment of the plaint 'B' schedule property on the footing that she had purchased the plaint 'A' schedule property from the third defendant. The third defendant is an utter stranger and nothing to do of the suit property. The defendants 1 to 3 had never been in the possession and enjoyment of the plaint 'B' schedule property at any point of time and the defendants 1 & 2 sent a reply dated 02.09.1992 containing the false allegations. Hence, according to the plaintiffs, they had been necessitated to lay the suit against the defendants for appropriate reliefs.

6. The defendants resisted the plaintiffs' suit contending that the suit is not maintainable either in law or on fact and it is false to state that the plaint 'A' schedule property



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belonged to the plaintiffs' father Thiruvengada Mudali by way of the oral sale for a sum of Rs.143/- from one Narayanavanam Kanniappa Mudali on 20.05.1947 and Narayanavanam Kanniappa Mudali purchased the same from Muthappa Mudali for a sum of Rs.45/- under the registered sale deed dated 25.07.1906 and since the date of purchase, Thiruvengada Mudali and the plaintiffs had been in the possession and enjoyment of the suit property by putting up the thatched house and subsequently, modified it as tiled house and paying house tax etc., After denying all the averments put out in the plaint, according to the defendants, neither the plaintiffs nor the predecessor in title have any right, title, interest or possession in the plaint 'A' schedule property or the plaint 'B' schedule property and the oral sale pleaded by the plaintiffs is false and also invalid and not binding on the defendants. The plaint 'A' schedule property belonged to one Sundara Mudali as his ancestral property and after his demise, his two sons viz., G.Munirathnam and G.Elumalai succeeded to the said property and after the demise of G.Munirathnam and G.Elumalai, their heirs divided the plaint 'A' schedule property and the plaint 'A' schedule property had been allotted to Subramaniam S/o.G.Munirathnam and the remaining portion in the plaint 'A' schedule property had been allotted to the wife of G.Elumalai i.e. eastern 1/2 share portion lying to the east of the plaint 'B' schedule property and the house portion in the 'B' schedule property became dilapidated and remaining a vacant site and the eastern 1/2 share in the plaint 'A' schedule property absolutely belongs to Osurammal wife of Elumalai and mother-in-law of the 4th plaintiff and it is Osurammal, who had constructed a tiled house in her portion and enjoying the same for more than the statutory period by paying house tax etc., It is only Osurammal and the 3rd defendant, who had been in the possession and enjoyment of their respective portions openly and without any hindrance and thereby, perfected their title by way of the adverse possession also. The first defendant purchased the 'B' schedule property under the registered sale deed dated 11.05.1992 from Subramaniam and since then enjoying the same, the defendants have sent a suitable reply to the notice issued by the plaintiffs. The plaintiffs had never been in the possession and enjoyment of the suit property at any point of time. The alleged Will projected by the plaintiffs is false and not binding on the defendants. The plaintiffs' mother have no locusstandi to execute any settlement deed in respect of the suit property and the alleged settlement executed by her is not true and valid and binding on the defendants. The case of the defendants that Osurammal was permitted to stay in the property by the 4th plaintiff is utter false suit and hence, prayed for the dismissal of the plaintiffs' suit.



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7. In support of the plaintiffs' case, PWS1 to 5 were examined and Exs.A1 to A11 were marked. On the side of the defendants, DWS1 to 4 were examined and Exs.B1 to B9 were marked. Exs.C1 & C2 were also marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions put forth in the matter, the trial Court was pleased to dismiss the plaintiffs' suit. On appeal preferred by the plaintiffs, the first appellate Court, on an appreciation of the materials available on record and the submissions projected by the respective parties, was pleased to set aside the judgment and decree and by way of allowing the appeal preferred by the plaintiffs, decreed the suit in favour of the plaintiffs as prayed for. Impugning the judgment and decree of the first appellate Court, the defendants 1, 3 to 5 have preferred the second appeal.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"a. Whether the Court below was right in its view holding that Ex.A6, an unregistered sale deed, was valid and binding?

b. Whether the Court below was right in disregarding the vital finding of the trial Court holding that the plea of adverse possession advanced by the plaintiffs could not be accepted when the plaintiffs did not admit the title of the 1st defendant - rather, on the contra. Plaintiffs made a plea of "adverse possession" and at the same time, simultaneously, advancing the theory of ownership of the suit property - which, in essence, only means the plaintiffs staking "adverse possession" in their own property?

(This vital finding of the trial Court has been overlooked by the lower Court) "

10. On a reading of the plaint averments in toto, it is found that the plaintiffs claim title to the suit property based on the settlement deed dated 26.04.1992 marked as Ex.A1, which according to the plaintiffs, had been executed by their mother Bagamma in



their favour qua the suit property. Further, according to the plaintiffs, Bagyammal had acquired title to the suit property based on the Will executed by the plaintiffs' father Thiruvengada Mudali dated 20.12.1991 marked as Ex.A2. Further, it is the case of the plaintiffs that their father Thiruvengada Mudali had purchased the suit property orally on 20.05.1947 from one Narauanavanam Kanniappa Mudali. Further, the plaintiffs have also put forth the case that Narauanavanam Kanniappa Mudali had purchased the suit property by virtue of the sale deed dated 25.07.1906 marked as Ex.A3. Thus the case has been projected by the plaintiffs that since the purchase of the suit property by their father, they had been enjoying the suit property continuously and uninterruptedly by constructing a thatched house and thereafter, modified it as a tiled house and also paying house tax etc., and inasmuch as the defendants, without any authority or right, attempted to interfere with the plaintiffs' possession and enjoyment, according to the plaintiffs, the suit has come to be laid by them for appropriate reliefs.

11.Per contra, the defendants would plea that the suit property originally belonged to Sundara Mudali as his ancestral property and after his demise, his two sons viz., G.Munirathnam and G.Elumalai enjoyed the suit property and after the demise of G.Munirathnam and G.Elumalai, their legal heirs divided the suit property and the plaint 'B' schedule property was allotted to the third defendant, who is the son of G.Munirathnam and the remaining portion was allotted to Orsurammal wife of G.Elumalai. Osurammal is also the mother-in-law of the 4th plaintiff and put forth the case that Osurammal had put up a tiled house in the portion allotted to her and the third defendant sold the plaint 'B' schedule property to the first defendant by way of the sale deed dated 11.05.1992 and thus the first defendant is in the possession and enjoyment of the suit property and therefore, according to the defendants, the plaintiffs have neither title nor possession and enjoyment of the suit property and the suit is liable to be dismissed.

12.Inasmuch as the defendants have in toto disputed the claim of the plaintiffs' title to the suit property, it is for the plaintiffs to establish that they have acquired a valid title to the suit property and that the suit property is in their possession and enjoyment lawfully. The plaintiffs claim title to the suit property through their father Thiruvengada Mudali. When according to the plaintiffs, Thiruvengada Mudali had purchased the suit property orally on 20.05.1947 for a sum of Rs.143/- from one Narauanavanam Kanniappa Mudali and pointing to the abovesaid oral sale, the plaintiffs would project the copy of the sale deed marked as Ex.A6. As rightly held by the trial Court, when the value of the immovable property by way of the oral sale as put forth by the plaintiffs exceeds at Rs.100/-, the abovesaid



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transaction should have been effected only by way of a registered instrument as per Section 17 of the Indian Registration Act. The plaintiffs have not whispered about the unregistered sale deed dated 20.05.1947 in the plaint. As rightly held by the trial Court, on a perusal of Ex.A6, when it does not reveal the father name of the parties, the village name and also the description of the property conveyed under the said document and no one had attested the same and nothing has been whispered as to who had scribed the said document, all put together, when no one had been examined by the plaintiffs associated with Ex.A6 and as pointed out supra, when the sale transaction covered under Ex.A6 should be effected only by a registered instrument, thus it is found that the sale transaction said to have been effected by way of Ex.A6 deed cannot at all accepted in the eyes of law and therefore, as rightly held by the trial Court, by way of Ex.A3 unregistered instrument, the plaintiffs' father could not acquire a valid right qua the suit property as sought to be projected by them. Therefore, the trial Court is justified in holding that Ex.A6 is an invalid document and when the position being above, the plaintiffs have miserably failed to establish that their father had acquired a valid title to the suit property and the alleged oral transaction by which their father is alleged to have purchased the suit property cannot be accepted as a valid transaction. Accordingly, the plaintiffs' father having not derived any valid title to the suit property, he would incompetent to execute any Will much less Ex.A2 in favour of his wife Bagyamma. Therefore, under Ex.A2 Will, as rightly contended by the defendants' counsel, no valid right would accrue to Bagyamma qua the suit property. The resultant position is that Bagyamma would also the incompetent to settle the suit property in favour of the plaintiffs under Ex.A1 deed. Therefore, when the plaintiffs have miserably failed to establish that their mother Bagyamma or their father had acquired a valid title to the suit property, the documents marked as Exs.A1 & A2 would be of no use to sustain the plaintiffs' case. Equally, the registered sale deed dated 15.07.1906 marked as Ex.A3 would also not lend support to the plaintiffs case, particularly, though by way of Ex.A3 sale deed, we could gather that one Narauanavanam Kanniappa Mudali had purchased the suit property under Ex.A3 sale deed, when the plaintiffs have failed to establish the oral sale transaction in favour of their father as a true and valid transaction, Ex.A3 would be of no use to hold that Narauanavanam Kanniappa Mudali had validly transferred the suit property in favour of the plaintiffs' father.

13.The position being above, the trial Court is found to be justified in declining the reliefs sought for by the plaintiffs and accordingly, rightly dismissed the plaintiffs' suit.



14. Whereas the first appellate Court, on the reasonings that Ex.A3 sale deed is dated 25.07.1906, applying the presumption that could be taken in respect of the old document under Section 90 of the Indian Evidence Act, proceeded to hold that the abovesaid document is a true one That Ex.A3 sale deed is a true and valid document, in respect of which there is no issue in the present matter. The issue is whether Narauanavanam Kanniappa Mudali had validly conveyed the suit property in favour of the plaintiffs' father. Merely because the plaintiffs are able to have custody of Ex.A3 sale deed that by alone would not lend the colour of validity in respect of the oral transaction projected by the plaintiffs. As above pointed out, when the sale transaction in favour of the plaintiffs' father should have been effected only by way of a registered instrument, therefore, merely because, the plaintiffs had subsequently paid the stamp duty and penalty for Ex.A6 sale deed that by itself would not lend validity to the transaction effected by way of the same and when admittedly Ex.A6 has not been properly stamped and registered in accordance with law, the first appellate Court is found to be not justified in upholding the plaintiffs' case.

15. The first appellate Court is found to have rejected the defence version on the footing that the defendants had failed to establish that their predecessor in interest viz. Sundara Mudali had, at any point of time, enjoyed the suit property and when no document has been projected by the defendants pointing to the same, on that premise, proceeded to hold that no title would flow to the defendants through Sundara Mudali for claiming title to the suit property as projected by them. As rightly contended by the defendants' counsel, even assuming that the defendants have failed to establish their claim of title to the suit property one way or the other, that automatically would not ennure to advantage of the plaintiffs to contend that their title to the suit property should be upheld. When the plaintiffs, being the suitors, claim title to the suit property by way of specific pleas and when the case projected by the plaintiffs as above discussed are found to be totally unacceptable in the eyes of law, particularly, the oral sale transaction projected by the plaintiffs not having the sanctity of law in any manner, the so called subsequent payment of stamp duty and penalty in respect of Ex.A6 instrument by itself would not lend the colour of validity to the same and on that footing, the plaintiffs would not be entitled to claim a valid title to the suit property. When the instrument chargeable with the duty, not duly stamped as per Section 35 of the Indian Stamp Act, 1899, when it is seen that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence or shall be acted upon, registered or authenticated by any such person or by any public officer,



unless such instrument is duly stamped, therefore, when as per Section 35 of The Indian Stamp Act, there is a total bar to receive Ex.A6 in evidence and as above pointed out, when the plaintiffs have not even pleaded that an instrument had been effected evidencing the oral sale transaction said to have been taken on 25.07.1906, all put together, in my considered opinion, the subsequent payment of stamp duty and penalty by itself would not enable the plaintiffs to claim the title to the suit property particularly, when Ex.A6 is found to be not registered in accordance with law, more so when the provisions of the Stamp Act and the Registration Act should be read together and the unregistered instrument would not affect any immovable property comprised therein or be received in evidence of any transaction affecting such property, vide Section 49 of the Registration Act. In the light of the abovesaid factors, the determination of the first appellate Court that Ex.A6 unregistered sale deed is valid and binding upon the defendants is totally based on perverse, illogical and irrational reasonings and therefore, liable to be set aside.

16.The plaintiffs also, after seeking the claim of title to the suit property through their father on the basis of the oral sale transaction and by way of the settlement deed executed in their favour by their mother marked as Ex.A1, would also put forth that they had acquired title to the suit property by way of adverse possession. When the plaintiffs have taken the plea of adverse possession against the defendants, impliedly thereby, the defendants' right and title to the suit property have been admitted by the plaintiffs. The plaintiffs' cannot be allowed to seek adverse possession in respect of their own property. Therefore, the case of the plaintiffs seeking title to the suit property by way of title and also by way of adverse possession, being totally contradictory and not mutual and the plaintiffs having taken the plea of adverse possession against the defendants and by way of the same, having admitted the title of the defendants to the suit property impliedly, the abovesaid position of law has not been properly appreciated by the first appellate Court. In any event, the failure of the defendants to establish their claim of title to the suit property by itself would not be the basis for upholding the plaintiffs' title to the suit property. When as above discussed, the plaintiffs have miserably failed to establish their title, possession and enjoyment of the suit property, in view of the abovesaid discussions, the substantial questions of law involved in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.



In conclusion, the Judgement and Decree dated 02.11.2007 passed in A.S.No.56 of 2005 on the file of the Subordinate Court, Tiruvellore, are set aside and resultantly, the Judgment and Decree dated 29.04.2005 passed in O.S.No.35 of 2001 on the file of the District Munsif Court, Pallipattu (Tiruttani - O.S.No.383 of 1993) are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms

To:

1.The Subordinate Court,
Tiruvellore.

2.The District Munsif Court,
Pallipattu (Tiruttani - O.S.No.383 of 1993).

3.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.V.Ajay Khose, Advocate Sr.12702

+1cc to M/s.P.Selvaraj, Advocate Sr.12858

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