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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.03.2021
PRONOUNCED ON: 23.03.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1567 of 2008
and
M.P.No.1 of 2008

P. Sivakumar
S/o. T. Palaniswamy

...Appellant/Plaintiff

Vs.

1. Arumugam (deceased)
2. Rathinavel
3. Iyyathal
4. Dharmalingam
5. Saraswathi
6. Chinapillai, S/o. Arumugam
7. Bhoovarangavan, S/o. Arumugam
8. Poovashagam, S/o. Arumugam

... Respondents/Defendants

Respondents 6 to 8 brought on record as LR's of the deceased R1 vide order of Court dated 23.07.2015 made in M.P. Nos. 1 to 3 of 2015 in S.A.No.1567/2008.

Prayer: Second Appeal is filed under Section 100 of CPC, against the judgment and decree dated 22.06.2007 passed in A.S.No.2 of 2005 on the file of the Sub-Court, Mettur in confirming the judgment and decree dated 19.07.2004 passed in O.S.No.422 of 1995 on the file of the District Munsif Court, Mettur.

For Appellant : Mr. T. Murugamanickam,
Senior Counsel
for M/s. N. Srinivasan

For Respondents : Mr. P. Mani for R2 to R8
R1 died. Steps taken



JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 22.06.2007 passed in A.S.No.2 of 2005 on the file of the Subordinate Court, Mettur, confirming the judgment and decree dated 19.07.2004 passed in O.S.No.422 of 1995 on the file of the District Munsif Court, Mettur.

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

3. The plaintiff in O.S.No.422/1995 is the appellant in the second appeal.

4. Suit for permanent injunction.

5. The case of the plaintiff, in brief, is that he is the owner of the suit properties, purchased by him from his vendor Govindan vide sale deed dated 24.05.1995 and since the date of purchase, the plaintiff is in the possession and enjoyment of the suit properties by obtaining the patta and paying kists, tax, etc., and the chitta and adangal of the suit properties stand in the name of the plaintiff and except the plaintiff no one has any right or title or possession over the suit properties. The defendants, without any manner of right or title over the suit properties, endeavoured to disturb the plaintiff's possession and enjoyment of the suit properties and hence, according to the plaintiff he has been necessitated to lay the suit against the defendants for the relief of permanent injunction.

6. The defendants resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts and denied that the plaintiff has title or in the possession of the suit properties as claimed in the plaint and enjoying the same by obtaining the patta, paying tax, kists, etc. The sale deed dated 24.05.1995 is not valid and binding upon the defendants. In fact the defendants 1 and 2 have laid a suit against the plaintiff's vendor for specific performance of the agreement of sale, wherein he had agreed to sell the suit properties to the defendants 1 and 2 and pursuant to the agreement of sale, the possession of the suit properties had been handed over to the defendants 1 and 2 by the vendor Govindan.



Inasmuch as one Arjunan, wrongly obtained the patta in respect of the portion of the suit properties, seeking cancellation of the said patta, the defendants have laid the suit in O.S.No.587/88. The plaintiff has not been entrusted with the possession of the suit properties and it is only the defendants who are in the possession and enjoyment of the suit properties. The defendants 1 and 2 have also filed a suit in O.S.No.424/95 against the plaintiff and his vendor for permanent injunction and the same is also pending. The plaintiff is not in the possession and enjoyment of the suit properties and hence, according to the defendants, the suit laid by the plaintiff is liable to be dismissed.

7. From the materials placed on record, it is seen that the present suit laid by the plaintiff in O.S.No.422/95 as well as the suits laid by the defendants in O.S.Nos 587/88, 304/90, 664/90, 424/95 and 586/95 were all jointly tried by the trial court and a common judgment had been rendered by the trial court in all the abovesaid six suits and common evidence had been recorded in all the abovesaid suits i.e. in O.S.No. 304/90 laid by the defendants.

8. In support of the plaintiff's case P.Ws.1 to 7 were examined and Exs.A1 to A119 were marked. On the side of the defendants D.Ws.1 and 3 were examined and Exs. B1 to B89 were marked. Further Exs.C1 to C4 were marked.

9. On an appreciation of the oral and documentary evidence adduced by the respective parties and the submissions put forth, it is found that the trial court, by way of the common judgment dated 19.11.2004, had dismissed all the six suits. As against the dismissal of O.S.Nos.587/88, 304/90, 664/90, no appeal has been preferred by the defendants. As against the dismissal of O.S.Nos.422/95, 424/95 and 586/95, the first appeals had been preferred by the aggrieved parties. The abovesaid three first appeals laid had been disposed of by the first appellate court vide a common judgment dated 22.06.2007 and the first appellate court had dismissed all the abovesaid first appeals. As against the dismissal of their appeals in A.S.Nos.11/07 and 12/07, the defendants have not preferred any challenge. It is only the plaintiff who has chosen to prefer the present second appeal challenging the dismissal of the first appeal in A.S.No.2/05.



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

- 1) "Having held that the suit schedule properties are the absolute properties of the appellant/plaintiff by virtue of a valid sale under Ex.B.8, dated 24.05.1995, have not the courts below committed a legal error in dismissing the suit for permanent injunction?
- 2) Having held that the defendants are trespassers, have not the courts below committed a legal error in not granting the permanent injunction in favour of the appellant/plaintiff?
- 3) Whether the courts below are right in ignoring the Exs.B.62 to B.71 filed on behalf of the appellant/plaintiff, categorically proving his possession and enjoyment of the suit schedule properties?"

11. Excepting the present suit in O.S.No.422/95, all the other 5 suits had been laid only by the defendants for one relief or the other. It is found that O.S.No.587/88 has been laid by the defendants seeking for the cancellation of the patta in favour of Aujunan qua the portion of the suit properties and for the other reliefs. O.S.No. 304/90 has been laid by the defendants for the specific performance of the sale agreement dated 12.10.1968, O.S.No.664/90 has been laid by the defendants for the relief of permanent injunction and the same has been laid against the present plaintiff, his vendor and the others. O.S.No.424/95 has been laid by the defendants for the relief of permanent injunction against the plaintiff, his vendor and the others. O.S.No.586/95 has been laid by the defendants for declaring the sale deed dated 24.05.1995 under which the plaintiff claims title to the suit property as null and void and for the consequential relief of permanent injunction.

12. In view of the abovesaid factors, it is noted that the defendants have been claiming right over the suit properties only based on the sale agreement dated 12.10.1968. However, the courts below had concurrently held that the sale agreement projected by the defendants for claiming the title to the suit properties is not true, valid and binding on the plaintiff's vendor as well as the plaintiff. As against the abovesaid



determination of the courts below, as above pointed out, no challenge has been made by the defendants. Therefore, the abovesaid determination has become final. It is thus noted that the defendants have no valid title to the suit properties. The only contention put forth by the defendants is that the suit properties had been entrusted to their possession by the plaintiff's vendor following the sale agreement dated 12.10.1968. When the sale agreement dated 12.10.1968 has been held to be not a true and valid sale agreement, the claim of the defendants that the possession had been entrusted to them following the alleged sale agreement falls to the ground.

13. The courts below had concurrently held that it is only the plaintiff's vendor who has a valid title to the suit properties and consequently further held that the plaintiff's vendor had validly alienated the suit properties in favour of the plaintiff vide the sale deed dated 24.05.1995 marked as Ex.B8. As above pointed out, the suit laid by the defendants in O.S.No.586/95 to declare the abovesaid sale deed as null and void and for the consequential permanent injunction had come to be dismissed by the trial court as well as by the first appellate court. As against the said dismissal, no challenge has been made by the defendants.

14. In the light of the abovesaid factors, the claim of the defendants that they are in the lawful possession and enjoyment of the suit properties pursuant to the sale agreement dated 12.10.1968 cannot at all be countenanced in any manner.

15. However, it is noted that the courts below though had proceeded to hold that though the plaintiff's vendor is the lawful owner of the suit properties and that he had validly conveyed the same to the plaintiff under Ex.B8 sale deed, however, held that there is no acceptable and reliable material placed on the part of the plaintiff's vendor and the plaintiff evidencing that they are in the possession and enjoyment of the suit properties and resultantly, directed the dismissal of the plaintiff's suit laid by him in O.S.No.422/95. The abovesaid determination of the courts below is now being challenged by the plaintiff in this second appeal.

16. Considering the materials placed on record in toto, when it is found that the plaintiff has validly obtained the



title of the suit properties from the lawful owner under Ex.B8 sale deed and furthermore, when the plaintiff has produced Ex.B1 kist receipt dated 02.03.1990 evidencing his vendor's possession and enjoyment of the suit properties and the adangal extract Ex.B2 evidencing that the suit properties are recorded in the adangal extract only in the name of the plaintiff's vendor for the period from 1984-89 and furthermore when the plaintiff and his vendor have also marked the miscellaneous receipts issued by the Executive Officer, Town Panchayat, Mecheri, marked as Exs.B10 to B14 qua the suit properties and in continuation of the same, the plaintiff and his vendor have also marked various tax receipts marked as Exs.B15 to B22, though the abovesaid receipts pertain to the period after the institution of the suit and further when the plaintiff and his vendor have also marked the house tax and water tax receipts marked as Exs.B62 to B74 and the other receipts marked as Exs. B75 to B89, though the abovesaid documents are found to have emanated after the institution of the suit, as rightly contended by the plaintiff's counsel, considering the abovesaid documents in toto, when the plaintiff and his vendor have been able to substantiate their possession and enjoyment of the suit properties prior to the institution of the suit by marking the kist receipt and adangal extract marked as Exs.B1 and B2 and the plaintiff having purchased the suit properties from his vendor only on 24.05.1995 and immediately thereafter he had chosen to lay the suit in O.S.No.422/95 on 28.06.1995 i.e. within one month from the date of the sale, the plaintiff would be expected to be only in the possession and enjoyment of the suit properties pursuant to the sale i.e. after Ex.B8 sale transaction and therefore, when the plaintiff and his vendor had placed acceptable and reliable documents evidencing their lawful possession and enjoyment of the suit priorities prior to the institution of the present suit laid by the plaintiff as well as after the institution of the suit continuously and though the plaintiff in the course of evidence is unable to name the occupants of the suit properties, moreso merely because the occupants of the suit properties had obtained some service connection in their names, by itself, would not lead to the conclusion that they had obtained the service connections in their names legally. When, as above pointed out, the courts below having declared that it is only the plaintiff who has title to the suit property based on Ex.B8 sale deed and that he had validly purchased the same from his vendor Govindan and when the courts below have further held that the claim of title to the



suit properties by the defendants under Ex.A1 sale agreement is totally devoid of merits and having held that the abovesaid sale agreement is not true and valid and in such view of the matter, the alleged claim of entrustment of the possession of the suit properties on the part of the defendants following the false and invalid sale agreement dated 12.10.1968 cannot at all be sustained in the eyes of law. The courts below are found to have been carried away on the mere factor that inasmuch as the service connections in the suit properties had been obtained by the occupants of the same in their names one way or the other, proceeded to hold that the plaintiff is not in the lawful possession and enjoyment of the suit properties. When the occupants of the suit properties had not shown their lawful entitlement to secure the service connections in their names qua the suit properties and on the other hand, when the plaintiff and his vendor are able to substantiate their claim of possession and enjoyment prior to the institution of the suit as well as after the institution of the suit, as above discussed, and when the alleged claim of possession and enjoyment of the suit properties by the defendants based on the false and invalid sale agreement cannot be sustained in the eyes of law, all put together, as rightly contended by the plaintiff's counsel, the defendants' alleged claim of possession and enjoyment of the suit properties, assuming their case of possession is true, could only be presumed as the possession and enjoyment of the trespassers without any sanctity of law and the plaintiff having been declared as the lawful owner of the suit properties, the courts below had erred in rejecting the relief of permanent injunction sought for by the plaintiff against the trespassers based on the erroneous appreciation of the materials placed on record, both oral and documentary.

17. If according to the courts below, the defendants are in the lawful possession and enjoyment of the suit properties and the plaintiff and his vendor are endeavouring to disturb their possession and enjoyment unlawfully, the courts below would have atleast granted the relief of permanent injunction sought for by the defendants in the various suits laid by them. When the courts below having dismissed all the suits laid by the defendants particularly having negatived their claim of possession and enjoyment of the suit properties and consequently having not granted the relief of permanent injunction sought for by them in the various suits laid by them and in such view of the matter,



the courts below having held that it is only the plaintiff who is the lawful owner of the suit properties, on the proper appreciation of the materials placed on record by the plaintiff and his vendor evidencing their possession and enjoyment of the suit properties by them prior to the institution of the suit and after the institution of the suit, should have granted the relief of permanent injunction sought for by the plaintiff in the present proceeding.

18. The defendants' counsel in support of his contentions placed reliance upon the following decisions reported in

- 1) 2003 (9) SCC 606 (Banarsi and Ors v. Ram Phal)
- 2) 2013(1) CTC 409 (Hardevinder Singh v. Paramjit Singh & others)
- 3) L.P.A. No.15 of 2005 before the Madras High Court (Renganayagi and others vs. K.R. Renganathan Mudaliar)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

19. For the reasons aforesaid, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

20. In conclusion, the judgment and decree dated 22.06.2007 passed in A.S.No.2 of 2005 on the file of the Subordinate Court, Mettur, confirming the judgment and decree dated 19.07.2004 passed in O.S.No.422 of 1995 on the file of the District Munsif Court, Mettur, are set aside. Resultantly, the suit laid by the plaintiff in O.S.No.422 of 1995 is decreed as prayed for with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

bga



1.The Subordinate Judge, Mettur

2.The District Munsif, Mettur

Copy To:

The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.P.Mani, Advocate, S.R.No.18689

+1cc to Mr.N.Srinivasan, Advocate, S.R.No.18659

S.A.No.1567 of 2008

SSI(CO)
SB(12/10/2021)