

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.1614 of 2008

1.Rukkumani

2.Muniappa

...Appellants

Vs.

Albona

...Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 29.07.2008 passed in A.S.No.108 of 2004 on the file of the Principal Subordinate Court, Krishnagiri, confirming the Judgment and Decree dated 21.06.2004 passed in O.S.No.301 of 1995 on the file of the District Munsif Court, Krishnagiri.

For Appellants: Mr.J.Hariharan
for M/s.V.Nicholas

For Respondent: Mr.V.Raghavachari

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 29.07.2008 passed in A.S.No.108 of 2004 on the file of the Principal Subordinate Court, Krishnagiri, confirming the Judgment and Decree dated 21.06.2004 passed in O.S.No.301 of 1995 on the file of the District Munsif Court, Krishnagiri.

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

3.The defendants in O.S.No.301 of 1995 are the appellants in the second appeal.

4.Suit for declaration, mandatory injunction, possession and mesne profits.

5.The case of the plaintiff, in brief, is that Sandhana Mary had purchased the suit property from her vendor viz., one B.A.Viswanatha Chettiar vide sale deed dated 20.01.1981 and enjoyed the same and the plaintiff has purchased the suit property from Sandhana Mary under the registered sale deed dated 14.12.1981 for a valid consideration and since then, in the possession and enjoyment of the same by way of obtaining patta, paying kist etc., and the defendants have no manner of right, title or possession over the suit property. The house site situated on the southern side of the suit property originally belonged to one Koli Basha Sahib and the defendants appear to have purchased the said house site and thereby, falsely claiming title in a portion of the suit property and endeavoured to encroach into a portion of the suit property unlawfully and the same had been prevented by the plaintiff and pending the suit, the defendants had unlawfully occupied the suit property and put up the construction illegally and the same had been noted by the advocate commissioner, who has been appointed based on the application preferred by the plaintiff and the advocate commissioner's report would reveal that the unlawful construction has been put up by the defendants in the suit property, hence, according to the plaintiff, she has been necessitated to lay the suit against the defendants for appropriate reliefs.

6.The defendants resisted the plaintiff's suit and after disputing the plaint averments in toto, contended that the first defendant vide the sale deed dated 21.04.1993 had purchased the house site from Rahamath Ali, son of Abdul Karim alias Koil Basha, who inturn had purchased the same from the original owner B.A.Viswanatha Chettiar and after purchasing the same, the first defendant had put up the foundation in the house site even in September, 1993 and completed the construction in the year 1996 and residing in the house from 04.02.1996 by paying tax, obtaining the electricity service connection etc.,. The house site lying to the immediate north of the first defendant's site was originally purchased by Josphine Mary under the registered sale deed dated 25.09.1980 wherein the southern boundary has been shown as the house site of the first defendant purchased under the sale deed dated 21.04.1993. Therefore, there is no house site available to the original owner B.A.Viswanatha Chettiar to the north of the defendants' house site for conveying the same to the plaintiff's vendor Sandhana Mary vide sale deed dated 20.01.1981. Since B.A.Viswanatha Chettiar had already conveyed the house site to Josphine Mary vide the sale deed dated 25.09.1980, hence, according to the defendants, the plaintiff cannot claim title to the suit property, in which, the

construction had been already put up by one Anjali Devi after she had purchased the same from Josphine Mary and therefore, the case of the plaintiff that the defendants endeavoured to encroach into a portion of the suit property belonging to the plaintiff and further the case of the plaintiff that after the institution of the suit, the defendants had unlawfully encroached into the portion of the suit property and put up the foundation are totally false and untenable in the eyes of law. When the plaintiff is not owning any house site immediately to the north of the first defendant, her claim of alleged interference and encroachment on the part of the defendants to the suit property in respect of which she has no title, possession and enjoyment is untenable. Thus according to the defendants, the plaintiff has come forward with the false suit claiming title to the suit property and therefore, according to the defendants, there is no cause of action for the plaintiff to lay the suit and hence, the plaintiff's suit is liable to be dismissed in toto.

7. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs. A1 to A5 were marked. On the side of the defendants, DWs 1 to 3 were examined and Exs. B1 to B5 were marked. Exs. C1 to C3 were also marked.

8. On an appreciation of the oral and documentary evidence adduced by the respective parties and the submissions put forth in the matter, the Courts below were pleased to accept the plaintiff's case and accordingly, granted the reliefs in favour of the plaintiff as prayed for. Impugning the same, the second appeal has been preferred by the defendants.

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

"a. When the material and record clearly established that there is no house site available on the ground for the plaintiff as the said site has already been sold by the original owner B.A. Viswanatha Chettiar in the year 1980 and as such the plaintiff under vendor who have purchased the said site 1981 has no right or title in respect of the said house site whether the Courts below are correct in granting the relief to the plaintiff which is contrary to the sale deeds relied on by the respective parties.

b. When the plaintiff did not make any objection or steps to prevent the defendants from putting up the constructions and having acquiesced in such construction, whether the courts below are correct in granting the relief of mandatory injunction to remove such construction."

10. The suit has been laid by the plaintiff for declaration, mandatory injunction, possession and mesne profits. The suit property has been described by the plaintiff as follows:

Description of Property

Dharmapuri District, Krishnagiri No.II Sub R. D./, Krishnagiri Taluk, Kattiganapalli Village in S.No.100/2 Dry Acre 5-41 Assessment Rs.7-41 House site to an extent of 578 sq.ft measuring East - West 34 feet and North - South 17 feet, assessment Rs.0.06 situated within the boundaries of

South of Ajalidevi's house (Original house site belonged to Josephin Mary)

North of the house site of defendants (Originally, it was the house site of Kothi Bacha)

East of Common Road, and

West of the house of Angappan
New Sub division No.10/2A2A3.

B Schedule

The illegal construction put up by the defendants in the A schedule property."

11. Therefore as per the description of the suit property given in the plaint schedule, it is found that the same is lying to the north of the house site belonging to the defendants, which originally belonged to Kothi Bacha.

12. The plaintiff claims title to the suit property lying to the north of the defendants' property by way of the sale deed dated 14.12.1981 executed in her favour by Sandhana Mary, which document has come to be marked as Ex.A2. Further, according to

the plaintiff, her vendor Sandhana Mary had purchased the house site i.e. the suit property from B.A.Viswanatha Chetty vide sale deed dated 20.01.1981, which property is lying to the north of the defendants' property and the abovesaid sale deed has been marked as Ex.A1. On a perusal of Ex.A1 sale deed, it is found that the southern boundary is shown as the house site belonging to Kothi Bacha. Similarly in Ex.A2 sale deed, the southern boundary is shown as the house site of Kothi Bacha. It is not in dispute that the first defendant had purchased the house site from Rahamath Ali son of Abdul Karim vide sale deed dated 21.04.1993 marked as Ex.B1. On a perusal of Ex.B1, it is found that the first defendant had purchased the house site measuring east to west 34 feet and north to south 27 feet from Rahamath Ali son of Abdul Karim, wherein, the northern boundary is shown as the house site belonging to B.A.Viswanatha Chetty. The parent title deed of the first defendant is dated 05.11.1979 marked as Ex.B2, whereunder, the first defendant's vendor Rahamath Ali had purchased the house site covered under Ex.B1 from B.A.Viswanatha Chetty and on a perusal of Ex.B2, the earliest document projected in the matter, the house site comprised therein is shown to be lying to the north and south of the house site belonging to B.A.Viswanatha Chetty. Therefore, when Ex.B2 had been executed qua the house site belonging to the defendants' vendor Rahamath Ali, the northern house site is clearly shown to be belonging to the vendor B.A.Viswanatha Chetty. The sale deeds marked as Exs.B1 & B2 are not in dispute.

13.Now, according to the defendants, the original owner B.A.Viswanatha Chetty had alienated the site belonging to him lying to the northern side of the property belonging to the defendants to Josphine Mary vide the sale deed dated 25.09.1980, which document has come to be marked as Ex.B4 i.e. the next document which had come into existence after Ex.B2 and thereunder, when the original owner B.A.Viswanatha Chetty had alienated the house site to Josphine Mary and the said house site is shown to be lying to the north of the house site belonging to Rahamath Ali. It is thus found that when B.A.Viswanatha Chetty, the original owner had conveyed the house site belonging to him to Rahamath Ali under Ex.B2 sale deed showing the northern house site of the said property as belonging to him and subsequent thereto, when he had sold the northern house site belonging to him to Josphine Mary vide the sale deed dated 25.09.1980 marked as Ex.B4, wherein he had clearly shown the said house site as lying to the north of the house site belonging to Rahamath Ali, thus, it is evident that from Ex.B4, the original owner B.A.Viswanatha Chetty had only alienated the house site lying on the northern side of the

defendants' property to Josphine Mary vide Ex.B4 sale deed and in such view of the matter, when B.A.Viswanatha Chetty is not having any other house site immediately lying to the north of the defendants' property or to the north of Rahamath Ali's property purchased under Ex.B2, the case of the plaintiff that B.A.Viswanatha Chetty had alienated the house site lying to the north of the defendants' property or Rahamath Ali's property to Sandhana Mary vide the sale deed dated 20.01.1981 marked as Ex.A1, as such, cannot all be accepted and believed. When the house site lying to the north of the defendants' property had been already conveyed by the original owner B.A.Viswanatha Chetty to Josphine Mary vide Ex.B4 sale deed dated 25.09.1980, it is for the plaintiff to establish as to how come her vendor Sandhana Mary had purchased the same northern site from B.A.Viswanatha Chetty. In Ex.A1 sale deed, the property comprised therein had been described as lying to the south of the house site belonging to Josphine Mary and north of the house site belonging to Kothi Bacha. When admittedly B.A.Viswanatha Chetty had already conveyed the house site lying to the north of Kothi Bacha to Josphine Mary vide Ex.B4 sale deed, it is evident that the property comprised in Ex.A1 sale deed had not been correctly described and further more, when the said house site had been already conveyed by B.A.Viswanatha Chetty to Josphine Mary vide Ex.B4 sale deed and in Ex.B4 sale deed, the house site comprised therein has been shown as lying to the south of the house site belonging to B.A.Viswanatha Chetty and north of the house site belonging to Rahamath Ali, how by giving the same description, B.A.Viswanatha Chetty would be entitled to convey the house site to Sandhana Mary vide Ex.A1 sale deed, there is no proper explanation on the part of the plaintiff. Therefore, as rightly contended by the defendants' counsel, when the original owner B.A.Viswanatha Chetty had sold the house site belonging to the first defendant's vendor Rahamath Ali vide Ex.B2 sale deed and subsequently, when he had sold the house site lying to the north of the same to Josphine Mary vide Ex.B4 sale deed, B.A.Viswanatha Chetty would be incompetent to sell the very same house site already sold to Josphine Mary vide Ex.B4 sale deed to Sandhana Mary vide Ex.A1 sale deed. Therefore, when the plaintiff's vendor is not entitled to claim the title to the house site already sold to Josphine Mary vide Ex.B4 sale deed on the strength of Ex.A1 sale deed, it is evident that Sandhana Mary would not be competent to convey the house site lying to the north of the defendants' property to the plaintiff under the sale deed dated 14.12.1981.

14. In the light of the abovesaid factors, when the very claim of title to the suit property as put forth by the

plaintiff on the strength of Exs.A2 & A1 has not been established, when the plaintiff has miserably failed to establish that the original owner B.A.Viswanatha Chetty is entitled to convey the suit property to her vendor Sandhana Mary and in turn Sandhana Mary had the entitlement to convey the same to the plaintiff and when the abovesaid factors could be gathered from the description of the properties comprised in the various sale deeds, as pointed out above, the Courts below had failed to bestow their attention on the abovesaid factors properly and though the Courts below had proceeded to hold that the boundaries had not been properly given in the sale deeds of the plaintiff and her vendor, but according to the Courts below that by itself would not take away the plaintiff's title to the suit property in my considered view, the abovesaid determination of the Courts below is found to be totally untenable and unacceptable.

15.Furthermore, it is noted that vide sale deed dated 29.04.1982, Josphine Mary, who had purchased the house site lying to the north of the defendants' property, had conveyed the same to one Nallammal, which document has been marked as Ex.B5 and a perusal of Ex.B5 would go to show that the property is lying to the north of the house site of Rahamath Ali and south of the house site belonging to Alphonsa. The same is the description given in the sale deed standing in the name of Josphine Mary marked as Ex.B4 wherein, it has been shown that the house site is lying to the north of the house site of Rahamath Ali and south of the house site belonging to B.A.Viswanatha Chetty. It could be thus seen that Sandhana Mary had only purchased the house site lying to the north of the property comprised in Ex.B4, which had been shown to be retained by B.A.Viswanatha Chetty in Ex.B4 sale deed and on the other hand, while conveying the property to Sandhana Mary vide Ex.A1 sale deed, the property had been conveyed as lying to the south of the house site belonging to Josphine Mary. When the title deed of Josphine Mary is anterior in point of time to the alleged title deed of Sandhana Mary and when vide Ex.B4 B.A.Viswanatha Chetty had already conveyed the house site lying to the North of A.Rahmath Ali and the first defendant to Josphine Mary, as rightly contended by the defendants' counsel, B.A.Viswanatha Chetty would not be entitled to reconvey the same site to the plaintiff's vendor Sandhana Mary under Ex.A1 sale deed and the abovesaid aspects had been failed to be considered properly by the Courts below.

16.On the other hand, considering the reasonings and conclusions of the Courts below, the Courts below had been

carried away by the eastern and western boundaries comprised in Exs.A1 & A2 and on that footing, despite the wrongful description of the northern and southern boundaries in Exs.A1 & A2 vis-a-vis the northern and southern boundaries described in Exs.B2, B4, B5 & B1, had erroneously proceeded to hold that the plaintiff has established her title to the suit property by virtue of Exs.A1 & A2 sale deeds.

17.As rightly contended by the defendants' counsel, the plaintiff is found to have taken advantage of the wrong description of the property comprised in Ex.B1 sale deed i.e. the said house site shown as lying to the south and north of the house site belonging to B.A.Viswanatha Chetty. As above pointed out, the abovesaid description, in my considered opinion, is not wrong. When there is no dispute that all the house sites in the locality was owned by the original owner viz., B.A.Viswanatha Chetty and he had plotted out the same and alienated to various persons, when admittedly B.A.Viswanatha Chetty had conveyed the property belonging to the first defendant firstly vide Ex.B2 sale deed to the first defendant's vendor A.Rahamath Ali and subsequently, A.Rahamath Ali having sold to the first defendant vide Ex.B1 sale deed dated 21.04.1993 and immediately, after Ex.B2 sale deed B.A.Viswanatha Chetty having sold the site lying to the north of the property covered in Exs.B2 & B1, B.A.Viswanatha Chetty to Josphine Mary vide Ex.B4, he is found to be not entitled to convey the same site to Sandhana Mary vide Exs.A1 sale deed, resultantly, the claim of title put forth by the plaintiff qua the suit property based on Ex.A2 sale deed executed by Sandhana Mary cannot at all be accepted in any manner.

18.When the plaintiff has miserably failed to establish her claim of title to the suit property as described in the plaint and in the light of the abovesaid discussions, when it is noted that the original owner B.A.Viswanatha Chetty is not entitled to convey the suit property to the plaintiff's vendor Sandhana Mary and in turn the plaintiff's vendor also would have no entitlement to convey the same to the plaintiff, in such view of the matter, the claim of the plaintiff that she has acquired a valid title to the suit property and that the defendants are endeavouring to interfere with her alleged possession and the defendants without any manner of right encroached into her portion has no base or foundation and in such view of the matter, the reasonings and conclusions of the Courts below for upholding the plaintiff's claim of title to the suit property are found to be based on an erroneous appreciation of the oral and documentary evidence projected in the matter, both on

factual matrix as well as on the point of law and accordingly, they being found to be totally perverse, illogical and irrational, are liable to be set aside.

19. In the light of the abovesaid position, the plaintiff having miserably failed to establish her claim of title to the suit property and the case projected by the plaintiff that the defendants are endeavouring to encroach into her property and subsequently, put up the foundation unlawfully completely goes out and therefore, it is evident that the plaintiff would not be entitled to secure the other reliefs prayed for by her. In such view of the matter, the plaintiff, accordingly, is found to have not raised any objection at the earliest point of time resisting the defendants from putting up the construction in the suit property and acquiesced to the same and when the materials placed on record go to show that the defendants had put up the foundation in their property immediately after they had purchased the property under Ex.B1 sale deed and completed the construction in the year 1996 and therefore, it is noted that inasmuch as the plaintiff has no valid claim of any title, possession and enjoyment of the suit property as sought to be projected by her by virtue of Exs.A1 & A2, it is evident that she had not chosen to make any objection or prefer any action to prevent the defendants from putting up the construction in her property immediately and acquiesced to the same and in such view of the matter, the Courts below having failed to consider the same in the proper perspective had erred in granting the other reliefs prayed for by the plaintiff.

20. In the light of the abovesaid discussions, the plaintiff having miserably failed to establish her vendor's claim of title to the suit property and in turn, her claim of title to the suit property as above pointed out, the suit property having been already conveyed to Josphine Mary by the previous vendor B.A.Viswanatha Chetty vide Ex.B4 sale deed, it has been rightly contended by the defendants' counsel that Ex.B4 sale deed belies the case of the plaintiff i.e. her source of title to the suit property. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the defendants and against the plaintiff.

21. In conclusion, the Judgement and Decree dated 29.07.2008 passed in A.S.No.108 of 2004 on the file of the Principal Subordinate Court, Krishnagiri, confirming the Judgment and Decree dated 21.06.2004 passed in O.S.No.301 of 1995 on the file of the District Munsif Court, Krishnagiri are set aside and resultantly, the suit laid by the plaintiff in O.S.No.301 of

1995 is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

sms

To:

- 1.The Principal Subordinate Court, Krishnagiri,
- 2.The District Munsif Court, Krishnagiri.
- 3.The Section Officer, V.R.Section, High Court, Madras.

+1 CC to Mr.V.Nicholas, Advocate sr 19092.

+1 CC to Mr.V.Raghavachari, Advocate sr 18572.

S.A.No.1614 of 2008

SPD(CO)
SP(22/11/2021)