



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.01.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.702 of 2008

and

M.P.No.1 of 2008

1.Maragathammal

2.Sundaramoorthy

3.Kothandam

4.Kamalakkannan

5.Gowri

All residing at
Kottavakkam Village,
Parandhur Post,
Kancheepuram Taluk.

... Appellants/Appellants/Plaintiffs

Vs.

1. Vengammal

2. Kumaravel
Both residing at
Kottavakkam Village,
Parandhur Post,
Kancheepuram Taluk.

.. Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.9 of 2005 dated 14.12.2005 on the file of the Sub Judge, Kancheepuram confirming the decree and judgment on the file of the Additional District Munsif, Kancheepuram in O.S.No.790 of 1996 dated 27.01.2004.

For Appellants : Mr.V.Sairam

For Respondents: Mr.M.R.Jothimanian



J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 14.12.2005 passed in A.S.No.9 of 2005 on the file of the Subordinate Court, Kancheepuram, confirming the judgment and decree dated 27.01.2004 passed in O.S.No.790 of 1996 on the file of the Additional District Munsif Court, Kancheepuram.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court. The plaintiffs in O.S.No.790 of 1996 are the appellants in the second appeal.

3. Suit has been laid by the plaintiffs for declaration and permanent injunction.

4. On a reading of the plaint averments, it is noted that the plaintiffs claim title to the suit property based on the oral purchase. According to the plaintiffs, the suit property had been purchased from one Thiruvengada Naicker in the year 1975 by their predecessor in title namely Sampath Achari. The first plaintiff is the wife and the plaintiffs 2 to 5 are the children of Sampath Achari, since deceased. It is put forth that following the purchase of the suit property by Sampath Achari from Thiruvengada Naicker, in or about 1975, Sampath Achari, had been in the possession and enjoyment of the suit property and after his demise, the plaintiffs are in the possession and enjoyment of the suit property, and inasmuch as litigation was pending qua the suit property, Thiruvengada Naicker had not chosen to execute the sale deed in respect of the suit property in favour of Sampath Achari and following the oral sale, inasmuch as, Sampath Achari and the plaintiffs had been in the possession and enjoyment of the suit property over a long period of time and Thiruvengada Naicker's son Govinda Naicker also agreed for the transfer of ownership over the suit property in favour of Sampath Achari, after due enquiry, it is put forth that the patta had been mutated in the name of Sampath Achari qua the suit property vide patta No.142. and Sampath Achari thereafter, the plaintiffs had been enjoying the suit property by paying Kists, tax etc., and the first defendant is the wife of Govinda Naicker and daughter-in-law of Thiruvengada Naicker and the second defendant who is having properties adjacent to the suit property, requested the plaintiffs to grant permission to use the suit property as an access to go to his lands, for which, the plaintiffs were not amenable and consequently the second defendant in collusion with the first defendant had created a sham and nominal sale deed as if the suit property had been conveyed by the first defendant to the second defendant and also endeavored to change the patta qua the suit property in the name of the second defendant and thereby attempted to interfere with the plaintiffs' possession and enjoyment of the



suit property and hence according to the plaintiffs, the suit has come to be laid for appropriate reliefs against the defendants.

5. The defendants in the written statement denied the case projected by the plaintiffs in the plaint in toto and putforth the case that survey number for the suit property is 41/F, which originally belonged to Chellammal, wife of Raji Naicker and Chellammal died intestate leaving behind her only daughter Chokkammal and the said Thiruvengada Naicker is the father-in-law of the first defendant and his wife Chokkammal predeceased him and they had one son namely Govinda Naicker, Govinda Naicker is the husband of the first defendant and after his demise, the first defendant and her sons are in the possession and enjoyment of the suit property and they had sold the suit property to the second defendant by way of a sale deed dated 26.02.1996 and following the same, it is only the second defendant who has been in the possession and enjoyment of the suit property in her own right, by paying tax etc., and neither Sampath Achari nor the plaintiffs would be entitled to claim title to the suit property by way of the oral sale as putforth by them or on the basis of the patta said to have been granted in favour of Sampath Achari. The patta relied upon by the plaintiffs had been issued behind the back of the defendants and would not convey a valid title to the plaintiffs and the plaintiffs and their predecessors in interest, at no point of time, have been in the possession and enjoyment of the suit property.

6. In support of the plaintiffs' case, P.Ws.1 to 3 were examined. Exs.A1 to A20 were marked. On the side of the defendants, D.Ws.1 and 2 examined. Exs.B1 to B15 were marked.

7. On a consideration of the oral and documentary evidence putforth in the matter and the submissions made by the respective parties, the Courts below were pleased to dismiss the plaintiffs' suit. Impugning the judgment and decree of the Courts below, the second appeal has been preferred by the plaintiffs.

8. The plaintiffs claim title to the suit property based on the oral sale. According to the plaintiffs, their predecessor in interest, Sampath Achari, who is the husband of the first plaintiff and the father of the plaintiffs 2 to 5 had purchased the suit property by way of an oral sale in or about 1975 from one Thiruvengada Naicker. At the foremost, the plaintiffs have not pleaded or established as to on what date, month and year, the oral sale deed had been effected and in the plaint, only mentioned that the oral sale was effected in or about 1975 very



vaguely. The plaintiffs have also not pleaded and established for what consideration, the oral sale was effected and in whose presence, the oral sale was effected. Without putting forth any pleas qua the factum of oral sale, very vaguely the plaintiffs would claim that Sampath Achari had purchased the suit property orally from Thiruvengada Naicker in or about 1975 and according to the plaintiffs, as the litigation was pending qua the suit property, Thiruvengada Naicker did not come forward to execute the sale deed and as above pointed out, when to the knowledge of Sampath Achari, as pleaded by the plaintiffs, the litigation was pending concerning the suit property, hence their case that Sampath Achari had endeavored to purchase the suit property that too by way of the oral sale cannot at all be believed and accepted in any manner. The plaintiffs would also project a case that Thiruvengada Naicker's son Govinda Naicker ie., the husband of the first defendant also gave consent for the change of ownership qua the suit property in favour of Sampath Achari and in this connection, they had marked the document marked as Ex.A15. However, when Ex.A15 has been stoutly challenged in all aspects by the defendants, even then the plaintiffs have not endeavored to establish that Ex.A15 had been really executed by Govinda Naicker by examining the attestor to the same as well as the signature contained therein is only that of Govinda Naicker and to cap it all, the particulars of Ex.A15 have also not been projected by the plaintiff in the plaint. The Courts below were found to be thus justified in not placing reliance upon Ex.A15.

9. The plaintiffs have also placed reliance upon the patta said to have been issued in favour of Sampath Achari. However when the acquisition of the ownership of the suit property by Sampath Achari has not been established by the plaintiffs in the manner known to law and the oral sale putforth by them cannot be legally sustained and that too not having been established by the plaintiffs by placing acceptable and reliable materials, their case that they had been issued patta in respect of the suit property based on the so called agreement said to have been executed by Govinda Naicker, as such. cannot be relied upon and believed. When the plaintiffs have failed to establish a valid claim of title to the suit property, in such circumstances, the plaintiffs should have placed acceptable and reliable materials as to, on what basis, the patta had been issued under Ex.A2 and when admittedly even as per case projected by the plaintiffs, the litigation was pending concerning the suit property, their case that they had been granted patta in respect of the suit property based on the alleged oral sale as putforth by them cannot at all be believed in any manner.

10. Per contra, from the materials placed on record on the part of the defendants, it is found that the second defendant



had purchased the suit property from the lawful owner namely the first defendant, following the agreement entered into with her under Ex.B12 and after the payment of the valid consideration, had secured the sale deed on 26.02.1996 marked as Ex.B1. Following the same, it is seen that it is only the second defendant, who has been in the possession and enjoyment of the suit property by obtaining patta, paying Kists etc., and in such view of the matter, the Courts below are found to be wholly justified in upholding the case of the second defendant's claim of title, possession and enjoyment of the suit property.

11. The plaintiffs' counsel would only contend that based on the revenue documents projected by the plaintiffs, the court should have upheld the plaintiffs' claim of title, possession and enjoyment of the suit property. However, when the plaintiffs have miserably failed to establish that the patta had been properly and lawfully issued to them by the revenue authorities after inviting objections from the real owners of the suit property and when the plaintiffs' claim of title to the suit property based on the oral sale is found to be legally unsustainable and when the plaintiffs have failed to establish the genuineness of Ex.A15, as per law, the mere obtainment of the patta by the plaintiffs by itself, would not confer them a valid title qua the suit property. As put forth by the defendants' counsel as well as outlined in the decisions relied upon by the defendants' counsel reported in 1999 (3) CTC 650 [Guruvammal and another Vs. Subbiah Naicker and others], 1999 (3) CTC 304 [Kammavar Sangam through its Secretary R.Krishnasamy Vs. Mani Janagarajan], 2003-2-LW-152 [Varadarasu alias Devarasu Vs. Malone Veerasamy alias Thanapal and others] and 1996 (6) SCC 223 [Sawarni Vs. Inder Kaur and others], the revenue documents would not create or extinguish the title and the question of granting reliefs to the plaintiffs, particularly, the plaintiffs having failed to establish a valid title to the suit property based on the oral sale and their claim of possessory title, which fact has also been not established by the plaintiffs in an acceptable manner, the plaintiffs cannot be granted the relief of permanent injunction as sought to be projected by the plaintiffs counsel against the true owners of the suit property namely the defendants.

12. In view of the abovesaid discussions, the Courts below are found to be justified in rejecting the plaintiffs' case and the reasonings and conclusions of the Courts below for rejecting the plaintiffs' case are found to be based on the proper appreciation of the materials placed on record, both oral and documentary, on factual matrix as well as on the points of law and I do not find any valid ground to interfere with the same. In such view of the matter, no substantial question of law is found to be involved in the second appeal.



13. In conclusion, the judgment and decree dated 14.12.2005 passed in A.S.No.9 of 2005 on the file of the Subordinate Court, Kancheepuram confirming the judgment and decree dated 27.01.2004 passed in O.S.No.790 of 1996 on the file of the Additional District Munsif Court, Kancheepuram are confirmed and resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mfa

To

1.The Sub Judge,
Subordinate Court,
Kancheepuram.

2.The Additional District Munsif,
Additional District Munsif Court,
Kancheepuram.

Copy to
The Section Officer,
VR Section,
High Court.

+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No.3801

S.A.No.702 of 2008
and
M.P.No.1 of 2008

SRI (CO)
CB(21/10/2021)