

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2021

PRONOUNCED ON : 25.02.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 879 of 2008

Subramanian

S/o. Seenan

rep. by

Power Agent Dr. Veeran

S/o. Murugesan

...Appellant/Appellant/Plaintiff

Vs.

Ramachandran

S/o. P. Nediyan

... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree dated 28.02.2008 in A.S. No.55 of 2007 on the file of the III-rd Additional District Judge, Puducherry, confirming the Judgment and decree dated 28.11.2007 in O.S.No.20 Of 2006 on the file of the Additional Sub Judge, Puducherry.

For Appellant : Mr. N. Suresh

For Respondent : Ms. G. Sumitra

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.02.2008 passed in A.S. No.55 of 2007 on the file of the III Additional District Judge, Puducherry, confirming the Judgment and decree dated 28.11.2007 passed in O.S.No.20 Of 2006 on the file of the Additional Subordinate Court, Puducherry.

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

3. The plaintiff in OS.No.20 of 2006 is the appellant in the Second Appeal.

4. Suit for declaration, permanent injunction and mandatory injunction.

5. The case of the plaintiff, in brief, is that the suit property belonged to Seshachalam and his brother Lakshmanasamy and after their demise, the suit property was enjoyed by one Mohanambal, who was the daughter of Seshachalam and she is the sole legal heir and Mohanambal sold the suit property to one Halil Basha on 30.06.1983 and Halil Basha sold the same to the plaintiff on 13.09.1984 and since then it is only the plaintiff who has been enjoying the suit property. Taking advantage of the plaintiff's absence from India and his wife also residing at Madras, the defendant, who is the Superintendent of Police, had attempted to interfere with the plaintiff's possession and enjoyment of the suit property by putting up the construction on the same and a police complaint had also been lodged against him with reference to the same and the Lloyds Colony Welfare Association formed with reference to the suit property and the other adjacent plots has also only communicated to the plaintiff to pay a sum of Rs.5,000/- for the development charges and the plaintiff also issued a legal notice dated 28.01.2006 calling upon the defendant to refrain from interfering with his possession and enjoyment and to remove the unlawful construction put up by him in the suit property and as the defendant had failed to comply with the same, according to the plaintiff, he has been necessitated to lay the suit for the relief of permanent injunction.

6. The defendant resisted the plaintiff's suit contending that the suit is not maintainable either in law or on facts and admitted that the suit property originally belonged to Seshachalam and Lakshmanasamy and thereafter, Mohanambal was enjoying the same and further admitted that Mohanambal sold some of the properties to Halil Basha by way of the sale deed dated 30.06.1983 and would further contend that the suit property was not part of the abovesaid sale deed and therefore, denied that Halil Basha had any valid title over the suit property based on the sale deed dated 30.06.1983 and further denied that the plaintiff had purchased the suit property from Halil Basha by way of the sale deed dated 13.09.1984 and enjoying the same and according to the defendant, the sale deed dated 13.09.1984 is a sham and nominal deed and intended only to illegally appropriate the suit property. The plaintiff has never been in the possession and enjoyment of the suit property and that he raised the superstructure thereon is totally false and further denied that the suit property forms part of the Lloyds colony and according to the defendant, in the appeal in A.S.No.158/86 on the file of the II Additional District Court, Puducherry against the judgment and decree passed in O.S.No.832/84 on the file of the Principal District Munsif Court, Pondicherry, dated 30.09.1991, the appellate court was pleased to hold that the sale deed dated 30.06.1983 in favour of Halil Basha is not valid and liable to be ignored and the said judgment of the appellate

court was confirmed by the High Court Madras in S.A. No.755/93 by judgment dated 05.11.1993 and the counsel appearing for the plaintiff had appeared for the appellant Halil Basha in the abovesaid proceedings and therefore, the plaintiff is fully aware that in the abovesaid proceedings the sale deed dated 30.06.1983 has been declared to be invalid and suppressing the same, the plaintiff has laid the present suit and the plaintiff cannot claim a valid title based on the invalid sale deed as declared by the competent court and hence the plaintiff cannot lay any claim of valid title to the suit property on the basis of the sale deed dated 13.09.1984 and it is only the defendant who is in the possession and enjoyment of the suit property by virtue of the sale deed dated 07.02.2005 and the defendant is a bonafide purchaser having purchased the same from one Balamuthuvel who is the legal heir of Mahanambal and therefore, sought for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case, P.Ws. 1 to 4 were examined and Exs.A1 to A26 were marked. On the side of the defendant D.W.1 was examined and Exs.B1 to B3 were marked. Further Exs.X1 and X2 were also marked.

8. On an appreciation of the materials available on record and the submissions put forth by the respective parties, the courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been laid.

9. At the time of the admission of the second appeal, the following substantial question of law were formulate for consideration.

- 1) Whether the court below has erred in taking into consideration Ex.B2, the sale deed by virtue of the decree in O.S.832 of 1984, when the plaintiff is not a party to the said suit by the time title in respect of the same resided in the plaintiff virtue of the sale under Ex.A2?
- 2) Whether the courts below are right in law in relying the specific performance decree in O.S.832 of 1984 when the same is admittedly not a proper decree as the plaintiff herein was not a party to the decree?

10. That the suit property originally belonged to Seshachalam and Lakshmanasamy and thereafter was enjoyed by Mohanambal, as regards the abovesaid facts, the parties are not in issue. Now according to the plaintiff, Mohanambal alienated the suit property to one Halil Basha by way of the sale deed dated 30.06.1983, the certified copy of which sale deed has been marked as Ex.A11. The further case of the plaintiff is that he

had purchased the suit property from Halil Basha by way of the sale deed dated 13.09.1984 marked as Ex.A2. Therefore, it is noted that the plaintiff claims title to the suit property only by way of purchase from Halil Basha. In turn it is noted that Halil Basha, according to the plaintiff, had acquired a valid title over the suit property by virtue of Ex.A11 sale deed.

11. From the materials placed on record, it is noted that based on the sale agreement dated 30.12.1982 executed between Mohanambal and Veerappan, which document has come to be marked by consent as Ex.A14, it is seen that Devarasu @ Veerappan had preferred the suit in O.S.No.832/84 on the file of the Principal District Munsif Court, Puducherry, for the relief specific performance. The abovesaid suit has come to be dismissed, which could be gathered from the copy of the decree passed in the abovesaid suit marked as Ex.A16. Against the dismissal of the abovesaid suit, Devarasu @ Veerappan had levied the first appeal in A.S. No.158/86 and the same has been allowed by the first appellate court. It is found that in O.S. No.832/84, the original owner Mohanambal remained exparte and only the plaintiff's vendor Halil Basha contested the case. Challenging Ex.A14 sale agreement, Halil Basha contended that he had acquired right over the suit property by virtue of the sale deed dated 30.06.1983 marked as Ex.A11 in the abovesaid proceedings. However, the first appellate court in A.S. No.158/86, vide judgment and decree dated 30.09.1991, marked as Exs.A22 and A23 has held that the sale deed in favour of Halil Basha executed by Mohanambal dated 30.06.1983 is invalid and liable to be ignored and thereby it is found that the sale agreement dated 30.12.1982 entered into between Mohanambal and Devarasu @ Veerappan had been upheld and that Halil Basha had knowledge about the sale agreement dated 30.12.1982 even before he had purchased the property by way of Ex.A11 sale deed and consequently his sale deed has been held to be an invalid document. The abovesaid determination of the first appellate court has also been confirmed by the High Court, Madras in S.A. No.755/93 and the same could be seen from the certified copy of the judgment dated 05.01.1993 passed by the High Court in the abovesaid second appeal marked as Ex.A24. It is thus found that the sale deed in favour of Halil Basha dated 30.06.1983 has been held to be an invalid document.

12. Now the plaintiff claims title to the suit property based on the sale deed executed by Halil Basha. When in the earlier proceedings, when as above seen, Halil Basha's title deed Ex.A11 has been held to be an invalid document, it has not been explained by the plaintiff as to how he could acquire a valid title to the suit property based on the purchase from Halil Basha under Ex.A2 sale deed. The only answer provided by the plaintiff's counsel with reference to the same is that even

much prior to the institution of O.S.No.832/84, he had purchased the suit property from Halil Basha on 13.09.1984 under Ex.A2 and further according to him, as the plaintiff has not been arrayed as a party in O.S.No.832/84, the decree passed in the abovesaid proceedings in the appellate stage would not bind upon him and therefore, according to the plaintiff's counsel, the courts below had failed to taken into consideration the fact that the plaintiff is not a party in the abovesaid proceedings and therefore, according to him, the decree obtained in the abovesaid proceedings is not a proper decree and binding upon the plaintiff.

13. Even though the plaintiff may not be the party to the proceedings in O.S.No.832/84, it is seen that his vendor Halil Basha is admittedly a party to the abovesaid proceedings. It is also seen in the abovesaid proceedings Halil Basha's sale deed dated 30.06.1983 had been declared to be an invalid document. When the plaintiff claims title to the suit property only from Halil Basha, that too, particularly based upon the sale deed dated 30.06.1983, when the sale deed dated 30.06.1983 has been declared to be an invalid document by the competent court and the same has also been upheld by the High Court, in such view of the matter, in my considered opinion, the judgment rendered in A.S.No.158/86 on the file of the II Additional District court, Puducherry dated 30.09.1991 as confirmed by the High Court vide judgment dated 05.11.1993 in S.A.No.755/93 could only be held to be the judgment in rem and not judgment in personam. The Supreme Court has distinguished between the judgment in rem and judgment in personam and according to the Supreme Court the judgment in rem refers to the judgment that determines the status or condition of the property which operates directly on the property itself and therefore, it is found that the judgment in rem refers to actions determining the title to the property and the rights of the parties, not merely among themselves but also against all the persons at any time claiming an interest in that property. The position of law on the abovesaid point has been outlined by the Apex Court in the decision reported in (2011) 5 Supreme Court Cases 532 (Booz Allen and Hamilton Inc. v. SBI Home Finance Limited and others)

B. Jurisprudence - Conceptual jurisprudence - Rights - Right in rem and right in personam, and judgment in rem and judgment in personam - Distinguished - Held, a right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals - Correspondingly, judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status, and judgment in rem refers to judgment that determines status or condition of property which operates directly on the property itself - Evidence

Act, 1872 - S.41 - Transfer of Property Act, 1882 - S.6 - Specific Relief Act, 1963, S.34.

37. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interest of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself.

14. In the light of the abovesaid principles of law enunciated by the Apex court, it is found that though the plaintiff is not a party in the proceedings initiated in O.S.No.832/84, however, his vendor being a party to the same and his vendor's sale deed dated 30.06.1983 having been declared to be an invalid document in the abovesaid proceedings and accordingly, the judgment rendered in the abovesaid proceedings determining the title to the property and the rights of the parties would bind not only among themselves i.e. the parties to the proceedings but also against all the persons at any time claiming interest in that property and thus, the judgment in rem determines the status and condition of the property which operates directly on the property itself and applying the abovesaid principles of law to the case at hand, when the title to the property covered under sale deed dated 30.06.1983 in favour of Halil Basha has been declared to be an invalid document in the abovesaid proceedings, it is seen that the abovesaid determination would not only bind the parties to the abovesaid proceedings but equally on the plaintiff also as the plaintiff seeks title to the suit property only through Halil Basha and on the strength of the sale deed dated 30.06.1983 and when as above pointed out, the sale deed dated 30.06.1983 having been declared to be an invalid instrument, resultantly, the plaintiff would not acquire any valid claim of title to the suit property under the sale deed dated 13.09.1984 marked as Ex.A2. The facts being above, I hold that the judgment and decree passed in A.S.No.158/86 arising out of O.S.No.832/84 is binding upon the plaintiff and accordingly in the light of the decision

of the Apex Court referred to supra, the plaintiff would not acquire a valid title to the suit property.

15. In addition to that, when the defendant is putting forth the case that the suit property does not form part of the property covered under Ex.A11 sale deed and also would put forth that neither the plaintiff's vendor Halil Basha nor the plaintiff had ever been in the possession and enjoyment of the suit property and in such view of the matter, it is for the plaintiff to establish that the suit property forms part of the property covered under Ex.A11 sale deed. As rightly concluded by the first appellate court on factual matrix and on a comparison of the boundaries mentioned in Exs.A2 and Exs.A11 when they are found to be not tallying in any respect and when the western boundary is shown to be a canal in Ex.A2 sale deed and when the same is not mentioned in Ex.A11 sale deed, as concluded by the first appellate court, it cannot be safely held that the property comprised in Ex.A2 forms part of the property comprised in Ex.A11.

16. Further as rightly held by the first appellate court when under Ex.A11 Halil Basha endeavoured to purchase the land measuring 16 kuzhies 12 veesams on the north western corner of larger extent of 1 kany 14 kuzhies and 12 veesams of land in R.S. No.167/2 and on comparison of the boundaries conveyed in favour of Devarasu @ Veerappan vide Ex.B2 sale deed obtained by him based on the decree obtained in the specific performance suit and the description of the properties comprised in Ex.A11, when it is seen that the boundaries do not tally, as held by the first appellate court, when as per Ex.B2 sale deed the property is stated to be situated to the north of canal whereas in Ex.A2 sale deed, the property comprised therein is stated to be situated to the east of canal in R.S.No.167 and the plaintiff having not explained the discrepancies with reference to the same, it is highly doubtful, whether the plaintiff had acquired the suit property by virtue of Ex.A2 sale deed from Halil Basha. When Halil Basha himself is not established to have acquired the suit property under Ex.A11 and when the plaintiff had not endeavoured to clear the picture by examining his vendor Halil Basha and as held by the first appellate court, the plaintiff cannot escape his responsibility in not examining his vendor by contending that he had failed to appear despite the service of summons, particularly, the plaintiff having failed to take further concrete coercive steps to procure his presence as per law, all put together, as rightly contended by the defendant's counsel, the plaintiff, at the foremost, has failed to establish the identity and lie of the property said to have been acquired by him under Ex. A2 sale deed from Halil Basha. Furthermore, the plaintiff is also unable to identify the suit property by correlating the same with the lay out marked as Exs.A10 and X2.

As contended by the defendant's counsel, the plaintiff having failed to establish the identity and lie of the suit property, on that ground also, as held by the first appellate court, the plaintiff would be disentitled to secure the reliefs prayed for by him. As rightly concluded by the first appellate court, the letters marked as Exs.A2 to A5, by themselves, would not lead to the conclusion that the plaintiff has a valid title to the suit property and enjoying the same as put forth by him.

17. The defendant would claim title to the suit property by virtue of the sale deed dated 07.02.2005 marked as Ex.B3. When as per the proceedings in O.S.No.832/84, the same having culminated in favour of Devarasu @ Veerappan, the case of the defendant that he had purchased the suit property from the legal heir of Mohanambal under Exa.B3 sale deed, as such, cannot be readily accepted. It is thus found that the defendant also failed to establish his valid claim of the title to the suit property on the premise, when it is found that the property had been already conveyed to Devarasu @ Veerappan under Ex.A14 by Mohanambal and when Devarasu @ Veerappan had been granted the relief of specific performance, the case of the defendant that the property got reverted back to Mohanambal and that he had purchased the property from the legal heir of Mohanambal does not stand scrutiny in the eyes of law.

18. In any event, the defect of the defendant's claim of title to the suit property, by itself, would not lead to the conclusion that the plaintiff has a valid claim of title to the suit property. When, as above pointed out, the plaintiff has miserably failed to establish the identity and lie of the suit property and when, as above discussed and held, the plaintiff's vendor's sale deed having been declared to be an invalid deed by the competent courts and when the same is binding upon the plaintiff in all aspects and in such view of the matter, the courts below are found to be justified in holding that the plaintiff has miserably failed to establish his title, possession and enjoyment of the suit property and rightly declined the reliefs prayed for by him.

19. The reasonings and conclusions of the courts below for dismissing the plaintiff's suit being based on the appreciation of the materials available on record both on factual matrix as well as on the point of law and when they are not shown to be perverse, illogical and irrational and therefore, I do not find any valid reason to interfere with the same. The substantial questions of law, for the reasons abovestated, are accordingly answered in favour of the defendant and against the plaintiff.

20. For the reasons aforesated, the judgment and decree dated 28.02.2008 passed in A.S. No.55 of 2007 on the file of the III Additional District Judge, Puducherry, confirming the Judgment and decree dated 28.11.2007 passed in O.S.No.20 of 2006 on the file of the Additional Subordinate Court, Puducherry, are confirmed. Resultantly, the second appeal is dismissed with costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

To

1. The III Additional District Judge,
Puducherry.
2. The Additional Subordinate Judge,
Puducherry.
3. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.N.Suresh, Advocate Sr.12414
+2cc to M/s.G.Sumitra, Advocate Sr.11533, 11371

S.A.No.879 of 2008

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srg 02/07/2021

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