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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A. No.844 of 2007

1. Kolandayammal (died)
2. Guruvaiyammal
3. Ramayee
4. Lakshmi
5. Sundararajan N.
6. Muthusamy
7. Ramachandran

(Appellants 2 to 7 are brought on record as
LRs of the deceased appellant vide order dt
10.07.2019 made in M.P No.1 to 3 of 2015 in
S.A.No.844 of 2007)

.... Appellants/1st Respondent/Plaintiff

Versus

1. Ponnayal
2. Krishnammal ... Respondents 1 & 2/Appellants/Defendants 1 & 2
3. Murugavel ... 3rd Respondent/2nd Respondent/3rd Defendant

Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S. No.80 of 2004 dated 28.06.2007 on the file of Sub Court, Bhavani, reversing the judgment and decree dated 30.06.2003 in O.S.No.96 of 2002 on the file of I Additional District Munsif, Bhavani.

For Appellants : Mr.K.Sathish Kumar

For Respondents 1 and 2 : Served No Appearance

For Respondent No.3 : Affixed No Appearance

JUDGMENT

This Second Appeal is filed challenging the reversal finding of the lower appellate Court viz., Sub Court, Bhavani in its judgment and decree dated 28.06.2007 in A.S.No.80 of 2004 by reversing the findings of the trial Court dated 30.06.2003 in O.S.No.96 of 2002 rendered by I Additional District Munsif, Bhavani.



2. The parties are described as per their litigative status in the suit.

3. The legal heirs of the deceased plaintiff are the appellants in this second appeal. The suit in O.S.No.96 of 2002 was filed by Kolandayammal, seeking for declaration and consequential permanent injunction in respect of the suit schedule property. According to her, by virtue of sale deed dated 19.05.1980 (Ex.A.2), she became the absolute owner of the suit schedule property and further, according to her, the defendants have attempted to interfere with the her peaceful possession and enjoyment of the suit schedule property and therefore, she was constrained to file the suit in O.S.No.96 of 2002 on the file of I Additional Munsif Court, Bhavani.

4. The respondents are the defendants in the suit.

5. According to the plaintiff, the suit property originally belonged to Ponnusamy Gounder. He had purchased the same, out of his own funds, through a Sale Deed registered as Document No.247/79 (Ex.A.1) dated 12.02.1979. Thereafter, the suit schedule property was sold to the plaintiff and her husband Nanjan @ Nanjappan by a Sale Deed Document No.926/1980 (Ex.A.2) dated 19.05.1980. Thereafter, the husband of the plaintiff Nanjan @ Nanjappan had executed a registered Will (Ex.A.3) dated 20.11.1998 in Document No.76/1998 bequeathing his absolute right and interest in the suit schedule property in favour of the plaintiff.

6. According to the plaintiff, her husband Nanjan @ Nanjappan died on 23.01.1999 and thereafter, she became the absolute owner of the entire suit schedule property. According to the plaintiff, the defendants are the relatives of the plaintiff's vendor's vendor viz., Ponnusamy Gounder and they have illegally attempted to interfere with the plaintiff's peaceful possession and enjoyment of the property and therefore, she was constrained to file a suit in O.S.No.96 of 2002 before the I Additional District Munsif Court, Bhavani.

7. However, it is the case of the defendants that the suit schedule property was owned by their deceased mother Selambaiammal. According to them, they are the legal representatives of the deceased Selambaiammal and since they are the legal representatives of the deceased Selambaiammal, they are entitled to inherit the suit schedule property as owners. In the written statement, they have disputed the sale deed dated 12.02.1979 registered as Document No.247/79 (Ex.A.1) executed in favour of Ponnusamy Gounder.



8. Issues were framed by the trial Court and after trial, by judgment and decree dated 30.06.2003 in O.S.No.96 of 2002, the learned I Additional District Munsif, Bhavani decreed the suit in favour of the plaintiff. Aggrieved by the judgment and decree dated 30.06.2003 passed in O.S.No.96 of 2002, the defendants in the suit preferred a regular first appeal in A.S.No.80 of 2004 before the lower appellate Court, viz., the Subordinate Court, Bhavani.

9. By judgment and decree dated 28.06.2007 in A.S.No.80 of 2004, the lower appellate Court viz., Subordinate Court reversed the findings of the trial Court by allowing the appeal filed by the defendants and thereby dismissed the suit. Aggrieved over the same, the plaintiff has filed the present Second Appeal.

10. This Court, while admitting the Second Appeal on 23.08.2007, , formulated the following substantial questions of law:-

" 1. Whether the approach of the Lower Appellate Court on deciding the genuineness of Ex.A.11 Will dated 24.12.1972 was in accordance with the principle contemplated under Section 90 of Indian Evidence Act? and whether the said Will being a registered one, said to be not proved merely because the Attestators and Scribe were not examined, when those persons were no more at the time of examination?

2. Whether the defendants/respondents can be permitted to agitate against the title of the Plaintiff/Appellant who is only a subsequent purchaser from the original owners, without challenging the first sale made in favour of the plaintiff's vendor under Ex.A.1 dated 12.02.1979 especially when such sale has become final and conclusive and binding on the respondents as they have not chosen to challenge the same at any point of time much less within the statutory period of limitation?

11. During the pendency of the second appeal, the plaintiff Kolandayammal died on 15.04.2014 and the appellants, who are the



children of the deceased plaintiff Kolandayammal, have been brought on record as the legal representatives of the deceased plaintiff vide order dated 10.07.2019 made in M.P No.3 of 2015 in S.A.No.844 of 2007.

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12. Learned counsel for the appellant drew the attention of this Court to the documents which were marked as exhibits before the trial Court and also the findings of the trial Court as well as the lower appellate Court. According to him, the trial Court has rightly given a finding based on the materials and evidence available on record that Ex.A.1 Sale deed dated 12.02.1979, standing in the name of Ponnusamy Gounder and subsequent Sale deed (Ex.A.2) dated 19.05.1980, standing in the name of plaintiff and her husband are genuine documents and has rightly decreed the suit in favour of the plaintiff. He submits that the Sale Deed dated 12.02.1979 (Ex.A.1) as well as the Sale Deed dated 19.05.1980 (Ex.A.2) have not been challenged by the defendants. He also drew the attention of this Court to the findings of the trial Court and submits that the property tax receipt (fe;jhak;) dated 16.07.2002 which was marked as Ex.B.1 has been obtained by the defendants only after filing of the suit. Therefore, he submits that the trial Court has rightly rejected the same.

13. The learned counsel also drew the attention of this Court to the patta which stands in the name of the husband of the plaintiff and also submits that the plaintiff has proved his case beyond reasonable doubt that she is the absolute owner of the suit schedule property.

14. Learned counsel also drew the attention of this Court to the findings of the lower appellate Court in the impugned judgment and decree dated 28.06.2007 in A.S.No.80 of 2004 and would submit that the lower appellate court, has rendered a perverse and an erroneous finding that the plaintiff has suppressed the execution of the Will dated 24.12.1972, marked as Ex.A.11, executed in favour of the brothers of the defendants. According to him, the plaintiff has purchased the property not based on the Will (Ex.A.11), but, based upon the parent Sale Deed dated 12.02.1979 (Ex.A.1), standing in the name of Ponnusamy Gounder. Therefore, according to him, there was no suppression of any material fact by the plaintiff. 3

15. Admittedly, the Sale Deed Document No.247/79 (Ex.A.1) dated 12.02.1979, standing in the name of Ponnusamy Gounder, remains unchallenged till date by the defendants. Subsequently, the Sale Deed Document No.926/1980 (Ex.A.2) dated 19.05.1980 executed in favour of the plaintiff and her husband Nanjan @ Nanjappan also remains unchallenged.



16. The plaintiff has purchased the suit schedule property only based on the Sale Deed Document No.247/79 (Ex.A.1) dated 12.02.1979 and has not traced his title based on the Will (Ex.A.11) dated 24.12.1972 executed by Selambaiammal. The plaintiff has traced the title over the suit schedule property only based on the Sale Deed (Ex.A.1) dated 12.02.1979 and the Sale Deed (Ex.A.2) dated 19.05.1980. Only during the course of trial, the Will dated 24.12.1972 was marked as Ex.A.11. In the deposition of the plaintiff, a categorical statement was made that only after filing of the suit, the plaintiff was aware of the Will (Ex.A.11). If there was suppression of any material document before the trial Court, the plaintiff would not have filed the Will dated 24.12.1972, which was marked as Ex.A.11 before the trial Court.

17. Admittedly, under the Will (Ex.A.11) dated 24.12.1972, alleged to have been executed by Selambaiammal, the defendants were not allotted any share in the suit schedule property. The patta No.197, issued subsequent to the purchase of the suit schedule property by the plaintiff, was also issued only in his favour which has been marked as Ex.A.6. The only documents filed by the defendants before the trial Court were Ex.B.1 property tax receipt (fe;jhak;;; Ex.B.2 Registrar's Certificate and Ex.B.3 Chitta. All the exhibits are dated 16.07.2002 which were marked as Exs.B.1 to B.3 respectively and have been filed in the year 2002, whereas, the property was purchased by the plaintiff and her husband in the year 1980 itself under the Sale Deed dated 19.05.1980.

18. The trial Court has duly considered the materials available on record and only thereafter decreed the suit in favour of the plaintiff. The oral and documentary evidence produced by the plaintiff will categorically prove that the plaintiff Kolandayammal is the absolute owner of the suit schedule property. However, the lower appellate Court has reversed the findings of the trial court and dismissed the suit on the following grounds:-

(a) The plaintiff has not deposed by herself, but, instead has deposed through her son Ramachandran (P.W.1) who has also not produced any medical certificate to prove the plaintiff's illness.

(b) The plaintiff suppressed the Will dated 24.12.1972, which was marked as Ex.A.11, by which, Selambaiammal had bequeathed the suit schedule property in favour of her three sons.

19. The reasons given by the lower appellate court for reversing the findings of the trial court are erroneous and have



been given by total non-application of mind to the pleadings in the plaint as well as the title deeds produced by the plaintiff which were marked as Ex.A.1 and Ex.A2 before the trial court.

20. The Sale Deed dated 12.02.1979(Ex.A.1) standing in the name of Ponnusamy Gounder as well as the sale Deed dated 19.05.1980 standing in the name of plaintiff and her husband remains unchallenged by the defendants.

21. The Will dated 24.12.1972 (Ex.A.11), which the defendants are relying upon, also does not give them any share in the suit schedule property. As per the said Will, the beneficiary are only the male children of the deceased Selambaiaammal.

22. Admittedly, Ramachandran is the son of the plaintiff. The defendants have not raised any dispute with regard to the same. In his oral evidence also, PW1 has deposed that only due to his mother's illness, she has been unable to depose by herself. No contra evidence has been produced by the defendants to disprove the statement of PW1 Ramachandran that his mother was ill. Hence, the lower appellate court's rejection of evidence of PW1 is erroneous and cannot be accepted by this Court. No contra evidence has also been produced by the defendants to prove that deliberately the plaintiff has not been examined as a witness.

23. Under the Will dated 24.12.1972(Ex.A.11), the defendants are not the beneficiaries, but, it is only their brothers. When they are not beneficiaries under the said Will and that too when the brothers in the said Will are very much alive, during the pendency of the suit, the defendants raising a defence relying upon the said Will dated 24.12.1972 cannot be accepted by this Court. However, the lower appellate court misappreciated the evidence available on record and has erroneously by total non application of mind to the evidence available on record, reversed the findings of the trial court by dismissing the suit.

24. For the foregoing reasons, I am of the considered view that the findings of the trial court will have to be restored and the findings of the first appellate court under the impugned judgment and decree has to be set aside. The substantial questions of law formulated by this Court at the time of admission of this Second Appeal are answered in favour of the Appellants for the following reasons namely, a) the Plaintiff has proved her title through Ex.A.1, Ex.A.2, Ex.A.12 to Ex.A.14 and she has also proved her possession through Ex.A.5 to Ex.A.10. On the contra, the defendants have not filed any document to prove their possession, at the time and after the execution of Ex.A1, Ex.A2, Ex.A12 to Ex.A14. b) Exhibits marked on the side of the defendants namely Ex.B1, Ex.B2 & Ex.B3, admittedly, came into existence only after the filing of the suit. Further when the



plaintiff has filed title deeds which have been marked as Ex.A1 & Ex.A2 to prove her title, Ex.B1 to Ex.B3 which are not title deeds has no evidenciary value. c) The defendants are also not beneficiaries under the Will dated 24.12.1972 (Ex.A11) and the sale deeds dated 12.02.1979 (Ex.A1) and 19.05.1980 (Ex.A2) by which the plaintiff claims ownership remains unchallenged.

25. For the foregoing reasons, there is no merit in the contentions raised by the respondents/defendants and hence, the Second Appeal stands allowed. Accordingly, the findings of the lower appellate court in A.S.No.80 of 2004 is hereby quashed and the findings of the trial court in O.S.No.96 of 2002 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

1. The Subordinate Court,
Bhavani.
2. The I Additional District Munsif Court,
Bhavani.

Copy to

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.K.Sathish Kumar, Advocate Sr.41988

S.A.No.844 of 2007

pm[col]
srg 06/10/2021