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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.03.2021
Pronounced on	30.03.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

S.A.No.236 of 2010

and

M.P.No.1 of 2010

Balasubramaniam ... Appellant/Appellant/Plaintiff

Vs.

Ponnusamy ... Respondent/Respondent/Defendant

PRAYER : The Second Appeal filed under Section 100 of C.P.C., against the Judgement and Decree of the Subordinate Judge's Court at Tiruchengode dated 24.07.2009 in A.S.No.185 of 2008, confirming the judgement and decree of the District Munsif Court at Tiruchengode dated 31.03.2008 in O.S.No.97 of 1998.

For Appellant : Mr.P.Valliappan

For Respondent : Mr.N.Manokaran

JUDGEMENT

This Second Appeal has been filed against the Judgement and Decree dated 24.07.2009 passed in A.S.No.185 of 2008 on the file of the Subordinate Judge's Court at Tiruchengode, confirming the judgement and decree dated 31.03.2008 passed in O.S.No.97 of 1998 on the file of the District Munsif Court, Tiruchengode.

2. The Appellant is the plaintiff in the suit.

The short facts of the plaintiff's case are as under:-

3. The plaintiff is in enjoyment of the lands in village Natham old Survey No.22/3A1 corresponding to new Survey No.500/6 comprising an extent of 0.0375.0 sq.mt. In Illupuli Panchayat, he has constructed a tiled house bearing Door No.9/60. The land in old S.No.22/3A1 corresponding to the new S.No.500/7 in an extent of 0.0210.0 sq.mt was in enjoyment of one Chinnaiya Pillai and Thiyagarajan. Patta is also granted in the favour of



them. On 27.11.1995, Chinnaiya Pillai and Thiagarajan sold the above said site in favour of the plaintiff and executed a sale deed on 27.11.1995. The defendant who is the adjoining land owner in S.No.500/8 situated on the eastern side of the plaintiff's suit property. He has also got patta to his land in S.No.500/8. Since the plaintiff's vendor refused to purchase the suit property, the defendant started to make unlawful attempts to trespass into the suit property and encroached the same. Hence the plaintiff has filed the suit for declaration of title and permanent injunction. During the pendency of the suit, the defendant constructed asbestos sheet building, erected compound wall, borewell and effected other improvements and changes in the suit property by trespassing into it. Hence the suit is amended to include the prayer for mandatory injunction to remove the same.

The short facts of the written statement of the defendant:-

4. The description of the property itself is false and fraudulent. The defendant and his forefathers had been in enjoyment and possession of the entire area covered under the patta No.579. The plaintiff's vendors have fraudulently obtained patta for the erstwhile S.No.500/7 by suppressing the defendant and his forefather's title over the same. Aggrieved by the same, the defendant filed an appeal before the District Revenue Officer, Namakkal and after enquiry, the patta granted in favour of the plaintiff's vendors was cancelled and both the sites in S.No.500/8 and 500/7 were clubbed together in S.No. 500/7 itself and a fresh patta has been granted to the entire extent in patta No.579. In view of the same, a patta in respect of the erstwhile S.No.500/7 in patta No.239 in the name of Chinnaiya Pillai and Thiagarajan was cancelled. The improvements in the suit property has been made by the defendant in the year 1985 itself and the Commissioner's report and plan in Exs.C1 & C2, would show the same. Further, the plaintiff has put up the borewell also in the suit property several years ago for his domestic use and agricultural purposes. The sale deed in favour of the plaintiff is a fraudulent one and the defendant has not made any construction during the pendency of the suit but the construction in the suit property has been made by him long ago. The plaintiff is not entitled to any relief and hence the suit has to be dismissed.

5. On the side of the plaintiff, one witness was examined as P.W.1 and Exs.A1 to A16 were marked. On the side of the defendant, two witnesses were examined as D.W.1 & D.W.2 and Exs.B1 to B9 were marked. The Commissioner's report and plan were marked as Exs.C1 & C2.

6. The Trial Court after the conclusion of the trial dismissed the suit. Now the plaintiff has filed the second



appeal and the second appeal has been admitted on the following questions of law:-

1. When the appellant had produced Ex.A.2, patta and Ex.A.3, sale deed, to establish his title and possession over the suit property, whether the courts below are correct in law in not considering the same and non-suiting the appellant?

2. When it is axiomatic in law that the issue of title has to be decided only by the Civil Court and the revenue authorities cannot decide the same as held in several judgements, whether the courts below are correct in deciding otherwise?

7. The simple facts which brought the plaintiff and the defendant to the Court are because of the claim made by the plaintiff in respect of S.No.500/7. As per the claim of the plaintiff, S.No.500/7 was a separate property measuring 0.210.0 sq.mt and it was in the enjoyment of his vendors and predecessors and he acquired title by virtue of a sale deed executed by his vendors. The defendant would claim that he is the owner of the entire 0.450.0 sq.mt land in the corrected S.No.500/7 which included both old S.Nos.500/7 and 500/8. The extent of property comprised in S.No.500/8 is 0.24 sq.mt and it is adjacent to the uncorrected S.No.500/7. The plaintiff claimed his title to the uncorrected S.No.500/7 by virtue of Ex.B4, patta, in the name of his vendors and Ex.B2, the sale deed, executed by his vendors in his favour. Ex.A2, patta, is in the name of Chinnaiya Pillai and Thiyagarajan, pertaining to uncorrected S.No.500/7 in patta No.239. The extent of property comprised in the said survey number is 0.0210.0. The sketch shown behind Ex.A2, S.No.500/8 is shown on the eastern side. Ex.A3, sale deed is dated 27.11.1995 and it is an unregistered sale deed for a sale consideration of Rs.75/-. The extent of property involved in Exs.A2 & A3 document is 0.210.0 sq.mt and that will be equivalent to 2260 sq.ft. The plaintiff has produced two other documents namely a sale deed dated 02.05.1939 (Ex.A4) and a release deed dated 09.04.1975 (Ex.A5). It is claimed by the respondent/defendant that those documents are not related to suit property but a property nearby to the suit property. In fact the appellant who had been examined as P.W.1 has admitted in his evidence that the property involved in Ex.A4 does not come under S.No.500/7, but it only comes under S.No.500/6. Trial Court has rightly observed that the properties in Exs.A4 & A5 do not relate to the suit property but it is a property nearby.

8. The extent of property comprised in Ex.A4 is lesser than the suit property and it is document of the 1939. However the



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property is valued at Rs.500/-in the year 1939 itself and the sale deed is registered. The property involved in Ex.A5 is 3442½ sq.ft of land and another extent of 2700 sq.ft. of house site and it has been valued at Rs.10,000/-. Out of which the share of the executant is valued at Rs.2000/-. And it is a document of the year 1975. The properties involved in Exs.A4 & A5 are just adjacent to the suit property. Though the market rate and value of the property have been valued in multiples of hundred in the year 1939 and 1975, the sale deed dated 27.11.1995 in favour of the plaintiff (Ex.A3 for an extent of 2200 sq.ft) has been valued at mere 75 rupees. Since the value of the property is valued at below Rs.100/- as per the convenience of the parties it was not registered. This sale deed is Ex.A3 and through which the plaintiff claims title over the suit property.

9. It is obvious that the property involved in Ex.A3 sale deed has been wantonly valued at Rs.75/- just for the purpose having it dated conveniently and kept it unregistered. The unregistered nature of Ex.A3 is completely contrary to the value of the properties and the practice of conveyance effected during the relevant point of time. This itself is sufficient to cause cloud on creditworthiness of the claim of the Appellant/plaintiff. The one and only previous document for Ex.A3, sale deed is Ex.A2 patta. From Ex.A2 patta its date of issuance cannot be ascertained. Excepting Exs.A2 & A3, the plaintiff did not produce any other document to prove the title of his vendors.

10. The plaintiff who was examined as P.W.1 he has stated in his evidence that he had seen one Will in the name of his vendor to ascertain his title and only on seeing the Will, he purchased the property through Ex.A3. The said Will is dated 20.01.1945 and marked as Ex.A10. It does not have the survey number in its property particulars. Without any proof of co-realtion, Ex.A10 cannot be relied. So the Appellant/plaintiff ought to have proved that the particulars of the property in Ex.A3 is the suit property. But he has not produced any document to correlate the same. The Courts below have correctly observed that Ex.A10 does not relate to the suit property.

11. The suit property being a Natham Poramboke, pattas are given basing on the enjoyment of the parties. The defendant has claimed that he was in enjoyment of the uncorrected S.No.500/7 along with the uncorrected S.No.500/8 as one lot and he put up house and other structures in the suit property. The plaintiff has stated that the structures in the suit property were put up by the defendant only during the pendency of the suit. The Commissioner has visited the suit property and filed his report with plan vide Exs.C1 & C2. His report would show that the

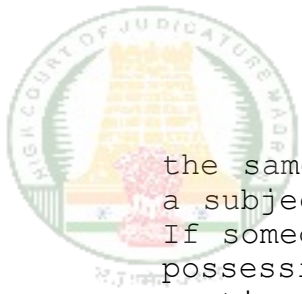


Commissioner has inspected the property on 05.09.1999. The suit has been filed in the year 1998 and it is alleged by the plaintiff that the defendant has encroached the suit property and put up construction. The date of the alleged encroachment has not been specifically stated. If the alleged constructions are recently put up after the suit, the Commissioner's report would have revealed the same. The Commissioner has showed the physical features of the suit property in his report and plan within the area shown as A, B, C, and D and he has observed that the door in the suit property was very old and it had old and new windows. The Commissioner has also observed the presence of one bore well with motor pump set. The Courts below have observed that there are sufficient evidence to show that the structures in the suit property were already in existence and they are not new.

12. But in the particulars of property in Ex.A3 sale deed the property is shown as vacant site. But the features in the suit property would show that it had old house and it is not vacant. In order to prove the title for a property through conveyance, the claimant should prove that his vendors have got valid title to convey the same by executing a sale deed.

13. In case the property is Natham Poramboke, the predecessors of plaintiff should have held a valid patta. Such pattas are given by the Revenue Authorities basing on their long enjoyment and possession. Ex.A2, patta which is claimed to be the patta granted to the plaintiff's vendors by virtue of their alleged possession and enjoyment, has been subsequently cancelled and a corrected patta has been granted in the name of the defendant by clubbing 500/7 and 500/8 into one Survey Number, 500/7.

14. It is not the contention of the plaintiff that he had ever challenged the proceedings dated 28.04.1997 of the District Revenue Officer and got it cancelled and confirmed the correctness of Ex.A2, patta. Ex.A2, patta loses its value once it is cancelled and a corrected patta is granted in the name of the defendant by virtue of Exs.B1 & B2. In the absence of any previous title documents, title to the property can be inferred from long possession. Admittedly, in this case, the plaintiff has not produced any relevant title document of his vendors. Since he has produced and claimed that Ex.A2 patta has been granted to his vendors by approving their possession, its correctness matters a lot. In pattas conferred by virtue of possession of a party over the Natham Poramboke, the decision will always be of the Revenue Officers and not the Court. In fact, the jurisdiction of the Court is barred in respect of such proceedings. It is true that the question of title should be decided by the Courts and not by the Revenue Authorities but at



the same time, entitlement of patta by virtue of possession, is a subject falls within the jurisdiction of the Revenue Officers. If someone claims title by virtue of their long possession, such possession should be evidenced through valid pattas and other continuous revenue records standing in the name of the person so claiming.

15. When Ex.A2 was cancelled by the Appellate Authority by virtue of Ex.B2, order, and a corrected patta is given to the defendant through Ex.B1, no sanctity can be attached to Ex.A2. And for the same reason, no evidentiary value can be attached to the unregistered sale deed, (Ex.A3).

16. The Courts below have correctly appreciated the evidence on record and arrived at a correct conclusion that Ex.A3 was created by using the old stamp papers for the purpose of his creating a record. And that is the reason why the valuation is shown below Rs.75. Even a registered sale deed cannot pass any title to the purchaser if his vendor is not found to be the rightful owner of the property subjected in the conveyance.

17. During the course of arguments, the learned counsel for the appellant relied on certain citations but did not produce citations. But at his request when liberty was given to produce the citations during the next day after the case was reserved, the learned counsel for the appellant submitted the following 8 citations:-

- 1.AIR 1959 SUPREME COURT 31
- 2.AIR 1993 SUPREME COURT 398
- 3.AIR 1966 SUPREME COURT 735
- 4.AIR 1987 SUPREME COURT 1242
- 5.1999(1) CTC 245
- 6.2017(2) MWN (Civil) 521
- 7.2021 (1) MWN (Civil) 505
- 8.2021 (1) MWN (Civil) 577

18. The citation Nos.1 to 4 were submitted to canvass the point of the appellant that the Lower Court should consider the entire materials placed before it. The judgement of the Lower Court would show that the Lower Courts have appreciated the entire evidence and then only recorded their findings and hence it is neither prejudice nor a surprise to the plaintiff.

19. The learned counsel for the appellant relied on the citation Nos.5 & 6 and submitted that when the Appellate Court failed to consider the vital aspects of evidence, question of fact is not a taboo under Section 100. The major discussion made in this second appeal mainly revolves around the facts and



this Court was not shy to deal with the necessary facts in order to answer the questions of law.

20. Citation No.6 does not apply to this case, where the appellant/plaintiff failed to prove his title.

21. The learned counsel for the appellant submitted that the Appellate Courts should comply with the requirement of Order 41 Rule 31 and in support of his contention he cited in the decisions Nos.7 & 8. But even in the absence of points for consideration, if sufficient justification is done by appreciating the evidence on record with enough discussion in order to answer the question of dispute involved in the suit, that itself can be considered as a sufficient compliance. The judgement of the First Appellate Court would show that it has done a fresh discussion on the findings of the Lower Court and subscribed its own reasons as to how the findings of the Trial Court are correct. The judgement and decree of the First Appellate Court is in conformity with the decision of the Trial Court and the reading of the judgement of the First Appellate Court reveals the reasons as to why the First Appellate Court could accept the findings of the trial court and why the first appeal was dismissed.

22. Though the questions of law raised in this appeal camouflaged as something related to law, actually the whole background is question of facts only. These facts have been correctly analysed by the Courts below and the Civil Court's jurisdiction to decide about the title of a person has been invoked correctly and decided. So, I find no factual or legal infirmity in the judgement and decrees of the Courts below in dismissing the suit. Hence the substantial questions of law are answered against the appellant.

23. In the result, the Second Appeal is dismissed and the judgment and decree of the First Appellate Court is confirmed. No costs. Connected miscellaneous petition in M.P.No.1 of 2010 is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The Subordinate Judge's Court,
Tiruchengode.

2.The District Munsif Court,
Tiruchengode.

3.The Section Officer,
V.R.Section,
High Court, Madras.

+1CC to M/s.P.Valliappan, Advocate, SR.No.20743

+1CC to M/s.N.Manokaran, Advocate, SR.No.21078

S.A.No.236 of 2010

RSV(CO)

B.VC (08.10.2021)