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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.10.2021

Delivered on: 23.11.2021

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A.(MD) No.265 of 2021

and

C.M.P.No.3636 of 2021

1. Guruvammal
2. Seetha Lakshmi @ Lakshmi
3. Jothi Lakshmi
4. Ananthan @ Muruganantham

... APPELLANTS/APPELLANTS/
1 to 3 and 6th DEFENDANTS

vs.

1. Visveswaran
2. Radhakrishnan
3. Nagalakshmi @ Renuga
4. Pandiyammal @ Murugayammal
5. Nagaraj

... RESPONDENTS/RESPONDENTS/
PLAINTIFF

... RESPONDENTS/RESPONDENTS/
4, 5 & 7TH DEFENDANTS

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 6.6.2019 passed in A.S.No.19 of 2016 on the file of the Additional District Judge (FTC), Theni confirming the Judgment and decree dated 25.4.2016 passed in O.S.No.101 of 2009 on the file of the Subordinate Judge, Theni.

For Appellants : Mr.P.V.Gurudevaraj
For R1 and R2 : Mr.J.Barathan

JUDGMENT

Defendants 1 to 3 and 6 in the suit have come up in the Second Appeal challenging the concurrent findings of the courts below in granting the relief of declaration, recovery of possession and mesne profits to the plaintiffs/respondents 1 and 2 herein.

2. The case of the plaintiffs is as under:-

The suit property and an adjacent property originally belonged to one Subbaian Chettiar, the grandfather of the plaintiffs having been purchased by him through a registered sale deed dated 27.11.1951. He died on 22.8.1987. The plaintiffs' father Sarkarairaj predeceased him on 24.4.1984. In the partition between the legal heirs of Subbaian Chettiar vide partition deed dated 10.10.1997, the suit property was allotted to the plaintiffs and one brother Babu. The said Babu passed away on 23.10.2007



leaving his wife Meena as his legal heir. Subsequently, in a partition deed dated 31.1.2008 among the plaintiffs and the said Meena, she had relinquished her right over the suit property in favour of the plaintiffs. One Sangili, husband of the first defendant and father of defendants 2 to 7 was a tenant in the suit property. He passed away on 3.8.2006 and after his demise, his legal heirs stopped paying rent and thereby the plaintiffs sent a lawyer notice on 24.3.2009 demanding payment of rent and hand over possession. All the defendants except the fourth defendant received the notice and sent a reply lawyer notice on 1.5.2009 denying the relationship of landlord and tenant and on the contrary, claiming title to the suit property through an unregistered sale deed dated 15.7.1985 alleged to have been executed by Subbaian Chettiar in favour of Sangili and hence, the plaintiffs had to file the suit seeking for declaration, recovery of possession and mesne profits.

3. Defendants 1 to 3 and 6 filed a written statement contending as under:-

Subbaian Chettiar had sold the suit property to Sangili through an unregistered sale deed dated 15.7.1985 and the said Sangili and his wife, the first defendant had settled the same in favour of their daughter the second defendant on 7.2.1997 and thereby the second defendant is the absolute owner of the suit property. The second defendant had also filed a suit in O.S.No.345 of 2006 on the file of the District Munsif, Theni against the Commissioner of Theni Municipality for assessing the property in the name of Subbaian Chettiar and the same was dismissed on 13.2.2007. The defendants denied the title of the plaintiffs and claimed adverse possession.

4. On the above pleadings, the Trial Court had framed the following issues for consideration:-

- (1) Whether Subbaian Chettiar had executed sale deed in favour of Sangili, father of defendants 2, 3 and 6 in respect of the suit property and other properties?
- (2) Whether the settlement deed dated 7.2.1997 executed by Sangili and the first defendant in favour of the second defendant in respect of the suit property is a valid one?
- (3) Whether partition was wrongly made in the partition deed dated 10.10.1997?
- (4) Whether the plaintiffs are entitled to declaration and recovery of possession as claimed by them?
- (5) Whether the plaintiffs are entitled to past and future mesne profits?
- (6) To what other relief the plaintiffs are entitled?

5. During the trial, the the first plaintiff examined himself while the second defendant examined as



DW1. The first defendant was examined as DW2 and the Assistants of Revenue Department were examined as D.Ws.3 and 4. Exs.B1 to B19 were marked on the side of the defendants. Witness documents were marked as Exs.X1 to X5.

6. On analysis of oral and documentary evidence, the Trial Court had decreed the suit for declaration, recovery of possession and for mesne profits.

7. Aggrieved against the judgment and decree of the Trial Court, defendants 1 to 3 and 6/the appellants herein had filed the appeal contending that the Trial Court had not properly appreciated the oral and documentary evidence to hold that the sale deed dated 15.7.1985 is invalid by ignoring the evidence of D.Ws.3 and 4, the Assistants of Revenue Department, who spoke about impounding of the document and it had ignored the continuous possession and enjoyment of the suit property by the appellants for 25 years to the knowledge of the plaintiffs and the fact that the plaintiffs had never collected rent from the appellants.

8. The Appellate Court had determined and considered the following points:-

- (1) Whether the Trial Court has committed any error in holding that the unregistered sale deed dated 15.7.1985 executed by Subbaian Chettiar in favour of Sangili is an invalid document and it does not create any right or title in favour of Sangili?
- (2) Whether the Trial Court has committed any error in holding that the Settlement Deed dated 7.2.1997 executed by the first defendant and Sangili Thevar in favour of the second defendant is an invalid document and it does not create any right or title in favour of the second defendant?
- (3) Whether the Trial Court has committed any error in granting a decree in favour of the plaintiffs?
- (4) Whether the appeal is liable to be allowed?

9. On reappraisal of the oral and documentary evidence, the appellant court had concurred with the finding of the Trial Court, aggrieved against which, the present Second Appeal has been filed by defendants 1 to 3 and 6.

10. Learned counsel appearing for the appellants would submit that the courts below have not properly appreciated the oral and documentary evidence on the side of the appellants, especially the evidence of DW3 and DW4 the official witnesses of the Revenue Department with regard to impounding of the unregistered sale deed dated 15.7.1985 under Section 40 of the Stamp Act, 1899 and by ignoring Ex.X2 the proceeding of the District Collector in this regard. He would also submit that the courts below have also ignored the principle of adverse possession when they had



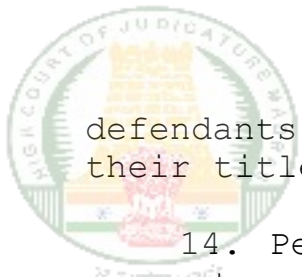
considered the sale deed dated 15.7.1985 as invalid moreso when the the plaintiffs have not produced any rent agreement or rent receipts to establish that the appellants were tenants from the year 1985. He would also submit that the suit for recovery of possession filed belatedly is barred by limitation.

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11. Per contra, learned counsel appearing for respondents 1 and 2/plaintiffs would submit that to prove their possession and enjoyment, the plaintiffs have not produced any tax receipts either in the name of Sangili or in the name of the second defendant and in fact, they have not even produced the original of the so-called unregistered sale deed dated 15.7.1985. He would further submit that only after lawyer's notice issued by the plaintiffs, the defendants had created the unregistered sale deed and the said document is inadmissible in evidence and the same is barred under Section 17(1)(b) read with Section 49 of the Registration Act whereas the plaintiff had proved their title to the suit property through registered documents and property tax receipts. He would also submit that the defendants are not entitled to take the contradictory pleas of independent title and adverse possession simultaneously, which are mutually inconsistent and destructive in nature. He would also submit that the Trial Court, rightly finding that the plaintiffs have proved their case and the defendants have not proved either the claim of adverse possession or the sale, had decreed the suit in favour of the plaintiffs and the Appellate Court, on perusing the entire materials on record, concurred with the findings of the Trial Court. He would also submit that there is no substantial question of law for admitting the Second Appeal.

12. Heard the learned counsel appearing for the parties and perused the materials available on record.

13. The plaintiffs have filed the suit for declaration, recovery of possession and for mesne profits. The fact that was undisputed by both the parties is that the suit property originally belonged to one Subbaian Chettiar, the grandfather of the plaintiffs as evidenced by sale deed, Ex.A1 dated 27.11.1951. The claim of the plaintiffs is that their grandfather died on 22.8.1987 as evidenced by the Death Certificate Ex.A2 dated 27.8.1987 and their father Sarkarairaj had predeceased their grandfather on 24.4.1984 as evidenced by the death certificate Ex.A3 and they had acquired the title to the suit property through partition deeds dated 10.10.1997 and 31.1.2008 marked as Exs.A7 and A9 and the defendants, the legal heirs of one Sangili, who happened to be a tenant in respect of the suit property had defaulted in paying the rent and when they issued lawyer's notice, they had denied the title of the plaintiffs and the



defendants and thereby they had filed the suit for declaration of their title, recovery of possession and mesne profits.

14. Per contra, the claim of the defendants is that the suit property was sold by the said Subbaian Chettiar in favour of Sangili, the husband of the first defendant and father of defendants 2 to 7 under an unregistered sale deed, marked as Ex.X2 and thereupon, the said Sangili and his wife, the first defendant had settled the same in favour of their daughter, the second defendant and thereby, it belongs exclusively to the second defendant. The appellants claim that the property in their possession bears Door No.236 and the property lying to its west bears Door No.237 which belongs to the plaintiffs, however, the revenue records had not been mutated even after the alleged sale deed dated 15.7.1985 executed by Subbaian Chettiar and they stand only in the name of Subbaian Chettiar and thereby the property bearing Door No.236 was wrongly described in the partition deeds relied on by the plaintiffs to claim title to the said property. The defendants deny the relationship of landlord-tenant between the plaintiffs and the defendants and in fact, they deny the title of the plaintiffs to the suit property.

15. When it is not in dispute that the title to the suit property originally belonged to Subbaian Chettiar, that the plaintiffs are the legal heirs of the said Subbaian Chettiar and they claim their title to the suit property through partitions that took place in their family, moreso when such partitions were not disputed by the parties to such partition deeds, the issue to be resolved is whether the unregistered sale deed dated 15.7.1985, marked as Ex.X2 alleged to have been executed by the said Subbaian Chettiar in favour of one Sangili, husband of the first defendant and father of other defendants, on which the defendants base their claim, is valid or not to unravel the golden knot in this case as the entire other issues revolve around the said unregistered sale deed and its validity.

16. It is also to be noted that the appellants claim title to the suit property based on an unregistered sale deed dated 15.7.1985 on one hand and they also claim adverse possession on the other hand on the strength of long possession without any objection from the plaintiffs whereas it is the case of the plaintiffs that the nature of possession of the defendants was only a permissive one in the capacity of tenant.

17. In this regard, it is relevant to note that in **Narasamma v. A.Krishnappa ((2020) 15 SCC 218)**, the Apex Court has held that the claim of independent title and adverse possession simultaneously and from the same date amounts to taking



contradictory pleas and when a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property and thus, the plea on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.

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18. The defendants cannot have their cake and eat it too. It appears that they emphatically rely on the unregistered sale deed, Ex.X2 as an origin to trace their title, but, at the same time, they seek to rely on the principle of adverse possession. It is well settled law that in case of claim of adverse possession, it must be actual, open exclusive, hostile and continued over statutory period by wrongful dispossession of rightful owner and mere possession cannot be deemed to be adverse possession merely on the basis of denial of another's title over property for that would be violative of basic rights of actual owner. (See: **Ram Nagina Rai v. Deo Kumar Rai (2019) 13 SCC 324**).

19. Therefore, if at all, the appellants can claim adverse possession as an alternative plea only in case the plaintiffs fail to establish their title to the suit property and the defendants are able to establish adverse possession for more than 12 years as held in **L.N.Aswathama and another v. P.Prakash (2009 SAR (Civil) 684)**. In this case, the appellants had not established that their possession was adverse to the title of the true owner and rather it had only been a permissive one, at the cost of repetition, as evidenced by the recital in Ex.X2.

20. Therefore, once again, the issue turns to the title claimed by the parties. On perusal of the entire documents, as produced in the typed set of papers and the judgments of the courts below, it is clear that the plaintiffs have contended that the suit property devolved on them through the partition deeds entered among the family members/legal heirs of Subbaian Chettiar and they had succeeded in proving their title whereas to claim title, the defendants rely on an unregistered sale deed, marked as Ex.X2 and the other witness documents viz., Exs.X1 and X3 to X5 with regard to impounding of such document and the oral evidence of the employees of the Revenue Department as DW3 and DW4.

21. In this regard, the courts below have properly appreciated the case in the light of legal provisions prevailing with regard to unregistered document relied on by the party to claim title. The foremost thing to be seen is that the appellants have not produced the original of the unregistered sale deed dated 15.7.1985, which they rely heavily to claim title and it had been impounded and it is pending the proceedings under Section 41 of the Stamp Act, 1899.



22. It will be apposite to refer here the provisions relating to the impact of the unregistered documents. Section 17(1)(b) of the Registration Act, 1908 reads as under:-

"17. Documents of which registration is compulsory

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:-

- (a) instruments of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;"

Section 49 of the Registration Act reads thus:-

"49. Effect of non-registration of documents required to be registered

No document required by section 17 32[or by any provision of the Transfer of Property Act, 1882] to be registered shall-

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:"

23. A perusal of the above provisions would emphasis the necessity of registration of the document and make it clear that even though the unregistered sale deed had been impounded, the authority cannot cure the defect and the impact of non-registration of the same. Therefore, on the basis of such unregistered sale deed, the said Sangili himself or his wife Guruvammal, the first defendant had not acquired any right or title to the suit property. When such being the case, based on that unregistered document, they cannot settle the suit property in favour of their daughter, the second defendant.

24. The plaintiffs claim that the occupation of the suit



property by the defendants is only a permissive one in the capacity of a tenant whereas the defendants seek take shelter by contending that the plaintiffs had not produced any documents to prove the tenancy.

25. In this regard, a perusal of the so-called unregistered sale deed dated 15.7.1985, Ex.X2 itself makes it clear that it recites the tenancy of Sangili and Guruvammal in the suit property. Therefore, their occupation can be considered only as a permissive one in the capacity of tenant and not as an adverse possession. When the landlord-tenant relationship is revealed from the recitals of the unregistered sale deed relied on by the defendants, the claim of adverse possession has to fail.

26. So far as the title is concerned, the defendants cannot make out a claim on the basis of an unregistered sale deed which is not valid in the eye of law. The said Sangili or his wife, the first defendant, having not acquired any right or title to the suit property, could not have rightfully settled the same in favour of their daughter, the second defendant vide Ex.B11 dated 7.2.1997. Therefore, this court is of the view that the courts below have not committed any error or infirmity in decreeing the suit for declaration, recovery of possession and mesne profits. Moreover, in this case, the appellants have not taken any steps to file a counter claim to declare that they are the owners of the suit property.

27. The Hon'ble Apex Court in **Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)** has categorically held as under:-

"23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any



substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

28. In the opinion of this court, the Appellants in the instant Second Appeal have not made out any substantial question of law to admit this Second Appeal as laid down in **Kirpa Ram's** case (cited supra).

29. In view of the above, the Second Appeal fails and is, accordingly, dismissed without being admitted. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

ssk.

To

1. Additional District Judge (FTC),
Theni.

2. Subordinate Judge,
Theni.

Copy to:

The Record Keeper,
V.R. Section,

Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-35825[F] dated 25/11/2021)

+1 CC to M/s.P.V.GURUDEVARAJ, Advocate (SR-35624[F] dated 24/11/2021)

S.A. (MD) No.265 of 2021
23.11.2021

KS (CO)