



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.299 of 2007

WEB COPY

1. Sivanandi
2. Kumarandi
3. Sellakannau

... Appellants / Respondents /
Defendants
Vs.

1. Ayyar Thevar
2. Chinnasamy Thevar

... Respondents / Appellants /
Plaintiffs

Prayer: Second appeal filed under Section 100 of C.P.C., against the judgment and decree dated 22.07.2005 made in A.S.No.161 of 2004 on the file of the I Additional Sub Court, Madurai, reversing the judgment and decree dated 30.03.2004 made in O.S.No.281 of 1995 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti.

For Appellants : Mr.PT.S.Narendravasan

For Respondents : Mr.M.Alagathevan

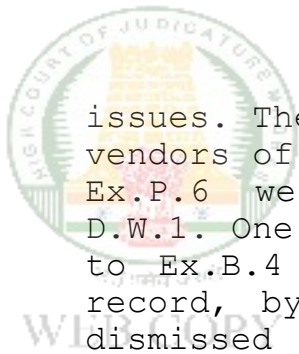
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J U D G M E N T

The defendants in O.S.No.281 of 1995 on the file of the District Munsif cum Judicial Magistrate No.1, Usilampatti, are the appellants in this second appeal.

2. The respondents herein filed the said suit seeking the relief of permanent injunction. The case of the plaintiffs is that the suit properties were purchased by them from the title holders vide sale deed dated 25.03.1992. Even prior to the purchase of the suit properties under Ex.A.1, the plaintiffs have laid pipelines underneath for taking water from their well that is situated to the north of the suit property to irrigate their fields lying to the south of the suit property. Since the defendants laid rival claim on the strength of the sale deed dated 29.04.2002, they were constrained to file the suit in question for the relief of permanent injunction.

3. The defendants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed as many as nine issues. Later, they were recast into three



issues. The first plaintiff examined himself as P.W.1 and one of the vendors of Ex.A.1, namely, Arumugam was examined as P.W.2. Ex.P.1 to Ex.P.6 were marked. The first defendant examined himself as D.W.1. One of his vendors under Ex.B.2 was examined as D.W.2. Ex.B.1 to Ex.B.4 were marked. After a consideration of the evidence on record, by judgment and decree dated 30.03.2004, the trial Court dismissed the suit. Aggrieved by the same, the plaintiffs filed A.S.No.161 of 2004 before the I Additional Sub Judge, Madurai. Vide judgment and decree dated 22.07.2005, the first appellate Court reversed the decision of the trial Court and allowed the appeal and decreed the suit as prayed for. Challenging the same, this second appeal came to be filed.

4. This second appeal was admitted on the following substantial questions of law:-

" 1. Whether the lower appellate Court is right in finding that the sale deed dated 11.05.1992 under Ex.A.1 is earlier to Ex.B.2 dated 29.04.1992, particularly when the plaintiffs failed to take due care to find out encumbrances as prescribed under Section 54 of T.P.Act, before purchasing the property under Ex.A.1 which is admittedly subsequent to Ex.B.2?

2. Whether the finding of the lower appellate Court is in conformity to the well settled principles that the plaintiffs have to establish their case on the strength of their own case and not to rely on alleged weakness of the defendant's case? "

5. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and restore the decision of the trial Court.

6. Per contra, the learned counsel appearing for the respondents / plaintiffs submitted that the impugned judgment and decree do not call for any interference.

7. I carefully considered the rival contentions and went through the evidence on record.

8. It is the admitted case of both the parties that the suit properties originally belonged to one Sivanandi Thevar @ Vellaiyan. The plaintiffs claimed that they had purchased from the legal heirs of the said Sivanandi Thevar under Ex.A.1 dated 25.03.1992. On the other hand, the defendants claimed title over the suit property under Ex.B.2 dated 29.04.2002. In the written statement, the defendants have challenged that the suit property was purchased by the plaintiffs from the legal heirs of Sivanandi Thevar. It was further alleged that after the defendants purchased the suit property from the legal heirs of Sivanandi Thevar under Ex.B.2 dated

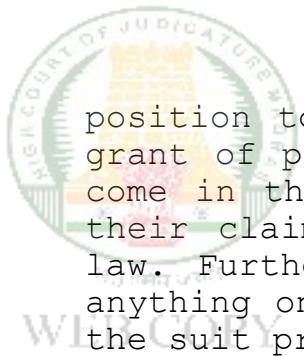


29.04.1992, the plaintiffs had fabricated the documents under Ex.A.1.

9. I went through Ex.A.1. Though it was presented for registration only on 11.05.1992, the stamp papers are dated 21.02.1992 and it is said to have been executed on 25.03.1992. If really the document was executed on 25.03.1992, there is absolutely no reason as to why, there was a delay of almost two months for presenting the document for registration. Of course, as rightly contended by the learned counsel appearing for the respondents, a duly executed document can be presented for registration within three months from the date of execution and it will relate back to the date of execution. This is not only challenged by the defendants, but they have also questioned the competence of the vendors of Ex.A.1 to convey title in respect of the suit property. Thus a *bona fide* doubt has been raised regarding title. In such circumstances, the plaintiffs could not have maintained a simple suit for injunction. The plaintiffs ought to have sought relief of declaration also. The plaintiffs have also not really established that the executants of Ex.A.1 are the legal heirs of Sivanandi Thevar @ Vellaiyan. In these circumstances, the trial Court rightly declined to give relief to the plaintiffs based on Ex.A.1. Without even taking note of this fundamental aspect, the first appellate Court has erroneously reversed the decision of the trial Court by picking holes in the defence. That is why, while admitting the second appeal, second substantial question of law was framed by this Court and the same is answered in favour of the appellants.

10. It is beyond dispute that even before the registration of Ex.A.1 on 11.05.1992, Ex.B.1 had already been registered. Therefore, the first appellate Court could not have rendered a finding that the sale deed standing in the name of the plaintiffs under Ex.A.1 is prior in point of time. I therefore answer the first substantial question of law in favour of the appellants. Though both the substantial questions of law are answered in favour of the appellants and I also set aside the impugned judgment and decree passed by the first appellate Court, the decision of the trial Court cannot be restored as such.

11. From a reading of the evidence on record, it has been established beyond dispute that the suit pipelines were already in existence. The plaintiffs would claim that the pipelines were laid after getting oral permission from the owners of the suit property. The suit pipelines are being used to take water from the plaintiffs' well to irrigate their own fields. It appears that even during the pendency of the appeal, the plaintiffs had been granted temporary injunction in their favour. During the pendency of the second appeal, injunction was also not suspended. On the date of the filing of the suit, the suit pipelines were very much in existence. Hence, the plaintiffs will be entitled to injunction in respect of the suit



position to establish their title over the suit property, then the grant of permanent injunction in favour of the plaintiffs will not come in the way of the defendants from filing a suit to establish their claim and to get appropriate relief in the manner known to law. Further, I make it clear that this Court has not pronounced anything on the respective claims of title of both the parties over the suit property.

12. This second appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The I Additional Sub Judge,
Madurai.
2. The District Munsif cum Judicial Magistrate No.I,
Usilampatti.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-31815[F] dated 08/10/2021)

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