



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.777 of 2005

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1. Sivasamy
2. A.V.Gopalakrishnan
3. A.V.Subramanian
4. A.V.Ramakrishnan
5. A.V.Gokulan
6. A.V.Indiran

... Appellants / Respondents /
Defendants

Vs.

1. V.M.Peyapandiyan
2. A.V.Manoharan

... 1st Respondent / Appellant /
Plaintiff
... 2nd Respondent / 7th Respondent /
7th Defendant

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 25.02.2003 passed in A.S.No.163 of 2000 on the file of the Principal Subordinate Court, Madurai, reversing the judgment and decree dated 29.10.1999 passed in O.S.No.30 of 1996 on the file of the District Munsif Court, Thirumangalam and thereby dismiss this suit in O.S.No.30 of 1996 with costs throughout.

For Appellants : Mr.J.Barathan,
for M/s.T.R.Jeyapalam.

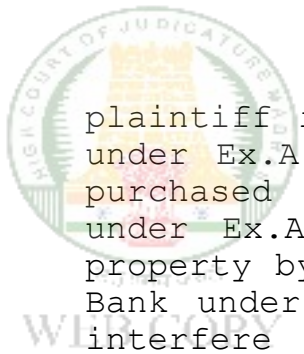
For R-1 : Mr.H.Lakshmi Shankar,
for Mr.S.Elango.

For R-2 : No appearance.

J U D G M E N T

The defendants in O.S.No.30 of 1996 on the file of the District Munsif Court, Thirumangalam, are the appellants in this second appeal.

2. The first respondent herein, namely, V.M.Peyapandiyan filed the said suit seeking the relief of declaration and permanent injunction in respect of the suit properties. The suit property is comprised in Survey No.428/3 in Karadikal Village, Thirumangalam Taluk, measuring an extent of 2 acres and 12 cents. The case of the



plaintiff is that he purchased the suit property from one Rajammal under Ex.A.1 dated 19.05.1995. The said Rajammal's husband Rajaram purchased the suit property from one Varthiniyammal and another under Ex.A.11 dated 15.02.1971. Rajaram had dealt with the suit property by mortgaging the same in favour of the local Co-operative Bank under Ex.A.2 dated 02.04.1971. Since the defendants tried to interfere with the possession and enjoyment, the plaintiff was constrained to file the said suit. The appellants herein filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed the necessary issues.

3. The plaintiff examined himself as P.W.1 and one Kamatchi as P.W.2. Ex.A.1 to Ex.A.18 were marked. On the side of the defendants as many as three witnesses were examined. Ex.B.1 to Ex.B.8 were marked. An Advocate Commissioner was appointed and his report was marked as Ex.C.1.

4. After a consideration of the evidence on record, the trial Court by judgment and decree dated 29.10.1999 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.163 of 2000 before the Principal Subordinate Court, Madurai. In the first appeal, the defendants filed I.A.No.54 of 2003 for adducing additional evidence. The said I.A. was allowed and Ex.A.19 Patta came to be marked. After a consideration of the evidence on record, the first appellate Court by judgment and decree dated 25.02.2003 set aside 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.

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

"1. Whether the lower appellate Court has committed an error of law in failing to follow the principles that the plaintiff should succeed on the strength of his own case and not by picking holes in the case of the defendants vide 1946 II MLJ 98, 1999 I MLJ 769 and 2003 (3) L.W.763?

2. Whether patta is a document of title and can it be relied upon for proving title in a suit for declaration of title?

3. Whether the lower appellate Court committed an error of law in omitting to draw proper inference from Ex.A.2, the order of the Revenue Divisional Officer in appeal, and Ex.B.8, the patta pass book issued to Vasudeva Iyer, father of the defendants in the year 1971?

4. Whether the lower appellate Court committed an error of law in holding that the plaintiff's vendor has got title to the suit property on the basis of UDR proceedings of the year 1987 by omitting to consider that the patta pass book given to Vasudeva Iyer, defendant's father is of the year 1973?

5. Whether the lower appellate Court has committed an error of law in holding that mere marking of Ex.A.11 amounts to proof of



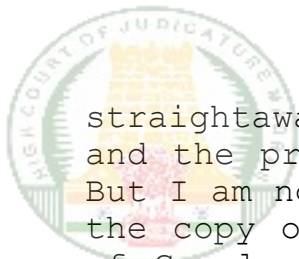
6. The learned counsel appearing for the appellants / defendants submitted that the plaintiff had traced his title from one Varthiniyammal. There is absolutely no material to show that the said Varthiniyammal had any title over the suit property. The learned trial Munsif after a careful consideration of the evidence adduced by the plaintiff had clearly noted that there is no correlation between Survey number and what was mentioned in Ex.A.11. The first appellate Court ought to have seen that there was a serious contest regarding the title between the father of the contesting defendants and Rajaram from whom the plaintiff traced his title. When the revenue record was changed in the name of Rajaram, Vasudeva Iyer filed an appeal before the Revenue Divisional Officer, Usilampatti under Ex.B.2 to set aside the mutation of patta in favour of Rajaram. He would also state that the trial Court had given a categorical finding that the property appears to be full of thorny shrubs and that therefore, the plaintiff could not establish possession over the same. The first appellate Court by an inverse application of the principle, " possession follows title " had conferred title on the plaintiff. He also pointed out that the plaintiff was allowed to mark Ex.A.19 and the same was treated as additional evidence even without following the procedure set out in Order 41 Rule 28 of C.P.C. Even though on a deeper scrutiny one may fault the case projected by the defendants, on the basis of the weakness in the defence, the plaintiff cannot be allowed to succeed. He called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and restore the decision of the trial Court.

7. In the alternative, he submitted that this Court could remand the matter to the file of the trial Court, since the first appellate Court without following the procedure set out in Order 41, Rule 28 C.P.C., had permitted marking of Ex.A.19.

8. Per contra, the learned counsel appearing for the first respondent/ plaintiff submitted that the impugned judgment does not call for any interference and he called for dismissal of the appeal.

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

10. The suit property is comprised in Survey No.428/3 in Karadikal Village. The defendants have not filed any parent title document. On the other hand, the plaintiff has filed Ex.A.1 sale deed dated 19.05.1995 executed by one Rajammal. The said Rajammal in turn had inherited the property from her husband, namely, Rajaram. Rajaram had purchased the suit property under Ex.A.11 dated 15.02.1971 from one Varthiniyammal and another. The defendants themselves have admitted that the suit property originally stood in the name of Gopalsamy Naidu. Ex.A.19 is the settlement deed issued in the name of Gopalsamy Naidu. It is true that Ex.A.19 was



straightaway allowed to come on record by the first appellate Court and the procedure under Order 41, Rule 28 C.P.C. was not followed. But I am not inclined to remand the matter on that ground. Ex.B.1 is the copy of SLR marked by the appellants. In Ex.B.1 also, the name of Gopalsamy Naidu is finding mention. D.W.2 Gopalakrishnan admits that the settlement proceedings stood in the name of Gopalsamy Naidu. The legal heirs of Gopalsamy Naidu have executed Ex.A.18 dated 17.02.1971 stating that they have no objection for Varthiniyammal to convey the property comprised in Survey No.428/3. Of course Ex.A.18 cannot be called as the document of conveyance. It is however a release deed. But the fact remains that a document was executed in favour of Varthiniyammal by the legal heirs of Gopalsamy Naidu. The evidence on record clearly points to the fact that the property originally stood in the name of Gopalsamy Naidu. Therefore, while the plaintiff may not be able to project an absolute title, he certainly has a better title compared to that of the appellants. I am satisfied on a overall consideration of the evidence on record that the case of the plaintiff stands on a higher footing compared to that of the appellants. Therefore, the substantial questions of law are answered against the appellants.

11. This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

PMU

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To:

1. The Principal Subordinate Judge,
Madurai.
2. The District Munsif,
Thirumangalam.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai, (2 copies)

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+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-33535[F] dated 02/11/2021)

+1 CC to M/s.S.ELANGO, Advocate (SR-33717[F] dated 08/11/2021)

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