



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 1.10.2021.

CORAM

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

S.A.(MD) No.612 of 2021
and
C.M.P.(MD) No.8175 of 2021

Sekar

Appellant/Appellant/Plaintiff

vs.

1. Murugesan
2. Jegan
3. Vinoth

Respondents/Respondent/Defendant

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 30.11.2020 passed in A.S.No.61 of 2020 on the file of the Additional District and Sessions Judge, Fast Track Court, Tenkasi confirming the Judgment and decree dated 20.7.2020 passed in O.S.No.79 of 2018 on the file of the Principal Sub Judge, Tenkasi.

For Appellant : Mr.S.S.Thesigan

JUDGMENT

The plaintiff, who failed in both the courts below in getting a decree for declaration and injunction in respect of the suit property, has filed the present Second Appeal questioning the correctness of the concurrent findings of the courts below.

2. The factual background is as under:-

(i) The suit property originally belonged to one Arunachalam as his ancestral property and he had been in possession and enjoyment of the same by paying kist etc. He had bequeathed the same to his son Manikandan through his Will dated 13.2.2008 and subsequently, he died on 6.9.2012. Since then, the said Manikandan was in possession and enjoyment of the same by getting patta in his name and paying kist etc. and on 30.9.2015, the said Manikandan had sold the same to the plaintiff on 30.9.2015 and from then, the plaintiff had been in possession and enjoyment of the same.

(ii) Whiles, the first defendant, who is the legal heir of the sister of the said Arunachalam, without any legal right over the suit property, claims right and title to the same in collusion with defendants 2 and 3 and had been interfering with the possession and



enjoyment of the plaintiff from 12.2.2018 onwards. The plaintiff had lodged a complaint to the the Joint Sub Registrar I, Tenkasi on 14.2.2018. Except the plaintiff, nobody else has got any right or title over the suit property and since the defendants had been attempting to interfere with the possession and enjoyment of the plaintiff, the present suit had been filed.

(iii) The defendants filed written statement contending as under:-

The suit is not maintainable. The Will dated 13.2.2008 alleged to have been executed by Arunachalam is a fake and fraudulent one. The said Arunachalam had sold the suit property to the first defendant and his wife Lakshmi Ammal on 16.4.1973 and since then, they had been in possession and enjoyment of the same and on the death of his wife Lakshmi, her legal heirs viz., the first defendant and also defendants 2 and 3 had been enjoying the share of the suit property belonged to Lakshmi Ammal. Whiles, the subsequent Will dated 13.2.2008 had been created fraudulently to usurp the suit property already sold to the first defendant and his wife and based upon such Will, the sale deed dated 30.9.2015 in favour of the plaintiff had also been introduced. In fact, the alleged vendor Manikandan himself had not acquired title to the suit property and thereby the plaintiff, who claims title through the sale deed executed by the said Manikandan has no right or title to the suit property. The plaintiff and the said Manikandan, in collusion with each other, had filed the present suit and hence, it is liable to be set aside.

(iv) On the above pleadings, the Trial Court had framed the following issues for consideration:-

- (1) Is it true that first defendant and his wife had purchased the suit property through sale deed dated 16.4.1973?
- (2) It is true that the sale deed dated 16.4.1973 was acted upon?
- (3) Whether the sale deed dated 30.9.2015 was a fraudulent one?
- (4) Whether the plaintiff is entitled to the declaration sought for?
- (5) Whether the plaintiff is entitled to permanent injunction sought for?

(v) During the Trial, the plaintiff examined himself as PW1 and marked 12 documents while the first defendant examined himself as DW1 and marked 2 documents.

(vi) On analysis of the oral and documentary evidence, the Trial Court had dismissed the suit, aggrieved against which, the plaintiff had preferred appeal in A.S.No.61 of 2020 on the file of the Additional District and Sessions Judge, Fast Track Court, Tenkasi.

(vii) In the appeal, the plaintiff claimed that the Trial Court had not properly appreciated the evidence to come to a conclusion that the Will Ex.A2 and the sale deed Ex.A5 are not valid ones and the Trial Court had erred in coming to the conclusion that no evidence is produced by the plaintiff to prove his possession when Ex.A4 is produced by the plaintiff to prove that kist had been paid by Manikandan and when the defendants had not produced any



documentary evidence to prove that they were in possession and enjoyment of the suit property based on Ex.B1 sale deed, the Trial Court ought to have come to a conclusion that Ex.B1 was not acted upon.

(viii) The following points were taken up for consideration in the Appeal by the appellate court:-

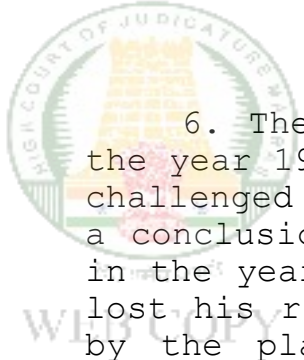
- (1) Whether the Will Ex.A2 is a true and valid one?
- (2) Whether the plaintiff is entitled to the relief of declaration and permanent injunction in respect of the suit property?
- (3) Whether the appeal is allowable or not?

(ix) The Appellate Court, on reconsidering the oral and documentary evidence, had concurred with the finding of the Trial Court, aggrieved against which, the present Second Appeal has been filed by the plaintiff.

3. Learned counsel for the appellant/plaintiff would submit that Ex.A12/B1 is a sham and nominal document which did not confer any title on the respondents/defendants and such document was not acted upon and no revenue records were mutated pursuant to the said sale and the courts below have committed error in disbelieving the Will Ex.A2 and the courts below have failed to appreciate the fact that the physical possession of the suit property was remaining with the predecessors in title of the plaintiff and with the plaintiff after execution of Ex.A5.

4. Having heard the learned counsel for the appellant/plaintiff and perused the materials available on record, this court finds that the plaintiff claims right and title to the suit property through Ex.A5 sale deed dated 30.5.2015 executed by one Manikandan, son of Arunachalam, who claims to have acquired the same through a Will Ex.A2 dated 13.2.2008 executed by his father and the plaintiff intends to take shelter under the receipts for payment of kist, etc. to prove that possession of the suit property was with the predecessors in title and subsequently with the plaintiff, whereas, the defendants claim their right and title to the suit property based on Ex.B1 sale deed dated 16.4.1973 executed by the said Arunachalam himself, the original owner of the suit property.

5. The undisputed fact is that the suit property originally belonged to one Arunachalam as it is his ancestral property. The dispute is between the execution of two documents viz., A2 Will dated 13.2.2008 and Ex.B1 sale deed dated 16.4.1973. The claim of the plaintiff is based on the Will Ex.A2 dated 13.2.2008 executed by the said Arunachalam, a document, based on which, Manikandan, son of the said Arunachalam is said to have acquired title to the suit property and had executed the sale deed dated Ex.A5 dated 30.9.2015 in favour of the plaintiff. The defendants base their claim on Ex.B1 sale deed dated 16.4.1973 executed by the said Arunachalam himself in favour of the first defendant and his wife Lakshmi Ammal.



6. The document executed earlier in point of time is Ex.B1 in the year 1973 itself and it is a registered one which had never been challenged by the plaintiff and thereby the Trial Court had come to a conclusion that it was acted upon. After executing a sale deed in the year 1973 itself, the original owner Arunachalam himself had lost his right over the suit property and thereby the Will claimed by the plaintiff to have been executed by the said Arunachalam cannot be deemed to be a valid document and the sale deed executed by his son Manikandan in favour of the plaintiff, on the strength of the said Will, cannot bind the defendants.

7. Having so observed, the Trial Court found that the documents filed by the plaintiff in support of his possession viz., receipts and other documents showing payment of receipt will not come to his rescue since he can, if at all, be a trespasser having not proved the right and title of his vendor himself and thereby rejected the claim of declaration and permanent injunction.

8. The appellate court had dealt with the Will Ex.A2 in depth and found that it only contains the thumb impression alleged to be that of the testator of the Will and no signature is found and the said Will had not been properly proved to be valid in the eye of law and further, copy of the Will alone has been produced in court and there is no proper explanation as to the whereabouts of the original Will and that no witness to the Will was examined in the suit to prove the genuineness of the Will and thereby the plaintiff had not taken any steps to prove the Will, moreso when Ex.B1 sale deed contains the signature of the said Arunachalam and thereby disbelieved the Will, Ex.A2.

9. Further, the appellate court has also found that the plaintiff has not initiated to disprove the execution of the sale deed Ex.B1 except contending that it was not acted upon due to non mutation of revenue records. In this regard, the appellate court has rightly found that mere non mutation of revenue records will not be a ground to come to a conclusion that the sale deed was not acted upon. It has further rightly observed that the original title holder viz., Arunachalam himself had lost his right after executing the sale deed Ex.B1 and thereby he is estopped from executing any Will in respect of the same property. Observing so, the appellate court had rightly concurred with the finding of the Trial Court and declined to grant the relief of declaration and permanent injunction.

10. This court does not find any error or infirmity in the findings of the courts below. In the opinion of this court, the Appellant has not made any substantial question of law to admit this Second Appeal. The Hon'ble Apex Court in **Kirpa Ram (D) Tr.Lrs. vs Surrender Deo Gaur (2020 Scc OnLine SC 935)** has categorically held as under:-

<https://hcservices.ecourts.gov.in/hcservices/>



"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."

11. 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 (CO)

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/ /2021

Sub Assistant Registrar(CS)

ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised 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. Additional District and Sessions Judge,
Fast Track Court,
Tenkasi.

2. Principal Sub Judge,
Tenkasi.

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C.M.P. (MD) No.8175 of 2021
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KMV (CO)

KB(16.11.2021) 6P 3C