



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2021

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**S.A(MD)No.283 of 2021
and
C.M.P(MD)No.3919 of 2021**

S.Mohamed Vaipathan ... Appellant/Appellant/Plaintiff

Vs.

1.M.Samsu Rowther
2.S.Kadarkhan
3.S.Saleel

... Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 11.12.2020 passed in A.S.No.25 of 2018, on the file of the Additional District Court, Paramakudi, confirming the judgment and decree dated 19.02.2018 passed in O.S.No.165 of 2017 on the file of the Sub Court, Mudukulathur.

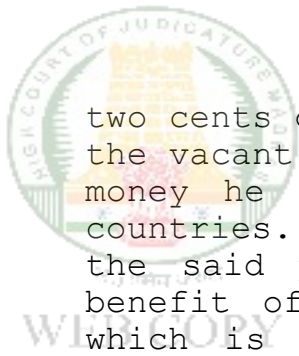
For Appellant : Mr.S.Siva Thilakar

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.165 of 2017 by the Sub Court, Mudukulathur and in A.S.No.25 of 2018 by the Additional District Court, Paramakudi, are being challenged in the present Second Appeal.

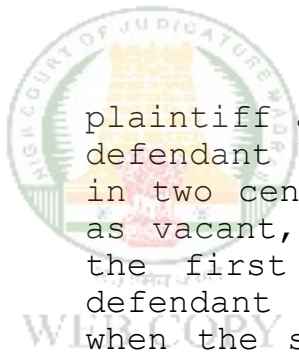
2. The appellant/plaintiff has instituted a suit in O.S.No.165 of 2017, on the file of the trial Court for the relief of declaration and permanent injunction, wherein, the present respondents have been shown as defendants.

3. In the plaint, it is averred that the defendants 2 and 3 are the brothers and the first defendant is the father of the plaintiff. The suit property measuring an extent of 4 cents is a vacant site. On the Western side portion of the suit property, in two cents of land, the plaintiff's house is situated. The said property including



two cents of land, wherein his house has been constructed as well as the vacant land belongs to him, as he purchased the same through the money he earned from the employment he was holding in abroad countries. The plaintiff further states that from one Noor Mohammed, the said property was purchased on 17.12.1992 and only for the benefit of the plaintiff, the same was purchased by his father, which is in possession of the plaintiff. The plaintiff further submits that he only went and purchased the stamp papers in his name and given it to the first defendant and also paid the amount of consideration as well as the registration fee to the father of the plaintiff and he left to Chennai. On the date of the sale, the plaintiff's father clandestinely included the name of the defendants 2 and 3 also and purchased the property. When the same was questioned by the plaintiff, the first defendant stated that the name of the defendants 2 and 3 have been wrongly included and he assured that the suit property only belonged to the plaintiff and they will not have any objection for his enjoyment of the property. On that assurance, the plaintiff did not take further action. The plaintiff has also sub-divided the property into Survey No.163/37 and the Revenue Authorities have issued patta No.896 in favour of him. The plaintiff is in possession and enjoyment of the said two cents of land and also constructed a house therein. The first defendant had two other houses and the said vacant four cents of land are in possession and enjoyment of the plaintiff and the defendants have no right or enjoyment of the suit property. The said fact of plaintiff paying the amount is known to Noor Mohammed and Samsudeen family also and in the document, dated 22.07.1993, the suit property has been shown as Northern boundary and the said Noor Mohammed had executed the said sale deed, as the said land has been purchased only the benefit of the plaintiff, on 17.12.1992 itself, the said sale deed has been handed over to the plaintiff and when the first defendant tried to construct a house in the vacant land, the plaintiff sent a legal notice on 28.09.2012 against his father and two brothers viz., the defendants. The said notice was also replied by the first defendant and the first defendant has replied that if the suit property has been purchased by his own earnings and he also sold a punja land and from the sale amount, he has purchased this land are all false. The plaintiff need not purchase the property in the name of his brothers also as the consideration has been paid by him. The first defendant, namely, the father of the plaintiff, in order to cheat the plaintiff has purchased the property in favour of three sons and he has tried to construct a house and he has not stated anywhere in the defendants reply notice and from 15.10.2012, the defendants are creating problems and trying to construct a house in the vacant land and hence, the plaintiff has filed a suit for declaration and permanent injunction.

4.The second defendant has filed the written statement on his behalf and on behalf of the defendants 1 and 3 and denied all the averments and stated that in the total 6 cents of land, in two cents



plaintiff and from the disputed land in other four cents, the first defendant had constructed a house in favour of the third defendant in two cents and in the remaining two cents of land which was left as vacant, the second defendant is in possession and enjoyment and the first defendant wanted to construct a house for the third defendant and the same was also constructed half-way through and when the same has yet to be completed, the plaintiff has filed a suit vexatiously and preventing them from enjoying the suit property. The first defendant had constructed a house in favour of the plaintiff, in which, the plaintiff is not residing, but he is living in the in-laws house in the next street and the fact of allegation made by the plaintiff that he has purchased the said lands through the earning made by the plaintiff through his employment in the foreign country are false and further submitted that only the first defendant has purchased the property on 17.12.1992 from one Sindhu Kalangiam Ravoothar's son Noor Mohammed and the said property was purchased only to safe-guard the interest of three sons and the plaintiff was major at that point of time and hence, he asked his son viz., the plaintiff to purchase the stamp paper and in order to help the first defendant, the plaintiff has purchased the stamp in his name and on the date of execution of the said sale deed, the plaintiff was available in Town and he has also signed in the said document on the date of execution.

5. Later, it has been stated by the plaintiff that even though he was available on that day, only after registration, he left for Chennai, was also not substantiated by any evidence. On the day of signing the said document, the plaintiff was available and the said statement made by the plaintiff that the defendants have given assurance was also not substantiated by any evidence. As the father of the plaintiff has constructed the house for the plaintiff and the second defendant and the third defendant alone is not having any house and the father was in the process for constructing a house for the third defendant. The plaintiff in order to cheat them has filed this plaint and further submitted that the plaintiff has got more properties and he has not taken any steps to get her sister's marriage and only the parents and the defendants 2 and 3 had spent money for the said marriage and other expenses and the plaintiff took the said document ie., original sale deed, for perusing and he did not return the same. After receiving the said document, he had sent a legal notice dated 28.09.2012 ie., after 20 years and the father has become sick and he could not move around and due to which, the defendants 2 and 3 could not defend their case and there was an ex-parte decree obtained by the plaintiff and later on, they have restore the same and the said suit was considered by the Court below.

6. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and Exs.A1 to A14 were marked. On the side of the defendants, the second defendant was examined as



7. On the basis of the rival pleadings on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has come to the conclusion that the plaintiff has failed to prove that he has paid the sale consideration and the said document through which the lands has been purchased belongs to him and the plaintiff's claim was negatived by the Court and he was not also in possession of the said vacant land and the relief of declaration and permanent injunction was also rejected by the trial Court and dismissed the suit.

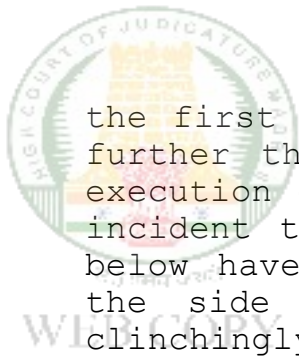
8. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff as appellant, had filed an Appeal Suit in A.S.No.25 of 2018. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal, confirming the Judgment and decree passed by the trial Court.

9. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present second appeal has been preferred at the instance of the plaintiff, as appellant.

10. Heard the learned counsel for the appellant and also perused the records carefully.

11. The learned counsel appearing for the appellant / plaintiff would submit that the Courts below ought to have seen that the appellant has paid the sale consideration while purchasing the property under Ex.A.1-sale deed for his benefit alone and the first respondent, who being the father has purchased the property in the name of the respondents 2 and 3 in order to cheat the appellant. The Courts below ought to have seen that the suit property was purchased out of the appellant's money, patta was granted in his name and if really the suit property was purchased in the name of the respondents 2 and 3, the patta would also have been granted in their names, but the patta exclusively stands in the name of the appellant and therefore ought to have come to the conclusion that the suit property belongs to the appellant absolutely. The Courts below ought to have seen that the appellant has put up a house in the property situate on the Western side of the suit property and he has also obtained EB service connection and house tax receipts also stands in his name. The Courts below ought to have seen that the respondents 2 and 3 have no manner of right, interest or title over the suit property especially when the original sale deed of the suit property is in the custody of the appellant.

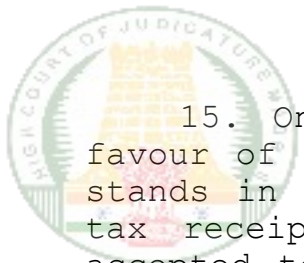
12. The Courts below ought to have directed the appellant to file the suit for partition instead of dismissing the suit in its entirety holding that all the properties of the family have not been shown as suit properties. The Courts below ought to have drawn



the first respondent has not been examined to prove their case and further that the respondents 2 and 3 were minors at the time of execution of sale deed under Ex.A.1 and they were not aware of the incident took place during the relevant point of time. The Courts below have miserably failed to appreciate the documents marked on the side of the appellant as Ex.A.1 to Ex.A.14, which would clinchingly prove that the appellant has proved his case. The Courts below have failed to see that the custody of the original sale deed and the revenue records are in the custody of the appellant and therefore, it should be presumed that the suit property belongs to the appellant even though the names of the respondents 2 and 3 also found place in the sale deed and prayed for allowing the Second Appeal.

13. On going through the averments made in the plaint, it could be seen that the plaintiff's case is that he purchased the property through his father by paying the consideration as well as the registration fees from his own earnings. The documents filed by him are the evidence let in by the plaintiff that he has paid the money was not substantiated by any documentary evidence. The plaintiff had just deposed that he was working as a paper boy and earned a sum of Rs.300/- per month was also not substantiated through examining any witnesses and also the plaintiff's statement that he has earned money by working in some foreign countries and paying the amount to his father, through which the father had purchased the property is also not proved by any document such as the Bank statement or any account transfer or money transfer mode and nothing has been filed to prove the same. The plaintiff claimed that he is the one who paid the money and purchased the stamp paper was also not substantiated on the said date of registration. The plaintiff's statement was contradictory in the plaint as well in the evidence and the plaintiff has submitted that he left Chennai on that date and he could not read the said document is also not acceptable. As a prudent person, he should have been vigilant to see who are the persons purchasing the property and after a period of 20 years, he cannot come and say that the said property has been purchased in favour of three persons is not acceptable and that his father has cheated him.

14. Further, the period of limitation is also to be taken into account as the purchase is of the year 1992 and the appellant has filed the suit only in the year 2012, which also would show that the plaintiff has not objected for the same and only after 20 years, he tried to trouble the defendants 2 and 3, who are the brothers, would show that if the plaintiff really had spend money for purchasing of the suit property, he would have claimed his right immediately as soon as he took the said document from his father and keeping quiet for so many years and trying to trespass into the said property wherein two, two cents have been divided among three persons and this Court is not agreeable to the claim raised by the appellant.



15. On the side of the plaintiff, the document purchased in favour of three sons has been marked as Ex.A1, Ex.A.2-patta, which stands in the name of the plaintiff and Ex.A.4 to Ex.A.10 are the tax receipts issued by Sayalkudi Town Panchayat also cannot be accepted to be a document to prove his title and anybody, who has constructed a house in the two cents of land alone would have been levied and the plaintiff could not produce any documents to show that he is possession of all 6 cents and also that the electricity bills and other things would prove that the plaintiff is in possession of two cents of land, for which, alone he is entitled to and not for the other four cents of land and the same is also rejected and the trial Court has gone into all these aspects and has completely stated that when the defendants have clearly stated that the plaintiff has claimed before the said authority as if the defendants are no more and obtained patta behind their back also would show that the said plaintiff has not shown any contra evidence that he has not claimed patta by that manner or so would prove the same. In the absence of any statement made by the plaintiff rebutting the said statement of the defendants would go to show that the plaintiff has not come to this Court with clean hands.

16. The defendants have stated that the first defendant had got plan approval under Ex.B.4 and Ex.B.5-agreement made to the contractor namely Mason and also other documents would prove that only for two cents of land, the plaintiff is entitled to and regarding other four cents of land, the plaintiff is not entitled to and for claiming any such prayer and it is clearly proved by the trial Court as well as the Appellate Court that the plaintiff has failed to prove his contribution to the purchase of the said property and this Court is not inclined to interfere with the factual findings of the Courts below and dismiss the claim made by the plaintiff.

17. Further, it is also seen that the Patta will not grant any title to the property and the sale deed is of the year 1992, which has proved that the property has been purchased by the father of the plaintiff in favour of three sons which would negative the claim of the plaintiff and the same has not been only based on oral evidence, but also the sale deed stands in the name of the defendants and that claim also goes. When suit property itself consists of six cents, wherein two cents of land has already been occupied by the appellant and the remaining 4 cents of land which would be two, two cents each. That being the case, in the four cents of land, the plaintiff is not even eligible for one feet of land and the same is also negated. No case has been made out by the plaintiff to prove that the first Appellate Court has to frame the issues under Order 41 Rule 31 C.P.C.

18. For the reasons aforesaid, this Court is of the considered view that no substantial questions of law has been made out by the plaintiff to interfere with the well considered judgments



and decrees rendered by the Courts below and accordingly, the Second Appeal fails and the same stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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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 Additional District Judge,
Paramakudi.

2.The Sub Judge,
Mudukulathur.

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-37076[F] dated 02/12/2021)

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