



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

S.A. (MD) No. 624 of 2021

and

C.M.P. (MD) No. 8315 of 2021

WEB COPY

Antony @ Manickam ... Appellant/ Appellant / 1st Defendant

Vs.

1. Amalorpavam ... 1st Respondent/Respondent/Plaintiff

2. Savarinadhan @
Robert Savarinathan

3. Acharyam ... Respondents 2&3 / Respondents 2&3
Defendants 2 and 3

PRAYER : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree, dated 22.11.2019 passed in A.S.No.28 of 2018, on the file of the Sub Court, Sivagangai, confirming the Judgment and Decree, dated 12.01.2018, passed in O.S.No.117 of 2011, on the file of the District Munsif Court, Sivagangai.

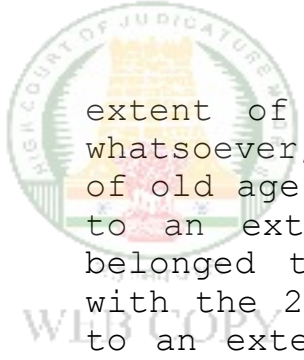
For Appellant : Mr.P.Santhanakrishnan
For Respondent No.1 : Mr.N.Tamilmani

J U D G M E N T

The Second Appeal is directed against the judgment and decree, dated 22.11.2019 made in A.S.No.28 of 2018, on the file of the Sub Court, Sivagangai, confirming the Judgment and Decree, dated 12.01.2018, passed in O.S.No.117 of 2011, on the file of the District Munsif Court, Sivagangai.

2. For the sake of convenience, the parties are referred to as, as described before the trial Court.

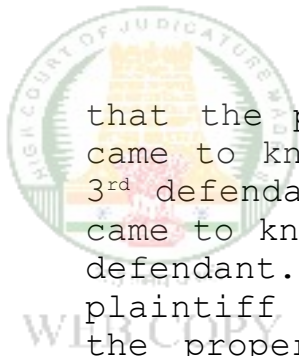
3. The case of the plaintiff, as per the averments made in the plaint, in brief, is that the suit property, initially belonged to one Vedhamuthu S/o. Mariyarose and Marikulanthai Udaiyar S/o. Gnanaprakasam of Pulikanmai Village. On 10.04.1978, the plaintiff purchased the 'A' suit schedule property from the said Vedhamuthu S/o. Mariyarose and Marikulanthai Udaiyar S/o. Gnanaprakasam and he is in exclusive possession and enjoyment of the same from the date of purchase. The suit property is an



extent of 38 cents. The defendants 1 and 2 have no right, whatsoever, in the suit 'A' schedule property. Taking advantage of old age of the plaintiff, the 1st defendant constructed a house, to an extent of 642.24 sq.ft, in suit 'A' schedule property, belonged to the plaintiff. Further, the 1st defendant colluded with the 2nd defendant sold part of the property of the plaintiff, to an extent of 870 sq.ft., to the 3rd defendant, and executed a registered sale deed, on 01.07.2004. The four boundaries mentioned in the sale deed is a false one. The entire suit property is absolute and self acquired property of the plaintiff. Since, the defendants have denied the title of the plaintiff in respect of part of the property, the suit is filed for the relief of declaration that the suit property exclusively belonged to the plaintiff and to remove the illegal construction made in schedule 'A' and 'E' property by the defendants 1 and 3 and hand over the possession to the plaintiff and for mandatory injunction.

4. The suit was resisted by the 1st defendant by filing a counter affidavit contending among other things that the plaintiff has not approached the court with clean hands and with an ill-intention, he has filed the suit. The part of suit schedule property is belonged to the 1st defendant and the suit schedule property is the ancestral property and the 1st defendant is in possession and enjoyment of the property. A part of suit property, to an extent of 870 sq.ft., was sold to the 3rd defendant, through the registered sale deed, dated 01.07.2004 and the 3rd defendant, in the same year, constructed a house in the purchased property and it was well known to the plaintiff. The 1st defendant constructed a house and obtained an electricity service connection, in the property and living there more than 50 years. Suppressing the fact that there was a house already existed, the suit has been filed by the plaintiff. There was a house in the suit property, before the date on which the plaintiff said to have purchased the suit property. Plaintiff created forged documents. It is unbelievable that the plaintiff did not know the house constructed by the 1st and 3rd defendants. The plaintiff has no right to state that 1st defendant should not construct the house, when the house was constructed by the 1st defendant long back and residing in the house. The 1st defendant have house tax receipt and electricity service connection bill on his name till date.

5. The suit was resisted by the 3rd defendant by filing a counter affidavit contending among other things that it is false to state that the suit property, belonged to one Vedhamuthu and Marikulanthai Udaiyar. The document in respect of the property purchased by the plaintiff on 10.04.1978 from the said Vedhamuthu S/o.Mariyarose and Marikulanthai Udaiyar S/o.Gnanaprakasam is a created and concocted document. The plaintiff is not in possession and enjoyment of the property. It is false to state



that the plaintiff, after obtaining the encumbrance certificate, came to know the fact that the suit property has been sold to the 3rd defendant and after referring 'A' register only, the plaintiff came to know that the patta has been changed in the name of the 2nd defendant. The suit property belonged to the 1st defendant. The plaintiff very well knew the fact that the 3rd defendant purchased the property and constructed a house in plaint 'E' schedule property even during the year 2004 itself.

6. The plaintiff, in support of his case, before the trial Court, examined himself as P.W.1 and examined one Krishnan as P.W.2, and marked 25 documents as Ex.A.1 to Ex.A.25. On the side of the defendants, they examined D.W.1 to D.W.5 and marked 17 documents as Ex.B1 to B17 and four Court documents in Exs.C1 to C4 were also marked.

7. On the basis of the above pleadings, the trial Court framed necessary issues viz.,

- 1) Whether the suit property is belonged to the plaintiff?
- 2) Whether the 1st defendant occupied the suit schedule property of the plaintiff in the northwest portion, as alleged by the plaintiff?
- 3) Whether the 3rd defendant occupied a part of suit schedule property of the plaintiff and constructed a house?
- 4) Whether the suit schedule property is in possession and enjoyment of the plaintiff?
- 5) Whether the suit schedule property is in possession and enjoyment of the 1st defendant?
- 6) Whether part of suit schedule property is in possession and enjoyment of the 3rd defendant?
- 7) Whether the suit is barred by limitation?
- 8) Whether the plaintiff is entitled for declaration and permanent injunction?
- 9) Whether the plaintiff is entitled for mandatory injunction?

10) Whether the sale agreement executed by



defendants 1 and 2 to the 3rd defendant is a valid one?

11) To what other reliefs?

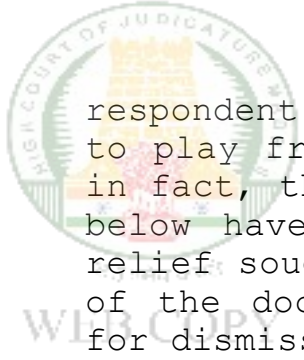
8. After full-fledged trial, the trial Court has come to the conclusion that the plaintiff has proved the case, by considering all the documents filed by the plaintiff and documents marked on the side of the defendants, and taking into account the evidences examined on both side. The trial court agreed with the case of the plaintiff and decreed the suit as prayed for with costs.

9. Aggrieved over the said judgment and decree passed by the trial Court, the 1st defendant preferred an appeal in A.S.No.28 of 2018, on the file of the Sub Court, Sivagangai. After determining necessary points for consideration and also taking into consideration the Advocate Commissioner's report, the lower Appellate Court has also very much relied on the documents referred to and accepted by the trial Court, confirmed the decree of the trial Court and dismissed the appeal.

10. Against the concurrent findings of the courts below, the unsuccessful 1st defendant filed the present second appeal before this Court.

11. The learned counsel appearing for the appellant / 1st defendant would submit that since the plaintiff has not proved the case with valid documents, the courts below ought to have dismissed the suit filed by the plaintiff instead came to an erroneous conclusion by wrongly shifting the 'burden of proof' upon the appellant. Both the Courts below erred to note that the construction exists for more than 50 years ago from the date of filing of the Original Suit and the same has been purposely suppressed by the plaintiff and hence, the suit has to be dismissed. With the knowledge of the plaintiff, the 3rd defendant made a construction in the suit schedule property, but the courts below failed to look into that aspect. The Commissioner has filed a report stating that an old thatched house already exists in the suit schedule property and hence, the relief sought for by the plaintiff has to be dismissed on the ground of limitation. The patta for the suit schedule property is standing in the name of the 1st defendant as well the defendants 2 and 3 and though the plaintiff very well knew about the same, has not taken any steps to cancel the patta. Hence, the learned counsel prayed for dismissal of the suit.

12. The learned counsel appearing for the plaintiff / 1st defendant would submit that since the plaintiff has not proved the case with valid documents, the courts below ought to have dismissed the suit filed by the plaintiff instead came to an erroneous conclusion by wrongly shifting the 'burden of proof' upon the appellant. Both the Courts below erred to note that the construction exists for more than 50 years ago from the date of filing of the Original Suit and the same has been purposely suppressed by the plaintiff and hence, the suit has to be dismissed. With the knowledge of the plaintiff, the 3rd defendant made a construction in the suit schedule property, but the courts below failed to look into that aspect. The Commissioner has filed a report stating that an old thatched house already exists in the suit schedule property and hence, the relief sought for by the plaintiff has to be dismissed on the ground of limitation. The patta for the suit schedule property is standing in the name of the 1st defendant as well the defendants 2 and 3 and though the plaintiff very well knew about the same, has not taken any steps to cancel the patta. Hence, the learned counsel prayed for dismissal of the suit.



respondent would submit that there was no attempt by the plaintiff to play fraud upon the court, as alleged by the 1st defendant and in fact, the 1st defendant has come with false story and the Courts below have rightly come to a correct conclusion and denied the relief sought for by the 1st defendant, after thorough examination of the documents adduced by the plaintiff and therefore, prayed for dismissal of the appeal.

13. I have carefully considered the submissions made by the learned counsel for the appellant / 1st defendant and the learned counsel for the 1st respondent / plaintiff and perused the materials on record.

14. It is seen that the suit property, initially belonged to one Vedhamuthu and Marikulanthai Udaiyar of Pulikanmai Village and they sold the property to the plaintiff through a registered sale deed, dated 10.04.1978, which was marked as Ex.A2. It is the contention of the 1st defendant that in the suit schedule property, there was a house, situated in Survey No.114/3, which was constructed 50 years back from the date of filing of the suit. But, in the cross examination, the 1st defendant, accepted the fact that the house was not in Survey No.114/3, but it is in Survey No.114/2. In the house tax receipts produced by the 1st defendant, the house tax was paid in three different numbers, but no explanation has been offered by the 1st defendant in that regard. Whether the electricity service connection bill produced by the 1st defendant belonged to the said house or not is not clear. Ex.B12 is the sale deed executed by defendants 1 and 2 to the 3rd defendant. Except ExB11 and B13, no other documents have been produced by the defendants 1 and 2 that the property conveyed to the 3rd defendant is their own property and therefore, the sale deed executed by the 1st and 2nd defendants is not a valid one. More over, it is found that a petition has been filed under Order 41 Rule 27, by the first defendant, for filing additional documents. Eventhough the parties have right to produce additional documents and evidence during appeal, in this case, there is no substantial reasons have been stated by the defendants, to file certain documents, which were very well available at the time of filing of suit, more particularly, the documents are of the year 1990 and after 1990. Hence, there is no necessity to produce or accept those documents in the appeal stage. The documents relied upon by the plaintiff is more effective than the 1st defendant and therefore, this court is of the view that the suit schedule property belongs to the plaintiff. As the plaintiff has proved her title in the absence of any evidence of the side of the defendants, the trial Court as well as the appellate Court has concurrently held in favour of the plaintiff. The facts proved by both parties were considered and the judgment rendered is a reasoned one and this Court accepts the same. In the light of the



above discussions, this Court is not inclined to interfere with the concurrent findings of the Courts below.

15. At this juncture, it is worthwhile to refer the Judgment of the Hon'ble Supreme Court in **Kirpa Ram Vs. Surendra Deo Gaur** reported in **(2020 SCC OnLine SC 935)**, wherein it has been held that a second appeal can be dismissed at the admission stage without formulating a substantial question of law, if none arises was reiterated. This is one such case and therefore, in the light of the narrative discussion, this second appeal is liable to be dismissed, at the admission stage itself, holding that no substantial question of law arises.

16. In the result, the Second Appeal is dismissed, confirming the judgment and decree, dated 22.11.2019 passed in A.S.No.28 of 2018, on the file of the Sub Court, Sivagangai, confirming the Judgment and Decree, dated 12.01.2018, passed in O.S.No.117 of 2011, on the file of the District Munsif Court, Sivagangai. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

vrn

To

1.The Sub Judge, Sivagangai.

2.The District Munsif, Sivagangai.

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The Record Keeper
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.TAMILMANI, Advocate (SR-34065[F] dated 11/11/2021)

S.A. (MD) No. 624 of 2021

10.11.2021

MMS (CO)

SP(21-01-2022)-6P 6C
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