



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.913 of 2014

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Ganesan

... Appellant/Appellant/Plaintiff

Vs.

Subbiah

... Respondent/Respondent/Defendant

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 16.06.2014 made in A.S.No.81 of 2013 on the file of the Subordinate Judge, Pudukottai, confirming the Judgment and Decree dated 20.12.2012 on the file of the District Munsif, Pudukottai, made in O.S.No.211 of 2010 and to allow this second appeal.

For Appellant : Mr.Mr.K.Baalasundharam

For Respondent : Mr.R.P.Ramachanthiran

* * *

J U D G M E N T

The plaintiff in O.S.No.211 of 2010 on the file of the District Munsif, Pudukottai, is the appellant in this second appeal.

2.The plaintiff filed the said suit seeking the relief of permanent injunction against the defendant Subbiah. The case of the plaintiff is that the suit property measuring 33 Ares in Survey No.677/4 in Mullur Village, Pudukottai Taluk, originally belonged to one Kulliyammal and that she sold the same to one Palani @ Pananiyandi for valuable consideration on 16.11.1970 by a registered sale deed and that the revenue records stand in the name of Palani @ Palaniyandi and from the said Palaniyandi, the appellant purchased the suit property vide sale deed dated 10.06.2010. According to the plaintiff, the defendant who claims to be the grandson of Kulliyammal, wanted the plaintiff to reconvey the property. Since the plaintiff declined to comply with the said request, the defendant had been interfering with the plaintiff's possession and enjoyment of the suit property and that necessitated the plaintiff to institute the instant suit.

3.The defendant filed his written statement denying the plaint averments. The defendant denied that the suit property was sold by Kulliyammal to Palaniyandi. Except admitting the fact that the property originally belonged to Kulliyammal, all the other claims put forth by the plaintiff were denied by the defendant.



4.The learned trial Judge framed the necessary issues. The first issue was whether the suit property belonged to the plaintiff. The second issue was whether the plaintiff was in possession of the same. The plaintiff examined himself as P.W.1 and one Arumugam, attester of Ex.A.5 as P.W.2. Ex.A.1 to Ex.A.9 were marked. The defendant examined himself as D.W.1 and two other witnesses in support of his contention that he was in possession of the suit property and no documentary evidence was adduced by the defendant. After a consideration of the evidence on record, the learned trial Munsif held that the plaintiff was the owner of the suit property. However, it was held that the plaintiff had not established that he was in possession of the same. Therefore, the relief of permanent injunction was denied. As a result, the suit came to be dismissed by judgment and decree dated 20.12.2012. Aggrieved by the same, the plaintiff filed A.S.No.81 of 2013 before the Sub Court, Pudukottai. By judgment and decree dated 16.06.2014, the first appellate Court confirmed the judgment and decree passed by the trial Court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

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

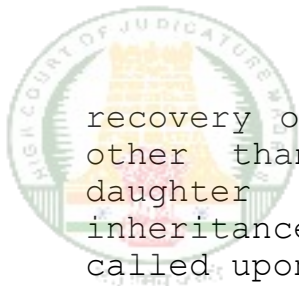
"i) Whether the Courts below are right in law in non-suiting the plaintiff, having held that the plaintiff is the absolute owner of the suit property and whether this approach of the Courts below is not perverse?

ii) Whether the failure of the Courts below in applying the principle "possession follows title" to the instant case is not substantially erroneous in law calling for interference?

iii) Whether the failure of the Courts below to read the evidence of P.W.1 as a whole is right in law especially when the plaintiff has proved his title over the suit property?"

6.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal and called upon this Court to answer the substantial questions of law in favour of the appellant and allow the appeal and decree the suit as prayed for.

7.The learned counsel appearing for the respondent submitted that no substantial question of law really arises for consideration. He pointed out that the plaintiff failed to examine his vendor Palani @ Palaniyandi. The sale deed dated 16.11.1970 was also not produced in original. Even though the plaintiff claimed that he has planted timber trees, adangal extract indicated that paddy was grown. From these discrepancies, the learned counsel for the respondent wanted this Court to infer that the plaintiff has come



recovery of possession. According to him, the defendant was none other than the granddaughter of Kulliyammal born through her daughter Singammal. The defendant claimed the property by inheritance. The plaintiff is an utter stranger. He therefore called upon this Court to dismiss the second appeal.

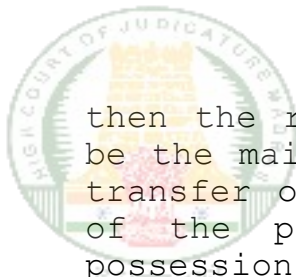
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8.I carefully considered the said contentions. There is no dispute that the suit property originally belonged to Kulliyammal. The case of the appellant is that Kulliyammal sold the suit property in favour of Palani @ Palaniyandi vide sale deed dated 16.11.1970 (Ex.A.1). It is true that the original sale deed was not produced. The appellant in response to a specific question in this regard had replied that the original document was missing and therefore, he could mark only a certified copy. From this, one cannot doubt the version of the plaintiff that Kulliyammal had sold the property in favour of Palani @ Palaniyandi. As rightly pointed out by the learned counsel appearing for the appellant, Ex.A.1 is a registered document. Therefore Section 60 of the Registration Act, 1908 can be invoked. The said provision reads as follows :

"Certificate of registration.-(1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered", together with the number and page of the book in which the document has been copied.

In the decisions reported in **(1972) 2 MLJ 508 (Irudayam Ammal and Ors. V. Salayath Mary)** and **(1999) 3 MLJ 577 (Dr.Kumari Shantha Arogyadoss and Ors. V. Tmt.G.C.Kamala Sri Hari and Ors.)**, it was held that though registration by itself, in all cases, is not proof of execution, if no other evidence is available, the certificate of registration is *prime facie* evidence of its execution.

9.It is relevant to note here that except a plea of formal denial, the defendant has not adduced any rebuttal evidence. Ex.A.1 was executed and registered on 16.11.1970. The suit in question was filed in the year 2010. The Court below have given a categorical finding that the plaintiff has established his title over the suit property. Having correctly given such a finding, the Courts below erred in denying the relief of permanent injunction. Apart from marking the sale deed executed in his favour (Ex.A.5), the plaintiff had also marked Ex.A.2, Ex.A.3, Ex.A.4, Ex.A.6 to Ex.A.9. These documents are revenue documents. In fact the original patta standing in the name of Palani @ Palaniyandi had also been marked. On the other hand, the defendant examined two witnesses to show that he is in possession of the suit property. The documentary evidence adduced by the plaintiff cannot be displaced by the oral evidence. In the decision reported in **2012 (6) CTC 303 (Kesavan V. Muthu)**, it was held that when a property is transferred by parties inter vivos,



then the registered document evidencing the transfer of title will be the main document of title and the patta issued, based upon the transfer of title will become the supporting document to the title of the party. Normally, possession of patta signifies lawful possession of the property by person in possession of patta.

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10.It is true that in the suit property, R.S.Pathy trees are standing. In the chitta document filed by the plaintiff, it was erroneously mentioned that Paddy is being grown. This is certainly a discrepancy. But this erroneous entry in the chitta document cannot disprove the claim of the plaintiff that he is in possession of the suit property. The plaintiff's title has been established. He has also filed a host of revenue documents indicating that the revenue department has recognised the possession of his vendor. By virtue of Ex.A.5 sale deed dated 10.06.2010, the plaintiff stepped into the shoes of his vendor Palani @ Palaniyandi. Therefore, the substantial questions of law are answered in the favour of the appellant and the judgment and decree impugned passed by the first appellate Court are set aside and the suit is decreed as prayed for.

11.This second appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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 Subordinate Judge,
Pudukottai.

2.The District Munsif,
Pudukottai.

3.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

S.A. (MD)No.913 of 2014

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DJ(CO)

GC/PM(23.11.2021) 4P 5C

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