



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2021

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.804 of 2021
and
C.M.P(MD)No.11077 of 2021

Thalaikaruppan ... Appellant/Appellant/Plaintiff

Vs.

Mayakkal ... Respondent/ Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 11.02.2020 passed in A.S.No.32 of 2018, on the file of the Subordinate Court, Thirumangalam, confirming the judgment and decree dated 08.11.2017 passed in O.S.No.567 of 2007 on the file of the District Munsif Court, Thirumangalam.

For Appellant : Mr.K.Hemakarthikeyan

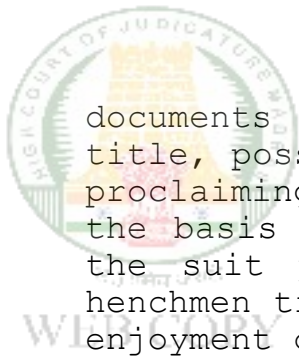
JUDGMENT

The appeal is directed against the Judgment and Decree passed in A.S.No.32 of 2018, by the learned Subordinate Judge, Thirumangalam, in confirming the Judgment and Decree in O.S.No.567 of 2007, passed by the learned District Munsif, Thirumangalam.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking as before the Trial Court.

3.The case of the plaintiff, as per the averments made in the plaint, in short, is as follows :

The suit property ancestrally belonged to Chinnakaruppan Kudumban, father of the plaintiff herein. After the death of Chinnakaruppan Kudumban, the suit property absolutely belongs to the plaintiff. The plaintiff is in absolute possession and enjoyment of the suit property. The plaintiff's father while he was alive, mortgaged the suit property in the Co-operative Land Development Urban Bank, Thirumangalam and made payments and redeemed the suit property. The payment receipt issued by the Land Development Urban Bank, Thirumangalam, in the name of the plaintiff's father. Those



documents will clearly prove that the plaintiff has got absolute title, possession and enjoyment of the suit property. The defendant proclaiming in the village that the suit property belongs to her on the basis of some void sale transaction made by her in respect of the suit property. The defendant on 02.12.2007 along with her henchmen tried to interfere with plaintiff's peaceful possession and enjoyment of the suit property. Hence the suit.

4.The defendant filed a written statement contending that the suit property ancestrally belonged to Chinnakaruppan, who is the father of the plaintiff. The plaintiff's father mortgaged the suit property and redeemed the same from the Co-operative Society are admitted as true. The defendant has purchased the suit property for valuable consideration by way of registered sale deed, dated 05.07.1985 from the plaintiff, his father Chinnakaruppan and their Pangali T.Pandi. The plaintiff and T.Pandi had executed the sale deed for themselves and on behalf of their minor children. The defendant being the true and lawful owner of the suit property, no injunction can be granted against her in respect of the suit property and hence, suit has to be dismissed with costs.

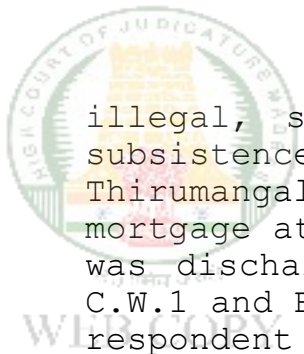
5. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and Exs.A1 to A5 were marked. On the side of the defendant, the defendant examined herself as D.W.1 and Exs.B.1 to B.3 were marked. One Rathinasamy was examined as C.W.1 and Exs.C.1 to C.4 were marked.

6. 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 dismissed the suit.

7. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff, as appellant, had filed an Appeal Suit in A.S.No.32 of 2018, on the file of the Subordinate Court, Thirumangalam. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, had dismissed the appeal and confirmed the Judgment and decree passed by the trial Court. 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.

8. Heard the learned counsel for the appellant / plaintiff and also perused the materials available on record.

9.The learned counsel for the appellant/plaintiff would submit that the Courts below have failed to consider the oral and documentary evidence which were marked by the appellant/plaintiff in a proper perspective manner and failed to allow the appellant/plaintiff's application in I.A.No.1 of 2019 to receive additional documents before the appellate Court and there is no



illegal, since at the time of purchase itself, mortgage was in subsistence before the Co-operative Land Development Urban Bank, Thirumangalam and the appellant/plaintiff had proved that there was mortgage at the time of execution of sale deed and the said mortgage was discharged only in the year 1994 and proved the same through C.W.1 and Exs.C.1 to C.4 and ought to have decreed the suit when the respondent / defendant had admitted the title of the appellant/plaintiff. The judgment and decree of the Courts below were based on surmises and conjectures, which is un-sustainable in law and the same is liable to be set aside and hence, prayed to allow the Second Appeal.

10.This Court paid its anxious consideration to the rival submissions made and also carefully perused the materials placed on record.

11.On going through the averments, it is seen that the property originally belonged to Chinnakaruppan Kudumban, the father of the plaintiff. After the death of Chinnakaruppan Kudumban the suit property absolutely belongs to the plaintiff. The plaintiff's father while he was alive, mortgaged the suit property in the Co-operative Land Development Urban Bank, Thirumangalam. The defendant has come forward with a forged document and had claimed title over the property. This point was not at all found in the plaint averments. But had clearly assured that the defendant proclaiming that the property belongs to her on the basis of some void sales transactions regarding the said suit property and prayed that the same should have been accepted by the Courts below.

12. On going through the averments it is stated that the defendant has purchased the suit property for a valuable consideration by way of registered sale deed, dated 05.07.1985 from the plaintiff, his father Chinnakaruppan and their Pangali T.Pandi. The plaintiff and T.Pandi had executed a sale deed for themselves and on behalf of their minor children as being the lawful owner of the property, in sale deed Ex.B.1. Ex.B.1 is a registered sale deed and the plaintiff has not substantiated their claim by providing any proof of evidence that the sale deed is a forged one. Moreover it is averred that the suit property and other properties were already mortgaged by the father of the plaintiff and the plaintiff has been paying the instalments of amount towards the discharge of the loan amount till the year 1999. When the suit property was sold away under Ex.B.1 in favour of the defendant, the plaintiff could not have paid the contribution up to the year 1999 and what made the plaintiff to wait till 2007 to file a suit.

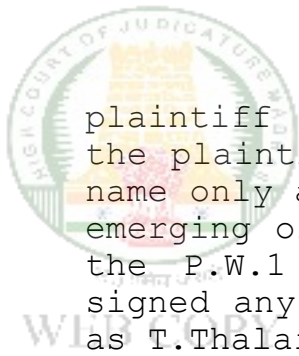
13.It is pertinent to note that there is no dispute about the fact that the suit property belonged to the father of the plaintiff by name Chinnakaruppan Kudumban. But the plaintiff disputed Ex.B.1 sale deed and that the instalment amount of loan was



involving the suit property. If the suit property was sold under Ex.B.1 sale deed, there is no need for making payment of instalment towards the discharge of mortgage till the year 1999 was the point raised. It appears from the document Ex.C.1 that the property comprised in S.No.375/8 and 372/3 were subjected to mortgage in Thirumangalam Co-operative Primary Agri and Rural Development Bank Limited. Whiles, it is clear that there is another property comprised in S.No.375/8 apart from the suit property, was under mortgage with the above said bank. But the plaintiff did not produce any evidence to show that the alleged instalments were paid until the year 1999 to the above said bank including that of the suit property. It is well settled law so far as the registered documents are concerned,,it has to be presumed that the said documents are genuine and valid one unless and until contrary is proved. As no evidence produced to show that the loan due was paid only with regard to the suit schedule property, the Court has to consider that there was no clear evidence in this regard.

14. On perusal of Ex.B.1, sale deed it is clear that one Pandi and one Chinnakaruppan, who is the father of the plaintiff sold the suit property in favour of the defendant on behalf of their minors, which binding their children including that of the plaintiff. But none of them, in particular, the brother of the plaintiff except the plaintiff disputed the Ex.B.1 sale deed or challenge the sale. If the sale deed under Ex.B.1 is fraudulent, definitely other persons in particularly the brother of plaintiff along with the plaintiff would have raised dispute with regard to Ex.B.1 sale deed. But as already stated, no one either objected nor disputed Ex.B.1 sale deed except the plaintiff. Under these circumstances even assuming that just because the instalments being paid towards the discharge of the mortgage till the year 1999, for the reasons best known to the plaintiff, which is also not proved that the same was paid to the suit property, it does not make any difference in this case, particularly, as there is no material on record to discredit Ex.B.1-sale deed. Moreover from the cumulative appraisal of the evidence emerged on record, it is clear that the plaintiff failed to prove that Ex.B.1 is a fraudulent one. The mortgage with regard to the suit property also stands discharged later in 1999 and the defendant has absolute title over the suit property, without any cloud over the title as the plaintiff had already sold the property and he cannot claim right over the same. Therefore, it cannot be construed that the plaintiff has title over the suit property.

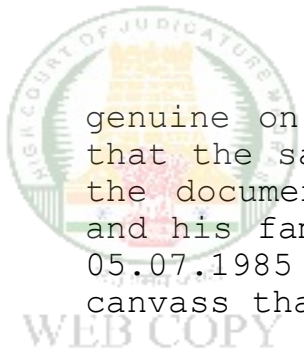
15. Based on the evidence of P.W.1, it is proved that the document executed by the plaintiff and his family members. That being the case, the registered sale deed executed by the plaintiff and his family members and the plaintiff could not prove that his signature is not T.Thalaikaruppan, which is present in the sale deed, but infact, he signs all his papers as T.Thalaikaruppan and



plaintiff that the plaintiff signs as C.Thalaikaruppan and since, the plaintiff's father's name is Chinnakaruppan, he has to sign his name only as C.Thalaikaruppan but, all through out the case from the emerging of the vakalat till the last deposition of the witness by the P.W.1 the said Thalaikaruppan the plaintiff has never ever signed any of the papers as C.Thalaikaruppan but he has only signed as T.Thalaikaruppan.

16.Moreover, the plaintiff has disputed the document 05.07.1985 for the simple reason that earlier there was an mortgage as between the Bank and the plaintiff's father and hence all the property has been mortgaged with the Bank. The title deeds have been deposited in the Bank. On perusal of Ex.C.1 to C.3 would show that there is nothing on record to show that deposit of title deeds has been made. It is stated that the loan has been obtained by Chinnakaruppan in the year 1983 itself, whereas, the sale deed has been executed and signed only in the year 1985, later Ex.A.5 which has been marked through the re-examination of P.W.1 is a chitta which shows the name of the owner of the property as Chinnakaruppan. The plaintiff having disputed Ex.B.1, produced by the defendant has the ultimate duty to prove that the title deeds regarding the property still stands in his name and that the title deeds are in his possession. It is true that the sale has taken place in the year 1983 that the patta was granted to the plaintiff with regard to the suit property in the year 1983 itself and hence there is a fair possibility that the plaintiff could have sold the suit property in the year 1985 but the defendant has not mutated the records initially.

17.Regarding the loan closure certificate which has been issued by the Bank is dated only 10 days before the filing of the suit and after receiving Ex.A.1 from the Bank, the plaintiff has filed the suit and he has not even filed any encumbrance to prove that the Bank was holding charge over the mortgaged property. From the Encumbrance Certificate, it is seen that the property has been sold to Mayakkal in the year 1985 itself and the alleged mortgage was not proved unless it is registered, it would not reflect in the encumbrance. Further the plaintiff has not stated as to which date he got knowledge about the alleged sale deed and he never prayed for cancellation of the above sale deed. Further the plaintiff never sought for any relief regarding cancellation of the sale deeds or even recovery of possession. Further the plaintiff has not filed any single revenue record to prove that he was in possession of the suit property. Ex.A.5 would clearly show that the plaintiff was in possession of the suit property two years before the alleged sale and no current document is filed to show that he is in possession of the property. The defendant case is that the plaintiff was the owner of the suit property along with Pandi and Chinnakaruppan and all three of them have executed a sale deed in favour of the defendant even before alleged closing of the loan. The plaintiff



genuine on the sale deed Ex.B.1, but the plaintiff has not denied that the said document was not executed by the plaintiff. Based on the documentary and oral evidence, it is found that the plaintiff and his family members had executed the registered sale deed, dated 05.07.1985 in favour of the defendant and now he cannot come and canvass that the said document is forged and not valid.

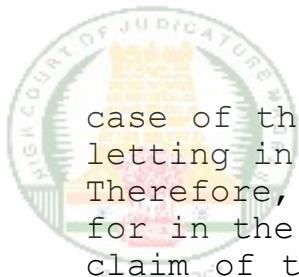
18.The specific case of the plaintiff is that the trial Court underlined the fact that the plaintiff did not file the encumbrance certificate. The plaintiff bonafidely believed that the suit was dismissed due to non-filing of the encumbrance certificate and that the plaintiff has filed a petition in I.A.No.1 of 2019 to receive additional documents. By way of reply, the contention of the defendant is that the production of additional document is highly belated one and the same was filed before the appellate Court without exercising due diligence to file the same before the trial Court.

19. On a perusal of records, it clearly shows that the above said document sought to be produced in this case in the form of additional evidence by the petitioner is already within his knowledge. Moreover the said document is no way useful to decide the matter in dispute. The trial Court has also come to the conclusion that Encumbrance Certificate is very well available in the Registration Department and the trial Court has very much pointed out that there is no such document namely, Encumbrance Certificate has been produced at the time of trial. That being the case, the plaintiff has filed a petition to produce the same by way of additional documents which is highly belated and the Court feels that no purpose is served in allowing the petition as the plaintiff failed to prove that notwithstanding the exercise of due diligence, he could not produce the same earlier is available before the plaintiff only now for filing an application to receive it and the trial Court had rightly dismissed the said I.A.No.1 of 2019.

20.As the plaintiff has not sought for cancellation of sale deed and only declaration of title and he is not entitled for the said prayer as he has not proved his title and enjoyment of the suit property.

21. The plaintiff Thalaikaruppan has executed a registered sale deed and also signed in the mortgage deed of the Bank and only based on the mortgage deed executed in favour of the Co-operative Bank, the plaintiff has been continuously putting forth various contentions regarding the sale deed presented before the Bank and not established his case by proper admissible evidence to grant the relief of declaration.

22.The plaintiff has never produced any single document to prove that he has been in continuous possession and enjoyment of the suit property. However, the plaintiff has approached this Court in order to take possession of the property by getting an order for declaration of title. Moreover, the defendant has also refuted the



case of the plaintiff, who in turn, had failed to prove his case by letting in appropriate evidence and by producing relevant documents. Therefore, the plaintiff is not entitled for any relief as sought for in the suit and hence the Courts below have rightly rejected the claim of the plaintiff and this Court finds no reason to interfere with the well reasoned judgment of the Courts below. That being the case, this Court is not inclined to interfere with the concurrent findings of the Courts below and also there is no question of law much less substantial question of law involved in this Second Appeal to be decided by this Court and hence, the Second Appeal is devoid of merits and the same fails.

23. In fine, the Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

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

+1 CC to M/s.K.HEMAKARTHIKEYAN, Advocate (SR-40311[F]
dated 23/12/2021)

Judgment made in
S.A(MD)No.804 of 2021
22.12.2021

TP (CO)

GC(18.02.2022). 7P 6C

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