



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.06.2022

Pronounced on : 26.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No. 1894 of 1999

R.Manickam (Deceased)

1. R.Manickam (deceased)

2. Prema

3. Krishnaveni

4. Meenakshi

5. Thirupathi

6. Arumugam

7. Rathinavel

8. Kavitha

... Appellants

[Appellants 2 to 8 brought on record as Lrs of the deceased sole appellant vide order of Court dated 12.01.2018 made in CMP.No. 10402 & 10403 of 2017 in S.A.No.1894/1999]

Vs.

1. S.Pandiyan (Deceased)



2. Sundaram

3. Amsu (died)

[RR 1 & 2 recorded as LR of the deceased 3rd respondent vide order of Court dated 11.04.2001 vide order memo filed by the appellant 11.04.2001]

4. S.Meenakashi

5. P.Sumathi

6. P.Murali

7. Vignesvaran

8. P.Venkatesvaran

... Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 03.11.1997 in A.S.No. 24 of 1993 on the file of the Subordinate Judge's Court, Ariyalur, reversing the Judgment and Decree dated 28.04.1992 made in O.S.No. 298 of 1990 on the file of the District Munsif Court, Ariyalur.

For Appellants : Mr. K.Mukund
for M/s. Sarvabhauman Associates

For RR 1 & 3 : died

For 2nd Respondent : Mr.C.Selvaraju

**JUDGMENT**

The plaintiff/legal representatives of the plaintiff in O.S. No. 298 of 1990 on the file of the District Munsif Court at Ariyalur are the appellants herein.

2. O.S. No 298 of 1990 had been filed by the plaintiff, R. Manickam against his brother Sundaram, shown as the 2nd defendant, S. Pandiyan, the son of Sundaram, shown as the 1st defendant and Amsu, wife of Gurusamy Chettiar, shown as the 3rd defendant, seeking declaration of title and consequential injunction to protect possession of the suit schedule property.

3. By judgment dated 28.04.1992, the suit had been decreed.

4. S. Pandiyan, the 2nd defendant then filed A.S. No. 24 of 1993 before the Sub Court at Ariyalur. By judgment dated 03.11.1997, the appeal suit was allowed and the judgment in O.S. No. 298 of 1990 was set aside and the suit was dismissed.



WEB COPY

5. The plaintiff, R. Manickam then filed the present second appeal. Pending the appeal, he died and his legal representatives have been brought on record as 2nd to 8th appellants. The 3rd respondent also died and the 1st and 2nd respondents were recognized as her legal representatives. The 1st respondent also died and 4th to 8th respondents were brought on record as his legal representatives.

6. The second appeal had been admitted on 11.07.2002 on the following substantial question of law :

“Whether the lower appellate court is right in discarding the documents filed in support of the case of the plaintiff?”

O.S. No. 298 of 1990 (District Munsif Court, Ariyalur) :

7. The suit was filed by the plaintiff seeking declaration of title and permanent injunction to protect possession of the suit property. The suit property was said to be house site and thottam (garden) in G.R. No. 541/570, measuring 0.04.0 acres, and measuring 12 human feet east to west and 120 human feet north to south in Vilangara Street, Ariyalur to



an extent of 724 sq.ft. It was stated to be east of the plaintiff's property and to the west of the plaintiff, 2nd defendant and another brother, Swaminathan's property. It is a narrow stretch of land.

8. The plaintiff stated that the suit property was purchased by Natarajan in Court auction held on 16.03.1960, who then sold the land to Gurusamy Chettiar, the husband of the 3rd defendant on 03.11.1960 by a registered sale deed. The plaintiff then claimed that Gurusamy Chettiar then sold the suit property to him by oral sale on 10.07.1961 for Rs.90/-. It was stated that one Thangarasu son of Kaliaperumal Naidu was a witness to the oral sale. The plaintiff further claimed that he was in possession of the documents of title relating to the suit property. He claimed to be in possession and also claimed to pay Government tax.

9. He further stated that he allowed the 2nd defendant to occupy a smaller portion of the suit property to put up his house. It was then stated that the 2nd defendant claimed that he had actually purchased the suit property from the 3rd defendant, Amsu Ammal, wife of Gurusamy



Chettiar, by a registered sale deed dated 27.07.1990. Claiming that the 2nd defendant was interfering with his peaceful possession and asserting title, the suit had been filed seeking declaration of title on the basis of the oral sale and permanent injunction restraining the defendants from interfering with peaceful possession.

10. The 1st defendant filed a written statement denying and disputing title of the plaintiff. He specifically disputed the bonafide of the oral sale in favour of the plaintiff. He denied that the 2nd defendant was allowed to be in possession of a portion of the suit property. He asserted that the plaintiff, being an advocate's clerk knew his way around and was able to obtain the original documents from the 3rd defendant on the pretext of obtaining loan from a co-operative bank. He denied that the plaintiff had granted such permission. He denied that the plaintiff was ever in possession of the suit property. He also disputed the correctness of the rough sketch of the suit property filed along with the plaint and also disputed the correctness of the description of the suit property in the schedule to the plaint.



11. He claimed to have purchased the suit property for valuable consideration of Rs.5,000/- from the 3rd defendant, by a registered sale deed dated 18.07.1990 and claimed to be in possession as owner. He claimed that the oral sale relied by the plaintiff was an imaginary transaction and disputed the same. He therefore urged that the suit should be dismissed.

12. On the basis of the pleadings, the District Munsif, Ariyalur framed the following issues ;

- 1. Whether the plaintiff was entitled to the reliefs of declaration of title and permanent injunction ?*
- 2. Whether the oral sale dated 10.07.1961 claimed by the plaintiff is true and valid ?*
- 3. Whether the plaintiff had acquired possessory right over the suit property ?*
- 4. Whether the suit property had been properly described ?*
- 5. Whether the 1st defendant is in possession from 18.07.1990, the date of the sale deed executed in his favour by Amsu Ammal ?*



6. Whether there is proper cause of action for filing the suit ?

7. To what other reliefs are the parties entitled to ?

13. The 2nd and 3rd defendants remained exparte.

14. During trial, the plaintiff examined himself as P.W.1, the witness to the oral sale, Thangaraj as P.W.2 and two other witnesses as P.W.3 and P.W.4. He also marked Exs. A1 to A25. Ex. A1 was the rough sketch of the suit property. Ex. A2 was the sale deed in favour of Gurusamy Chettiar, dated 03.11.1960. Exs. A3 to A5 were the parent documents of title over the suit property. Exs. A6 to A21 were tax receipts. Ex. A22 was copy of chitta. Exs. A23 and A26 were exchange of advocate notices between the 2nd defendant and another brother, Swaminathan, who was examined as P.W.4.

15. The 1st defendant examined himself as D.W.1 and his vendor, the 3rd defendant was examined as D.W.2. He marked Exs. B1 to B3. Ex.

B1 was the registration copy of the sale deed dated 03.11.1960 in favour



of Gurusamy Chettiar. Ex. B3 was the registered sale deed dated 18.07.1990 in his favour, executed by the 3rd defendant. An Advocate Commissioner had also been appointed during trial. His reports and sketch were marked as Exs. C1 to C3.

16. The District Munsif, in his judgment dated 28.04.1992, noted the rival contentions and observed that it was the case of the plaintiff that he had purchased the suit property by oral sale on 10.07.1961 for Rs.90/- from Gurusamy Chettiar and also observed that the plaintiff had produced the title deeds of the suit property as Exs. A2 to A5. It was further observed that the plaintiff had produced Ex. A22, chitta and Exs. A6 to A21, tax receipts and held that the plaintiff was in possession. The evidence of the 3rd defendant/D.W.2, who stated that the plaintiff had taken the original title deeds from her stating that they are required to obtain loan from co-operative bank and had not returned the documents, though asked, was also considered, and the District Munsif, however faulted the 3rd defendant/D.W.3 for not stating when she had so given the documents, and therefore observed that she had not proved her statement



by convincing supporting evidence. The District Munsif also observed that the description of the suit property was correct. Finally, observing that sale for less than Rs.100/- was not required to be registered, the District Munsif upheld the oral sale and also possession of the plaintiff, and therefore decreed the suit by judgment dated 28.04.1992.

A.S. No.24 of 1993 (Sub Court, Ariyalur) :

17. The 1st defendant then filed the aforementioned appeal suit. By judgment dated 03.11.1997, the learned Sub Judge re-appraised the evidence on record. Though the point framed for consideration was only whether the appeal suit should be allowed or not, a reading of the judgment shows that arguments were advanced on all points involved including the oral evidence adduced and also the validity of the oral sale in favour of the plaintiff vis-a-vis the registered sale deed in favour of the 1st defendant, the issue of possession of the suit property and the documents produced during trial. I would therefore not impinge the judgment of the first appellate court on the ground that sufficient points for consideration were not framed.



WEB COPY

18. The first appellate court first examined the description of the suit property. In the plaint it was stated to be measuring east to west 12 human feet and north to south 120 human feet and that the disputed portion measured 724 sq.ft. The measurements were compared with Ex. C3, the sketch produced by the Advocate Commissioner and it was found that the measurements differed. It was also found that the measurements in Ex. A22, chitta was also not correctly given. The admission of P.W.1 that enquiry was not conducted before patta was granted and that he obtained patta by using his experience was noted. With respect to the oral sale, it was observed that P.W.1 had stated that he had noted the date in a diary, but had not produced the diary. It was also noted that Ex. B25, the police complaint did not mention the date of the oral sale or that it was witnessed by P.W.2. It was also observed that though the plaintiff was an advocate clerk, even the receipt for the sale consideration of Rs.90/- was not produced. The evidence of P.W.2, Thangaraj was then analysed. The witness stated that he did not know the measurement of the suit property, He stated that the property was bounded on the east and west by the remainder portion of the plaintiff's property, which was not the case of the plaintiff himself. His evidence



was rejected.

19. The evidence of the 3rd defendant/D.W.3 was also considered.

She was the vendor in Ex. B3, sale deed in favour of the 1st defendant.

Her statement that the original title deeds were taken by the plaintiff to obtain loan from co-operative bank was also considered and the rejection of her evidence by the trial court was held to be improper.

20. The tax receipts Exs. A6 to A21 were also considered in juxtaposition with Ex. A 22. It was held that the evidence of P.W.2 to prove possession was not trustworthy.

21. The two notices exchanged between P.W.4, Swaminathan and the 2nd defendant in Exs, 23 and A 26 was not noted and it was observed that they were issued in a completely different circumstance, and there was no admission by the 2nd defendant about the title of the plaintiff, and even such admission would not bind the 1st defendant who had purchased the property.



WEB COPY

22. The sale deed in favour of the 1st defendant was upheld, and it was held that since the property was vacant land, possession would follow title. The appeal suit was allowed by judgment dated 03.11.1997.

S.A. No. 1894 of 1999 :

23. The plaintiff then filed the said second appeal before this court.

24. I would retain the nomenclature plaintiff and defendants. During the pendency of the second appeal, the plaintiff/appellant, the 1st defendant/1st respondent and the 3rd defendant/3rd respondent died and their legal representatives have been brought on record/recognized.

25. The second appeal had been admitted on the following substantial question of law :

“Whether the lower appellate court is right in discarding the documents filed in support of the case of the plaintiff?”



WEB COPY

26. Addressing the question of law would require examining the pleadings, oral and documentary evidence on record.

27. The plaintiff had filed the suit seeking declaration of title and injunction to restrain interference with possession of the suit schedule property.

28. It has to be examined whether the suit property had been properly described, particularly with respect to the measurements and incidently with respect to the value.

29. The plaintiff has claimed that he had purchased it by oral sale from Gurusamy Chettiar on 10.07.1961 for Rs. 90/-. He had described the property as measuring 12 human feet east to west and 120 human feet north to south. He had further stated that he had allowed the 1st defendant to be in occupation of a small portion and had therefore stated that the suit property measures 724 sq.ft.



WEB COPY

30. The suit property had been purchased Natarajan in a court auction on 20.10.1960.

31. Ex. A3 dated 20.10.1960 is the sale certificate issued in favour of the auction purchaser, Natarajan, the auction purchaser dated 20.04.1960 issued under Order 21 Rule 94 Criminal Procedure Code. Sale had been directed in C.P. No. 1833 of 1959 in O.S. No. 43 of 1947 on the file of the District Munsif Court, Ariyalur. The suit property has been described as measuring 12 feet x 120 feet. It had been valued at Rs. 101/-.

32. Natarajan then sold the property to Gurusamy Chettiar by registered sale deed dated Ex. A2 dated 03.11.1960. The sale consideration was Rs. 100/-. The property was described as measuring 12 feet x 120 sq.f.t. It had been registered as Document No. 4347 of 1960 in the office of the sub-registrar Ariyalur.



33. It is claimed by the plaintiff that Gurusamy Chettiar, who incidentally was the husband of the 3rd defendant Amsu Ammal, had sold the property to him by oral sale for Rs.90/- on 10.07.1961. He claimed that P.W.2, Thangaraj was a witness.

34. The 3rd defendant, Amsu Ammal, who was examined as D.W.3 had denied such oral sale said to have been effected by her husband. She affirmed the sale by her in favour of the 1st defendant.

35. P.W.2 Thangaraj did not mention the date 10.07.1961 in his chief examination when he was examined as a witness. During cross examination he stated he did not know the measurement of the property sold. He stated that receipt was not written on that date. There was no prior agreement. The date was given as the last Sunday of Tamil Aani month in 1961. He did not remember his exact date of marriage. It was either in the 3rd or 4th month of 1961. He did not remember the date of marriage of his daughter.

36. A reading of the evidence clearly shows that the witness is an interested witness. His evidence does not inspire confidence. It is improbable that he gives a date of an oral sale nearly 30 years prior and



does not remember either his or his daughter's marriage dates. More importantly, he did not give the date of the oral sale in his chief examination. Proof of oral sale has to be clear, lucid and unimpeachable.

37. The 1st defendant claims to have purchased the suit property from the 3rd defendant, wife of Gurusamy Chettiar. This was by Ex. B3, Sale Deed dated 18.07.1990, registered as document No. 800 of 1990 in the office of the sub-registrar, Ariyalur. The sale consideration was Rs.5,000/-. The area mentioned was land measuring 9 feet x 90 feet. This differs from the measurement given in the suit schedule.

38. It is inconceivable to accept the claim of the plaintiff that he had purchased the property on 10.07.1961 for Rs. 90/- when it was sold for Rs.101/- in auction on 20.10.1960 and later for Rs.100/- on 03.11.1960. Value of property, however small or wherever situated, increases, and certainly not decreases.

39. Section 101 of Indian Evidence Act, 1872 is as follows :

“Section 101. Burden of proof.

Whoever desires any Court to give judgment as



to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustration

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.”

40. In *Ramnivas Vyas v. H. Srinivasa Bhati*, (2013) 15 SCC 198 :

(2014) 5 SCC (Civ) 201 : albeit in a case of specific performance, the

Hon’ble Supreme Court had held as follows :

“38. The plaintiff had asserted that Ext. A-3, the agreement of sale dated 8-9-1988 was executed in his favour by Defendants 1 and 2 in respect of the suit schedule property which fact



was required to be proved to substantiate his claim, as the burden of proof of existence of that fact is on the plaintiff as per Section 101 of the Evidence Act, 1872, which provision states that a person who asserts the fact must prove that fact and therefore, he was required to prove that the documents Exts. B-1, B-2, B-3 and B-4 are ante-dated and fabricated by them to defeat the right of the plaintiff as alleged by him and the plaintiff was required to prove that the above fact existed on the date of assertion made by him.

“39. Section 103 of the Evidence Act states that the burden of proof as to any particular fact lies with a person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. Further, Section 104 of the Evidence Act states that the burden of proving a fact to make evidence admissible lies on the plaintiff and that burden has not been initially discharged by the plaintiff in this case by producing evidence on record.”

41. Thus the burden is on the plaintiff and the plaintiff alone to



prove the oral agreement of sale. He has failed to do so. He placed reliance on P.W.2, whose evidence is not trustworthy.

42. In *Kuppuswami Goundan vs Chinnaswami Goundan and others*, reported in (1928) 28 LW 234 : AIR 1928 Mad 546 : (1927) 53 Mad LJ (NRC 2) 27, a Division Bench of the Madras High Court, in a second appeal preferred by the plaintiff questioning two concurring judgments of the trial court and the first appellate courts against him had to consider the validity of a registered sale deed produced by the plaintiff/appellant vis-à-vis the contention of oral sale, subsequently reduced into writing, but unregistered produced by the defendant.

43. The facts were that the Plaintiff instituted a suit for recovery of possession of certain items of property, basing his claim on the title acquired by him under a registered sale deed, Ex. A, dated 15th June, 1922. The defendants pleaded that the plaintiff's vendor orally sold and delivered possession to them, of the suit properties in June, 1917 and in support thereof he also executed an unregistered sale deed, Ex. I dated 5th June, 1917. It was found that the defendants had been in possession of the suit properties for about 5 years prior to the suit in pursuance of



the said sale to the defendants.

44. The distinguishing factor between the facts in that case and the facts in the instant case is that, here, the plaintiff relied on an oral sale. There, the oral sale was subsequently reduced in writing. Even then the Division Bench held that property can pass only on a registered sale deed rather than on the claim of an oral sale, though subsequently reduced in writing. It was held as follows:

“(i) That the sale under which the defendants claimed should be regarded as a sale by the unregistered instrument and not as a “sale by delivery of property” and

(ii) that as the transaction of sale, if in writing, has to be registered under Sect. 54 of the Transfer of Property Act and as the sale to the defendants under the prior unregistered document is consequently invalid the subsequent registered instrument of sale must take effect, and the property must be deemed to have passed under it to the plaintiff.”

45. It was specifically held “

“So the case before us is a simple case of an invalid sale set up



by the 1st defendant as against a valid sale set up by the plaintiff it being clear that in such a case there being only one valid sale, that must be given effect to.”

46. In effect, it had been held that where two rival contentions are put, one based on an oral sale, even if subsequently reduced in writing and the other on a registered document, the pendulum must swing in favour of the registered document and it must be held that title passed on only to the party who produced the registered document.

47. In the instant case, the burden was entirely on the plaintiff to prove the oral sale. Mere possession is not sufficient. Title must be established to hold that possession is valid and lawful. Production of a few tax receipts will not come to the assistance of the plaintiff. The first appellate court had considered all the documents produced by the plaintiff. The plaintiff has no valid title.

48. An alternate plea of adverse possession had been put up. But that again will not come to the assistance of the plaintiff. He would have to admit to the title of Amsu Ammal, the 3rd defendant. If he does, then he would have to admit that his contention regarding oral sale is false. That



would shake the very nucleus of his case. In the plaint, he had claimed that he had joined her as a party “*to avoid future unnecessary litigations.*”

49. Either way the plaintiff’s case fails.

50. The plaintiff had produced Ex. A 25, police complaint. He had not given the date of his oral sale. He had not mentioned that it was witnessed by Thangaraj, P.W.2. They are very crucial facts.

51. The production of land tax receipts produced as Exs. A6 to A22 will not advance the case of the plaintiff, since they are based on Ex. A23, Chitta, which the plaintiff had admitted had been issued without enquiry and which he was able to obtain owing to his experience, obviously his experience as an Advocate clerk. Let me not enter into any further discussion on that aspect.

52. It is thus evident that the claim of the plaintiff of oral sale is a false claim. It had not been proved in manner known to law.

53. The substantial question of law revolves around whether the first



appellate court considered all the documents filed by the plaintiff. The discussion relating to the findings of the first appellate court and the subsequent independent discussion make it clear that the judgment of the first appellate court is a well considered judgment and requires no interference and has to be up held.

54. In the result

- i. The second appeal is allowed with costs;
- ii. The judgment of the Sub Court, Ariyalur, dated 03.11.1997 in A.S. No. 24 of 1993 is upheld and confirmed; and
- iii. The judgment of the District Munsif Court, Ariyalur dated 28.04.1992 in O.S. No. 298 of 1990 is set aside and the suit is dismissed with costs.

Vsg

26.07.2022

Index :Yes/No

Internet:Yes/No

To



WEB COPY

1. District Munsif Court, Ariyalur.
2. Sub Court, Ariyalur.

C.V.KARTHIKEYAN, J.

vsg



WEB COPY



**Pre-Delivery Judgment made in
S.A.No. 1894 of 1999**

26.07.2022