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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2021
PRONOUNCED ON : 04.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A. No.1082 of 2011
and M.P. No.1 of 2011

1.Velu
2.Dhandapani (died)

...Appellants/Respondents 1 & 2/
Defendants 1 & 2

3.Kumar
4.Ramesh
5.Panneerselvam
6.Anjalai
7.Meera (Minor)
D/o.Jothilingam,
aged about 12 years
Rep. by her Mother and Natural Guardian
Anjalai, 6th petitioner
all are residing at Keezhapalayam Village,
Elavanasoor Kottai Post,
Ulundurpet Taluk,
Villupuram District.

...3 to 7 Appellants/
LRs of the 2nd Defendant

[Appellants 3 to 7 were brought on record as LR's of the deceased 2nd appellant vide order dated 08.09.2021 made in C.M.P.No.13477 of 2021 in S.A.No.1082 of 2011]

versus

Kousalya

...Respondent/Appellant/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 07.04.2011 made in A.S.No.126 of 2010 on the file of the Principal District Court, Villupuram, reversing the judgment and decree dated 29.07.2009 made in O.S.No.97 of 2006 on the file of the learned Principal District Munsif, Ulundurpet.



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For Appellants : Mr.R.Rajarajan
For Respondent : M/s.Nilaphar
for Mrs.R.Meenal

J U D G M E N T

The present appeal is directed against the judgment and decree dated 07.04.2011 passed in A.S.No.126 of 2010 on the file of the learned Principal District Judge, Villupuram.

2. The respondent in this appeal filed the suit in O.S.No.97 of 2006 on the file of the learned Principal District Munsif, Ulundurpet, seeking the relief of declaration, declaring that the plaintiff, is the absolute owner of the suit schedule property and for consequential injunction. By judgment and decree dated 29.07.2009, the learned Principal District Munsif, Ulundurpet, partly allowed the suit, in respect to the 1st item of the suit schedule property.

3. Challenging the same, the plaintiff / respondent preferred an appeal in A.S.No.126 of 2010, wherein the Principal District Court, Villupuram, by judgment and decree dated 07.04.2011, allowed the appeal and ultimately, the suit filed by the plaintiff was decreed in its entirety. Being dissatisfied with the said findings, the defendants 1 and 2 are before this Court with the present Second Appeal.

4. The parties, for convenience sake, are referred to hereunder according to their litigative status before the trial Court.

5. The laconic averments made in the plaint, are as follows:

(i) The plaintiff had purchased the 1st and 2nd item of the suit schedule property from one Krishnaveni and others vide registered Sale Deed dated 02.12.1996 [Ex.A.1]. After made purchase, the plaintiff, is in the possession and enjoyment of the suit schedule property. As the plaintiff and her predecessors in title were in enjoyment and possession over the suit schedule property for more than a prescribed period of 12 years, they are entitled for prescriptive title by adverse possession. Till date, both the schedule properties, are in possession and enjoyment of the plaintiff.



(ii) The first and second defendants have got property in West of the 1st item of the schedule property and North of the 2nd item of the schedule property. By virtue of their possession over the nearby schedule property, on 01.03.2006, the defendants are trying to encroach upon the schedule property and the same was managed by the plaintiff. Now, the defendants again attempted to encroach the suit schedule property. Hence, the suit.

6. The case of the second defendant, as averred in the written statement, is as follows:

(i) The vendor of the plaintiff Krishnaveni, did not have any title over the suit schedule property. Therefore, the purchase made by the plaintiff from the said Krishnaveni does not create any right to the plaintiff. The description of properties and measurement were also not proved. The suit schedule property is not in the actual enjoyment and possession of the plaintiff. The defendants never trying to purchase the schedule properties, at any circumstances.

(ii) The properties situated at Pidagam Village in S.No.281/2, consists of 3.00 acres and the property in S.No.283/3 consists of 0.76 cents, totally 3.76 cents originally belonged to one Thalaiverichan, Thalaiverichan has got 3 sons, namely, Muruvan, Kulla Padayachi and Chinnathambi. After the demise of Thalaiverichan, his 3 sons partitioned the property at 1.25 cents each. The share begot by Chinnathambi lies in S.No.281/2A2. After Chinnathambi, his son Palani succeeded the property and he, in turn, sold the property to one Pokkalai Ammal, by registered Sale Deed dated 16.03.1942.

(iii) Pokkalai Ammal died leaving her husband Periyathambi Padayachi, as her legal heir. Masi Padayachi, is the son of Pokkalai Ammal and Periyathambi Padayachi. Masi Padayachi sold the said 1.25 cents to one Kaliya Padayachi by a Sale Deed dated 12.02.1959. The plaintiff's predecessor one Krishnaveni, is the wife of Kaliya Padayachi. Vijaya, Govindan and Venkatesan were the children of Krishnaveni and Kaliya Padayachi. They were actually in enjoyment of 1.25 cents derived from Masi Padayachi. Therefore, the legal representatives of Kaliya Padayachi would have actually sold 1.25 cents to the plaintiff but they have sold the property with more extent.

(iv) Kulla Padayachi died leaving behind Kesavan and Muniyan and they partitioned the property at 0.62½ cents each. Muniyan sold his share in favour of one Kesavan through auction. Muruvan has got 2 children, by name, Narayanan and Marimuthu and they partitioned the property at 0.62½ cents.



Narayanan sold his share in favour of Kesvan and accordingly, Kesavan got total extent of 1.87½ cents. Kesavan got 3 sons, namely, Kandasamy, Mayavan and Dhanasingu. Mayavan sold his share in favour of Kaliya Padayachi. But instead of selling 0.62½ cents, he sold 0.92 cents. Krishnaveni is the legal heir of the said person. Therefore, as per the Sale Deeds dated 12.02.1959 and 06.04.1966, the plaintiff ought to have got 1.87 cents but they have purchased 1.97 cents.

(v) Hence, the whole area consists of 1.97 cents in S.No.282/2A2 would not become the property of the plaintiff. As far as the plaint 2nd item of the schedule property is concerned, it consists of only 0.24 cents. The case of the plaintiff is that, the plaint 2nd item of the schedule property also, belongs to Krishnaveni and others. But in the Sale Deeds of her predecessors, the 2nd item of the suit schedule property, did not find place. Therefore, it is doubtful how the plaintiff begot the 2nd item of the schedule property from Krishnaveni and others.

(vi) The plaintiff has wantonly suppressed the Sale Deeds dated 12.02.1959 and 06.04.1966. Therefore, the plaintiff on the basis of the fraudulent Sale Deeds got patta and on the basis of patta, she is claiming right and she is no legal right over the 2nd item of the schedule property. The plaintiff, is entitled to 1.87½ cents. She had not purchased the 2nd item of the property from the persons having legal right. Therefore, the plaintiff is not entitled to any relief as prayed for in the suit. Hence, the suit filed by the plaintiff, is liable to be dismissed.

7. Based on the above pleadings, the learned Principal District Munsif, Ulundurpet, framed necessary issues and tried the suit. On the side of the plaintiff, 2 witnesses were examined as P.W.1 and P.W.2 and marked 11 documents, as Ex.A.1 to Ex.A.11. Similarly, on the side of the defendants, 2 witnesses were examined as D.W.1 and D.W.2 and marked 13 documents, as Ex.B.1 to Ex.B.13.

8. Having considered the materials placed before him, the learned Principal District Munsif, Ulundurpet, vide judgment and decree dated 29.07.2009, allowed the suit, in respect to the 1st item of the schedule property and as far as in respect to the plaint 2nd item of the schedule property, the suit was dismissed, without costs. In the appeal filed by the plaintiff in A.S.No.126 of 2010, the learned Principal District Judge, Villupuram, reversed the findings arrived at by the trial



Court in respect to the 2nd item of the suit schedule property and ultimately, the suit was decreed, as prayed for.

9. Feeling aggrieved over the said findings of the Court below, the appellants / defendants, are before this Court with the present Second Appeal. The Second Appeal was admitted on file after formulating the following substantial questions of law;

"1. Whether the first Appellate Court's decree and judgment is correct in reversing the decree and judgment of trial Court on the basis of claim of admission made by the appellants / defendants in respect of grant of patta in the name of respondent / plaintiff ?

2. Whether the first Appellate Court's finding is correct in granting a decree for declaration and injunction in respect of 2nd item of suit schedule property only on the basis of revenue records but not on the basis of any title deeds ?

3. Is not the first Appellate Court is wrong in decreeing the suit for declaration when the respondent / plaintiff could not able to produce any document of title in respect of the 2nd item of the suit property but on wrongly shifted the burden of proof of title to the appellants / defendants ?

4. Whether the first Appellate Court is right in deciding the title of suit property not based on any title deeds but based on patta obtained in the U.D.R. Scheme ?"

10. Heard Mr.R.Rajarajan, learned counsel appearing for the appellants and M/s.Nilaphar, learned counsel for Mrs.R.Meenal appearing for the respondent and also perused the materials available on record.

11. In the present suit, the plaintiff herein, seeking the relief of declaration, in respect to the following two properties i.e. S.F.No.281/2A to an extent of 1.97 cents and in S.F.No.281/2B to an extent of 0.24 cents. The trial Court, disposed the suit, after granting decree in respect to the 1st item of the suit schedule property alone i.e. S.F.No.281/2A. Against which, the defendants, who are the aggrieved parties, are not preferred any appeal. Therefore, the findings arrived at by the trial Court in respect to Survey No.281/2A becomes final.



12. In respect to the 2nd item of the suit schedule property i.e. S.F.No.281/2B, the trial Court negatived the relief which prayed for by the plaintiff. Therefore, he prepared an appeal, wherein, the learned Principal District Judge, Villupuram, after allowing the appeal, granted the relief of declaration, in favour of the said property also. Against which, the defendants have preferred this Second Appeal.

13. It is the submission of the learned counsel for the appellants / defendants that, the lower Appellate Court has erroneously come to the conclusion that, since the patta in respect to the 2nd item of the suit schedule property stands in the name of the plaintiff, it would be sufficient to accept the case of the plaintiff. He would further submit that in the absence of any evidence in respect to title, granting declaratory relief, is against the settled principles of law. Accordingly, he prayed to allow this appeal.

14. Per contra, the learned counsel for the respondent / plaintiff would contend that, the documents relied on by the plaintiff would be sufficient to prove his title, hence interference in the findings arrived at by the lower Appellate Court need not be necessary.

15. Now, on considering the said submissions with the relevant records, in order to prove his title, before the trial Court, the Sale Deed stands in the name of the plaintiff was produced as Ex.A.1. It seems through the said Sale Deed, the plaintiff herein purchased the suit schedule property from one Krishnaveni and others. In the Sale Deed in respect to deriving of title by the vendor of the plaintiff, it was stated as follows:

“எங்களில் 1 நபரின் கணவர் கலிய பெருமாள் 12.02.1959லும் 6.4.1966லும் முறையே கிரையம் பெற்றதும் மேற்படி கலிய பெருமாள் படையாச்சி தன்னுடைய தாயார் முனியம்மாள் என்பவரால் 18.12.1986ல் உயில் மூலம் வாங்கப்பட்டதுமான சொத்துக்களை மேற்படி கலிய பெருமாள் படையாச்சி அனுபவித்து உடையார்கால மானபிறகு எங்கள் அனுபவத்தில் வரப்பட்ட”

16. Accordingly, vide Sale Deeds dated 12.02.1959, 06.04.1966 and through the Will dated 18.12.1986, the husband of the vendor of the plaintiff Kaliya Padayachi, derived the title to the suit property and after his demise, the property under dispute came to her.



17. In this occasion, while at the time of trial before the trial Court, the husband of the plaintiff Mayavan, who gave evidence on behalf of the plaintiff, did not produce the above referred Sale Deeds.

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18. Furthermore, after suppressing those documents, the plaintiff has failed to produce the Will dated 18.12.1986 alleged to have been executed by her mother-in-law Muniyammal.

19. Accordingly, in order to prove her title, the plaintiff has produced only one document i.e. Ex.A.1, which is not having any correct particulars. Though the revenue records pertains to the 2nd item of the suit schedule property stands in the name of the plaintiff, it is settled law that, the revenue records, is not a document to the title.

20. In the said occasion, on going through the case of the defendants, it is seen that, the suit schedule property and other properties, are originally belongs to one Thalaiverichan. Thalaiverichan has got 3 sons namely, Muruvan, Kulla Padayachi and Chinnathambi. After the demise of the said Thalaiverichan, a total extent of 3.76 cents owned by him was orally partitioned between his sons. Among which, an extent of 1.25 cents in S.F.No.281/2A2 was allotted in favour of Chinnathambi.

21. After the demise of the said Chinnathambi, his son Palani on 16.03.1942 sold the said land to one Pokkalai Aammal. In turn, one Masi Padayachi, who is the son of Pokkalai Ammal, on 12.02.1959 sold the same in favour of Kaliya Padayachi, who is the husband of the vendor of the plaintiff. Accordingly, the defendants admitted that, the vendor of the plaintiff, is having 1.25 cents in S.F.No.281/2A2.

22. Further case of the defendants is that, from the other heirs of Thalaiverichan, the husband of the vendor of the plaintiff on 06.04.1966 purchased 0.62 ½ cents. In this regard, instead of mentioning 0.62½ cents, the vendor of the plaintiff had mentioned as 0.92 cents and the same would create a confusion over the title having by the plaintiff and the defendants. So, it is necessary to see the Sale Deed dated 06.04.1966, 12.02.1959 and the Will dated 18.12.1986.

23. Therefore, the fact remains that non-production of the Sale Deeds dated 12.02.1959 and 06.04.1966 by the plaintiff would go to show that the plaintiff has not approached this Court with clean hands.



24. In this occasion, on going the judgment rendered by the lower Appellate Court mainly relying on the evidence given by D.W.1, came to the conclusion that, the 2nd item of the suit schedule property, is the absolute property of the plaintiff. It is true, in respect to the 2nd item of the schedule property in the written statement filed by the defendants, they have not pleaded as the 2nd item of the schedule property belongs to them.

25. However, in the judgment rendered by the lower Appellate Court, it was observed as the defendants have not filed any documents for the proof of right and enjoyment over the plaint 2nd item of the suit schedule property and they have admitted the plaintiff's possession over the plaint 2nd item of the schedule property, therefore, the defendants could not claim any right or title over the plaint 2nd item of the schedule property.

26. Now, the said observations reveal the fact that the trial Court expected the defendants that they have to prove their case. In otherwise, the First Appellate Court upheld the contention of the plaintiff that the plaintiff is in the possession of the 2nd item of the suit schedule property and accordingly, came to the conclusion that, they are having the title.

27. At this juncture, it is necessary and useful to see the judgment of our Honourable Apex Court in UNION OF INDIA AND OTHERS vs. VASAVI CO-OP. HOUSING SOCIETY LTD. AND OTHERS reported in (2014) 2 SCC 269 wherein, it has observed as follows;

"15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

16. The High Court, we notice, has taken the view that once the evidence is let in by both the parties, the question of burden of proof pales into insignificance and the evidence let in by both the parties is required to be appreciated by the court in order to record its findings in respect of each of the issues that may ultimately determine the fate of the suit. The High Court has also proceeded on



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the basis that initial burden would always be upon the plaintiff to establish its case but if the evidence let in by the defendants in support of their case probabilises the case set up by the plaintiff, such evidence cannot be ignored and kept out of consideration.

17. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in *Moran Mar Basselios Catholicos v. Thukalan Paulo Avira* reported in AIR1959 SC 31 observed that:

"20. ... in a suit [for declaration] if the plaintiffs are to succeed, they must do so on the strength of their own title."

18. In *Nagar Palika, Jind v. Jagat Singh* (1995) 3 SCC 426, this Court held as under:

"The onus to prove title to the property in question was on the plaintiff-respondent. ... In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit."

19. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against (sic them), in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited."

28. Applying the principle set out in the above referred case, to the case on hand, as rightly pointed out by the learned counsel for the appellants, here is the case, the plaintiff after suppressing some material facts approached the Court for the relief of declaration. It is easy for her to trace out the Sale Deeds stands in the name of her predecessors.



Instead of tracing the same, after suppressing those vital Deeds, which are all stands in her predecessor's name, filed this case and the said situation creates a doubt over the plaintiff's case. Accordingly, we are of the opinion that the plaintiff failed to prove her case in respect to 2nd schedule of property.

29. Hence, in view of the above, the substantial questions of law are all answered affirmatively in favour of the appellants / defendants.

30. In fine, this Second Appeal is allowed and the judgment and decree dated 07.04.2011 made in A.S.No.126 of 2010 on the file of the Principal District Court, Villupuram, is hereby set aside. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sri
To

1.The Principal District Judge
Villupuram.

2.The Principal District Munsif,
Ulundurpet.

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+1 CC to Ms.R. Meenal, Advocate sr 188

S.A. No.1082 of 2011
and M.P. No.1 of 2011

PA(CO)
SP(07/02/2022)