



S.A.No.98 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2022

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

S.A.No.98 of 2019

and

C.M.P.No.2013 of 2017

1.Sugumar
2.Lakshmi

... Appellants

-Vs-

Pownammal

... Respondent

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree passed by the Subordinate Court, Vellore dated 09.09.2015 in A.S.No.46 of 2013 and thereby reversing the judgment and decree of the trial Court in O.S.No.784 of 2007 dated 25.07.2013 passed by Additional District Munsif, Vellore.

For Appellants : Mr.A. Palaniappan
For Respondent : Mr.A. Gouthaman



WEB COPY



S.A.No.98 of 2017

J U D G M E N T

The defendants have filed the above appeal, challenging the judgment and decree passed by the Subordinate Judge, Vellore in A.S.No.46 of 2013 in and by which, the learned Judge has revised the judgment and decree passed by the Additional District Munsif, Vellore in O.S.No.784 of 2007. It is necessary to allude to the facts which have given rise to the above second appeal and while narrating the same, parties are referred to in the same ranking as before the District Munsif, Vellore.

2. The plaintiff had filed the suit in O.S.No.784 of 2007 on the file of Additional District Munsif, Vellore seeking declaration of her title to the suit property and for permanent injunction restraining the defendants, their servants, agents, subordinates etc., from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The suit schedule property is an extent of 1.15 cents out of a total extent of 1.82 cents comprised in punja S.No.193, Pallaedayampattai



S.A.No.98 of 2017

Village, Virapaktchpuram Village, Vellore, bounded on the South by Palamathi Road, East by lake channel West by defendants lands, north by defendants land.

3. It is the plaintiff's case that the suit schedule property measuring a larger extent belong to one Balliyaammal who is grandmother of the plaintiff. She had executed a registered settlement deed on 15.12.1950 in favour of her son Kanna Gounder, the father of the plaintiff settling the suit property and other landed properties on the said Kanna Gounder. Kanna Gounder had two wives, Shakuntala ammal and Sharadha ammal. The plaintiff was born to Kanna Gounder through his first wife, Shakuntala ammal and the first defendant was born to Kanna Gounder through his second wife Sharadha ammal. The second defendant is the wife of the first defendant. Kanna Gounder had taken possession of the landed properties and was enjoying the same absolutely. On 13.10.1993, he had executed a settlement deed settling a portion of the suit property (15 cents) on the plaintiff. Thereafter, on 15.03.1994 Kanna Gounder had executed an



S.A.No.98 of 2017

WEB COPY

another settlement deed, settling the 1 acre of property upon his wife Shakuntala ammal and daughter, the plaintiff. Shakuntala ammal in turn, had executed a settlement deed dated 10.09.1997 settling this 1 acre upon the plaintiff.

4. The plaintiff would further submit that during his life time, Kanna Gounder had executed a sale deed dated 22.03.1994 selling the remaining portion to the defendant. Under the two settlement deeds Kanna Gounder had settled 1 acre and 15 cents on the plaintiff and her mother and under the sale deed, 0.67 cents was sold to the defendant. The defendant had accepted the sale fully understanding the 4 boundaries of the property sold to him. The defendants thereafter, started attempting to interfere in the plaintiff's peaceful possession and enjoyment of the suit schedule property. On 18.12.2007, they had openly declared that they would interfere in the possession of suit property. Therefore, left with no other alternative, the plaintiff had come forward with the suit, in question.



S.A.No.98 of 2017

WEB COPY

5. The first defendant had filed a written statement which is adopted by the second defendant, *inter alia* denying the statements made in the plaint and submitting that except for the relationship and the fact that the property belonged to his grandmother, Balliyammal and that she had settled the property on her father, Kanna Gounder, all other allegations were subject to proof as the first defendant did not accept the same. He had denied the settlement deed in favour of the plaintiff as well as her mother and consequently, the settlement deed by Shakuntala ammal in favour of the plaintiff. He would submit that his father had executed a registered sale deed dated 22.03.1994 selling an extent of 0.67 cents in S.No.193/3 along with the well, 3HP pump set with electrical service connection No.56 along with other properties. He would submit that though the boundaries have been wrongly set out in the sale deed however, they had been put in possession of the southern portion of S.No.193/1, in which portion they have been in continuous, open and uninterrupted possession, from the date of the sale; 31.01.2008 by the first defendant, till he had executed the



S.A.No.98 of 2017

registered settlement deed in favour of the 2nd defendant and thereafter, the second defendant has continued to be in possession of the suit property. He would therefore contend that the defendant had perfected title to the suit property. The defendants would submit that it is only they who are in possession and enjoyment of the property. The electricity service connection has also been transferred in their name after their purchase. Therefore, the defendant would seek to have the suit dismissed.

6. The learned Additional District Munsif, Vellore had framed the following issues on considering the pleadings and the evidence on record:

1. Whether the plaintiff is entitled for declaration as prayed for?
2. Whether the plaintiff is entitled for permanent injunction against the defendants?
3. To what other relief?

Additional Issues

1. Whether the defendants are in possession of the suit properties is true and correct?



S.A.No.98 of 2017

WEB COPY

7. The plaintiff had examined herself as P.W.1 and one Balaraman, as P.W.2 and Exs.A1 to A13 were marked. On the side of the defendants, the first defendant had examined himself as D.W.1 and marked Exs.B1 to B10. The Commissioner's Report and Plan were marked as Exs.C1 to C3. Thereafter, the learned Judge proceeded to hold that the defendants had perfected the title to the property and dismissed the suit. Challenging the same, the plaintiff had filed A.S.No.46 of 2013 on the file of the Subordinate Judge, Vellore. The learned Subordinate Judge after re-appreciating the evidence on record and after hearing the arguments, proceeded to allow the appeal. The learned Judge has taken into consideration, the description, proceeded to examine the schedule of property as given in Exs.A1, A2, A3 and B1, to identify the property that had been conveyed / settled on the defendant and the plaintiff respectfully. The learned Judge had also relied upon the admissions and cross examination of P.W.1 to arrive at the said finding and ultimately allowed the appeal and set aside the judgment and decree of the learned Additional



S.A.No.98 of 2017

District Munsif. Aggrieved by the same, the plaintiff is before the Court.

WEB COPY

8. The second appeal has been admitted on the following substantial questions of law:-

1. Whether the first appellate Court had reversed the specific findings of the trial Court that the appellants are occupying the southern portion of Survey No.193/1, Pallaidayanpatti Village, Virupatchipuram Post, Vellore Taluk which constitutes the suit schedule property was enjoyed by the first appellant land of an extent of acre 0.67 cents and the northern portion of the said Survey No.193/1, was enjoyed by the respondent who are elected as half sister and half brother respectively without any substantiation of oral and documentary evidence is sustainable in law?

2. Whether the first appellate Court is justified in relying upon the boundaries in the settlement deed Ex.A4 dated 10.09.1997, which constitutes a self-serving document by the mother of the respondent in favour of the respondent without appreciating the actual possession and occupation in the field by the respondent?

3. Whether the first appellate Court proceeded o a



S.A.No.98 of 2017

wrong footing in failing to appreciate the documentary evidence Ex.B5, Ex.B6 and Ex.B7 being the electricity consumption card in respect of the electricity connection to the well situated on the souther side of the property stands in the name of the first appellant?

9. Mr.A. Palaniappan, learned counsel appearing on behalf of the plaintiff would throw the weight of his argument on the fact that under Ex.B1, the first defendant has not only sold the land but he was also sold the right to enjoy the well and draw water there from. Therefore, he would contend that though, the description of the property in Ex,B1 would indicate that it is the northern portion that has been sold, however by usage and enjoyment of the property, the defendants were enjoying 67 cents in the South where the Well, electricity service connection etc., have been installed. He would further submit that the defendant has filed documents to show that the electricity charges are being paid by him and also the kist receipts. All of these documents would go to show that the defendant is in enjoyment of the southern portion of the S.No.193/1.



S.A.No.98 of 2017

WEB COPY

10. Per contra, Mr.A.Gouthaman appearing on behalf of the defendants would contend that the description of the property settled on the plaintiff and her mother would clearly show that they are situated in the portion situated on the South. The defendant has been sold the property on the North which is evident from Ex.B1. The argument of the defendants' counsel that the parties have been in possession and enjoyment of the properties in S.No.193/1 contrary to the deed is absolutely incorrect and the plaintiff has produced the kist receipts, patta etc., to show her enjoyment of the suit property. He would therefore seek to have the judgment of the lower appellate Court confirmed.

11. Heard the learned counsels on either side.

12. Before proceeding to discuss the facts on hand, a small chart showing the description of properties as contained in Exs.A1, A2, A3, A4 and B1 is depicted herein below which to a very great extent would narrow the need for an elaborate discussion.

10/16



S.A.No.98 of 2017

WEB COPY

Settlement deed dated 15.12.1950 bearing document No.179/1951 – Ex.A1
executed by Balliyammal in favour of plaintiff's father Kanna Gounder
(4.82 ¼ cents)

KARUPPUKARA
N PARAI

Land purchased by settlor



Road

Settlement deed dated 13.10.1993 bearing Document No.3942/1993 –
Ex.A2 executed by Kanna Gounder in favour of plaintiff (0.15 cents)

MANIMANGALAM
OF THE SETTLOR
KANNA GOUNDER

REMAINING LAND OF THE
SETTLOR KANNA GOUNDER



PALAMATHY ROAD



S.A.No.98 of 2017

WEB COPY

Settlement deed dated 15.03.1994 bearing Document No.1013/1994 –

Ex.A3 executed by Kanna Gounder in favour of Sagunthalammal (1 acre)

ERNOSRAI AND
BROOKING
SETTLED IN
FAVOUR OF
POUNAMMAL
(PLAINTIFF)

REMAINING PORTION OF THE
PROPERTY BELONGING
TO KANNA GOUNDER



PALAMATHY ROAD

Settlement deed dated 10.09.1997 bearing Document No.4427/1997 –

Ex.A4 executed by Sakunthala Ammal in favour of plaintiff (1 acre)

ERNOSRAI AND
BROOKING
PROPERTY
SETTLED IN
FAVOUR OF
POUNAMMAL
(PLAINTIFF)

PROPERTY BELONGING TO
SUKUMARAN SON OF
KANNA GOUNDER



BATTAI



S.A.No.98 of 2017

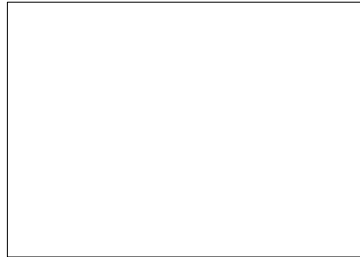
WEB COPY

Sale Deed dated 22.03.1994 bearing Document No.1152/1994 – Ex.B1

executed by Kanna Gounder in favour of 1st defendant (0.67 cents)

SYRVEIKARI
NO.190/1

SURVEY NO.197 AND
POROMBOKE LAND



PROPERTY ALREADY
SOLD BY KANNA
GOUNDER

13. A mere perusal of the boundaries given in Ex.B1 would show that the property that was sold to the defendant was the property on the North of the property settled upon the plaintiff and her mother. The defendant is attempting to stake a claim on the southern portion only on the basis of the narration in schedule to Ex.B1 that the plaintiff would enjoy the well, the service connection etc., all of which are situated in the property that is being settled on the plaintiff and her mother. The sale in favour of the defendant has taken place much after the settlement in favour of the plaintiff and her mother. Therefore, on the date of the sale in favour of the

13/16



S.A.No.98 of 2017

WEB COPY

defendant, the vendor namely Kanna Gounder did not have any right, title or interest to the southern portion of S.No.193/1 as the same has already been settled on the plaintiff and her mother. Therefore, the contention of the defendants that since they had a right to the well, the motor pump set etc., they would automatically have a right to the southern portion of S.No.193/1, is to say the least, absurd. The defendant has not been able to substantiate as to how he has got title or possession to the suit schedule property, especially when the property sold to him is a different one. The 1st defendant would also admit that he was aware about the fact that his father has settled the property on his sister. The defendant had purchased a specific property within well-defined boundaries. The plaintiff has also been given properties with specific boundaries and she has also produced proof of possession. The evidence has been analysed in great detail by the lower appellate Court and thereafter, the learned Judge has arrived at the finding that the plaintiff was entitled to the reliefs claimed.



S.A.No.98 of 2017

WEB COPY

14. Therefore, the substantial questions of law are answered against the defendants. The defendants have not been able to demonstrate as that the judgment and decree of the lower appellate Court is perverse.

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

22.11.2022

AT
Index : Yes/No
Speaking order/non-speaking order

To
1.The Subordinate Court, Vellore.
2.The Additional District Munsif, Vellore.



WEB COPY



S.A.No.98 of 2017

P.T.ASHA, J.

AT

S.A.No.98 of 2019 and
C.M.P.No.2013 of 2017

22.11.2022