



SA.No.1068 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.12.2023	Delivered on: 21.12.2023
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CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.1068 of 2010
and M.P.No.1 of 2010

1.Govindasamy
2.Anandan
3.Palani
4.Karthikeyan
5.Venkatesan.

... Appellants

- Vs -

1.Settu
2.Annamalai

... Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 05.11.2009 in A.S.No.82 of 2007 passed by the learned Additional Sub Judge, Thiruvannamalai, reversing the judgment and decree dated 06.10.2007 in O.S.No.21 of 2007, passed by the learned Principal District Munsif-cum-Judicial Magistrate, Chengam.

For appellants : Mr.D.Baskar
For respondents : Mr.G.Rajan



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J U D G M E N T

This second appeal has been filed at the instance of the defendants.
The respondents herein are the plaintiffs before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

The brief facts, which give rise to this instant second appeal, are as follows:

3(a). The suit properties originally belonged to one Mr.Gopal Chetty. The plaintiffs' father *viz.*, Mr.Kothanda Konar had filed O.S.No.168 of 1960, on the file of the District Munsif Court, Thiruvannamalai, for recovery of money against the said Mr.Gopal Chetty, and obtained a decree. In execution proceedings of the above suit, the 1st item of the suit properties was purchased by one Mr.Munusamy Pillai S/o.Konari Konar through Court auction sale. Thereafter, the plaintiffs' father purchased the same from the said Mr.Munusamy Pillai on 25.04.1967. The 2nd and 3rd items of the suit properties were purchased by the plaintiffs' father on 28.05.1965 through



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Court auction and he took possession of the same.

3(b). Out of the total extent held by the plaintiffs' father, he sold an extent of 3 acres by retaining an extent of 2 acres in S.F.No.27/1A. The plaintiffs' father was in possession and enjoyment of the suit properties during his life time. After his demise, the plaintiffs are in the possession and enjoyment of the said properties.

3(c). The defendants 1 and 3 are the sons of the said Mr.Gopal Chetty and the defendants 2 and 4 are the sons of the defendants 1 and 3, respectively. Therefore, the defendants 1 to 4 had no title or interest over the suit properties. Though the defendants 1 to 4 had no right in respect of the suit properties, they sold the 1st item of the suit properties to the 5th defendant on 21.02.2006 and 2nd and 3rd items of the suit properties on 09.10.2006. According to the plaintiffs, the sale deeds executed in favour of the 5th defendant will not bind the plaintiffs. By virtue of the said sale deeds, the defendants were attempting to interfere with the possession of the plaintiffs. Hence, the plaintiffs has come forward with the suit for declaration



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and for permanent injunction.

4(a). The said suit was resisted by the defendants by contending that the father of the plaintiffs *viz.*, Mr.Kothanda Konar purchased the 1st item of the suit property measuring 5 acres from the Court auction purchaser one Mr.Munusamy Pillai on 25.04.1967. Subsequently, he sold 4 acres of the property to one Mr.Gopal Konar, Mr.Raja Konar and Mr.Krishna Konar on 23.02.1983. Therefore, in respect of S.F.No.27/1A, he had only one acre and there is no land to an extent of 2 acres.

4(b). In respect of the 2nd and 3rd items of the suit properties, though the said properties were sold through Court auction, no one registered the sale certificate and no one had taken possession of the same through due process of law. Hence, the 2nd and 3rd items of the suit properties have been in constructive possession of Mr.Gopal Chetty. After his demise, the said properties devolved upon his legal heirs *viz.*, defendants 1 to 4. Since the defendants 1 to 4 are the absolute owners of the 2nd and 3rd items of the suit properties, they had sold the same to the 5th defendant.



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4(c). Further, the 5th defendant contended that in pursuance of the Court auction, no possession was taken through Court. Further, the 5th defendant had proceeded to purchase the suit properties based upon the encumbrance certificate, and there is no encumbrance in the encumbrance certificate in respect of the suit properties item 2 & 3. After verifying encumbrance certificate only, he proceeded to purchase the suit properties from the defendants 1 to 4. Hence, he stated that he is a *bona fide* purchaser and prayed to dismiss the suit.

Evidence and documents submitted before the Trial Court:

5. Before the Trial Court, on behalf of the plaintiffs, the first plaintiff examined himself as P.W.1 and one more witness viz., Mr.Shanmugam was examined as P.W.2, and fourteen documents were marked as Exs.A1 to A14. On behalf of the defendants, the 5th defendant examined himself as D.W.1, and eight documents were marked as Exs.B1 to B8.

Issues framed by the Trial Court:

6. The following issues were framed, after recasting by the Trial Court:

“1. Whether the plaintiffs have title over the 1st item of



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suit property?

2. Whether the plaintiffs' father took possession of item nos.2 and 3 of the suit property after Court auction sale?

3. Whether the plaintiffs have title and possession over item no.2 and 3 of the suit properties?

4. Whether the plaintiffs are entitled for the relief of declaration and injunction as prayed for? and

5. To what other relief are the parties entitled? ”

Findings of both the Courts below:

7. While answering the above issues which were recasted, the Trial Court found that in respect of the 1st item of the suit properties, the plaintiffs is entitled for declaration to one acre only in S.F.No.27/1A instead of his prayer for larger extent. In respect of the 2nd and 3rd items of the suit properties, the Trial Court arrived at a conclusion that the sale certificate of Court auction sale need not be registered and the possession of the auctioned properties can be obtained from the judgment debtor directly, without the intervention of the Court. However, the Trial Court decreed the suit in part and granted declaration only in respect of the 1st item of the suit properties, and dismissed in respect of the 2nd and 3rd items of the suit properties, on the



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ground that when the possession of Court auction purchase of 1st item of the suit properties was obtained by the plaintiffs' father through Court, in respect of the the 2nd and 3rd items of the suit properties, the case put forth by the plaintiff that possession was obtained directly from the judgment debtor, is not believable.

8. Aggrieved by the same, the plaintiffs preferred an appeal before the First Appellate Court. The First Appellate Court concurred with the findings in respect of issue no.1 viz., granting declaration to an extent of one acre in respect of the 1st item of the suit property. However, in respect of the 2nd and 3rd items of the suit properties, the First Appellate Court reversed the findings of the Trial Court and held that the plaintiffs are entitled for declaration and permanent injunction. Challenging the same, the defendants preferred the instant second appeal.

Submissions of both sides:

9. The learned counsel for the appellants/defendants would



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contend that the First Appellate Court had erred in reversing the well considered judgment rendered by the Trial Court, and that the finding rendered by the Trial Court in respect of taking delivery of possession of the 2nd and 3rd items of the suit properties, is probable. Whereas the First Appellate Court without assigning any reason, had reversed the findings. It is also contended by the learned counsel for the appellants that there is no proof or reference as to the factum of sale in Ex.B6/Encumbrance Certificate. Therefore, the purchase made by the 5th defendant is saved and could not be interfered with. It is further contended by the learned counsel for the appellants that non-registration of the sale certificate, and not taking possession through Court would stand against the plaintiffs. He would further contend that the First Appellate Court without gone into the legal position, reversed the findings of the Trial Court.

10. Per contra, the learned counsel for the respondents/plaintiffs would contend that under Section 17(2)(xii) of the Registration Act, 1908, the sale certificate need not be registered and it is not mandatory to get the possession of the Court auctioned property only through Court. It is further



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contended by the learned counsel for the respondents that they proved the possession of the property through Revenue records. Hence, the learned counsel for the respondents would contend that the judgment rendered by the First Appellate Court is well merited and liable to be confirmed.

11. To substantiate his contention, the learned counsel for the respondents/plaintiffs has relied upon the judgment rendered by the Hon'ble Supreme Court in the case of *B.Aravind Kumar vs. Government of India* [reported in (2007) 5 SCC 745].

12. This Court has given its anxious consideration to the submissions made by both sides.

Analysis of the submissions:

13. In respect of the 1st item of the suit property, the Trial Court granted decree only to an extent of one acre. The same was confirmed by the Lower Appellate Court. Here, the plaintiffs have not preferred any second appeal in respect of item 1 of the suit properties.



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14. Thus, this second appeal has been filed only in respect of the 2nd and 3rd items of the suit properties. Admittedly, the 2nd and 3rd items of the suit properties were purchased by the plaintiffs' father through Court auction sale which is evident through Ex.A3/sale certificate. However, the learned counsel for the appellants/defendants would submit that Ex.A3/sale certificate is an unregistered one, hence, it cannot be received in evidence and cannot be given any weightage. This Court is not persuaded with the submissions made by the learned counsel for the appellants. In this regard, it is imperative to mention Section 17(2)(xii) of Registration Act, 1908.

15. At this juncture, it is useful to refer the judgment relied by the learned counsel for the respondents/plaintiffs in the case of **B.Aravind Kumar** [cited supra]. Wherein the Hon'ble Supreme Court held that, when a property sold in Court auction, and when a sale certificate was issued by the Court as per Section 17(2)(xii) of the Registration Act, 1908, the sale certificate need not be registered as the same does not require any registration. Therefore, this Court is of the firm view, that notwithstanding the fact that the sale certificate is not registered, it will not impair the



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purchase made by the plaintiffs' father through Court auction and it's consequential transfer of the title to him.

16. The second limb of the submissions made by the learned counsel for the appellants/defendants is that, after the Court auction sale, the plaintiffs' father did not take possession of the 2nd and 3rd items of the suit properties. In this connection, the First Appellate Court has rightly relied upon the judgment in the case of *Pethaperumal Ambalam vs. Chidambaram Chettiar* [reported in *AIR 1954 Madras 760*] has held that the auction purchaser can even take the possession without the intervention of the Court.

17. Now, we must see as to whether the case of the plaintiffs that their father took possession without the intervention of the Court is to be believed. In this regard, the learned counsel for the respondents would rely upon Exs.A4 to A6/patta proceedings and Ex.A7/Kist receipts. On perusal of Exs.A4 to A6/patta proceedings, the First Appellate Court found that Ex.A4/patta is in respect of the 1st item of the suit properties, and Exs.A5 and A6/patta are in respect of the 2nd and 3rd items of the suit properties and



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these pattas were emerged from 1986, and also the plaintiffs have also obtained kist receipts through Ex.A7 to the above patta numbers. Therefore, the findings of fact rendered by the First Appellate Court that the plaintiffs' father had taken possession out of the Court without the intervention of the Court and that the properties are in possession and enjoyment of the plaintiffs, are well merited and based upon records. Therefore, this Court is of the firm view that the appellants have not made out any case so as to interfere with the well considered findings of the First Appellate Court.

18. Therefore, there are no substantial questions of law arising for consideration in this matter.

19. In the result, this second appeal is dismissed by confirming the judgment and decree passed by the Additional Sub Judge, Thiruvannamalai, in A.S.No.82 of 2007 dated 05.11.2009. Consequently, connected miscellaneous petition is also dismissed. There shall be no order as to costs.

21.12.2023

Internet: Yes/No

Index : yes/No

Speaking Order/Non-speaking order



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Neutral Citation Case: Yes/No
apd

To

1. The Additional Sub Judge,
Thiruvannamalai.
2. Principal District Munsif-cum-Judicial Magistrate,
Chengam.
3. The Section Officer, V.R.Section, High Court, Madras.



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C.KUMARAPPAN, J

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