IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.522 of 2017
and
CMP.Nos.6625/2018 & 12585/ 2017

Palaniammal ...Appellant

Vs.

1.Jayapal
2.Sakunthala ...Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 03.02.2017, made in A.S.No.5 of 2009 on the file of the Court of the Subordinate Judge, at Neyveli in reversing the judgment and decree, dated 21.01.2009, made in OS.No.78 of 2006 on the file of the Court of the District Munsif Court-cum-Judicial Magistrate, Neyveli.

For Appellant : Mr.R.Murugesan

For Respondents : Mr.J.Antony Jesus for R1

JUDGMENT

The unsuccessful plaintiff in the suit for declaration of title and injunction is the appellant. The suit was decreed by the trial Court and on appeal filed by the first respondent, the findings of the trial Court were reversed. Aggrieved by the same, the appellant is before this Court.

2. The appellant/plaintiff claimed that the suit property originally belonged to one Rajamanika Samutiyar and he sold the property to father of the second respondent namely Samiappan under Ex.A1. The second respondent is the only heir of Samiappan as her brothers pre-deceased Samiappan. The plaintiff purchased the suit property from the second respondent under Ex.A2 dated 11.01.1989. Thus, the appellant acquired her title to the suit property from the second respondent and the said Samiappan. It was also claimed by the appellant that after the revenue documents got mutated in her name, she has been in possession and enjoyment of the suit property. The first respondent without having any right over the suit property tried to interfere with the appellant's possession and hence, she was constrained to file a suit for declaration and injunction as prayed for.

3. The contesting first respondent filed a written statement claiming that Samiappan and Muthulingam were brothers and his father Muthulingam purchased the suit property from Samiappan in the year 1950 under oral sale for sale consideration of Rs.40/-. It was also claimed by the first respondent that the suit property has been in possession and enjoyment of his family from the year 1950 to the exclusion of all others including the appellant. It was claimed by the first respondent that patta in the suit property was issued by the Government in favour of his father Muthulingam on 17.05.1972. Thus, denying the title and possession of the appellant, the first respondent sought for dismissal of the suit.

4. Before the trial Court, the appellant/plaintiff was examined as PW1. Her vendor second respondent was examined as PW2. One Sarangappani was examined as PW3. On behalf of the appellant 9 documents were marked as Ex.A1 to Ex.A9. The first respondent was examined as DW1 and two other witnesses were examined as DW2 & DW3. 8 documents were marked on behalf of the first respondent as Ex.B1 to Ex.B8.

5. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the first respondent failed to prove the oral sale pleaded by him and consequently, upheld the tile of the appellant. The trial Court also held that after the death of Samiappan and his sons, the father of first respondent Muthulingam was the senior most male member of the family and therefore, the patta should have been issued in his name and the first respondent could not take advantage of the same. Based on the revenue documents produced by the appellant, the trial Court also found that the possession of the appellant was also proved and consequently granted a decree for declaration and injunction. Aggrieved by the same, the appellant filed an appeal in A.S.No.5 of 2009 on the file of the Subordinate Court, Neyveli.

6. The first Appellate Court reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the appellant/plaintiff is before this Court.

7. The learned counsel for the appellant submitted that the first Appellate Court failed to take into consideration that the oral sale pleaded by the first respondent was not at all proved and the final conclusion of the first Appellate Court as if the appellant failed to prove her title was based on non consideration of material evidence available on record. The learned counsel for the appellant further submitted that the appellant proved her possession on the date of the suit by producing Ex.A3 and Ex.A44 revenue documents in her name subsequent to purchase of suit property. In such circumstances, the first Appellate Court ought not to have reversed the findings of the trial Court and dismissed the suit. Based on the submissions made by the learned counsel for the appellant the following substantial questions of law are framed by this Court.

> *"1) Whether the judgment and decree passed by the First Appellate Court by negativing the prayer for declaration of title made by the appellant is the result of misreading of evidence.*
>
> *2) Whether the finding of first Appellate Court that the appellant failed to prove her possession over the suit property is vitiated by non-consideration of material evidence*

available on record?"

8. The learned counsel for the respondents advanced his arguments on the above said substantial questions of law.

9. The learned counsel for the respondents submitted that the appellant claimed that the suit property was inherited by the second respondent from Samiappan, but she failed to produce any documents to show that the suit property was really inherited by the second respondent, after the death of Samiappan.

10. The learned counsel for the respondents further submitted that the documents produced by the first respondent namely Ex.B2 patta in the name of his father Muthulingam, Ex.B3 series kist receipts, Ex.B4 receipt for payment of water tax and other revenue documents like Ex.B5 to Ex.B7 clearly established that long and continuous possession of the first respondent and his family members over the suit property. Therefore, the first Appellate Court is right in coming to the conclusion that the second respondent had not substantiated his title and possession over the suit property to convey the same to the appellant through Ex.A2. The learned counsel for the respondents further submitted that the proceedings of the Revenue Divisional Officer marked as Ex.B8 create serious doubt about the genuineness of the revenue documents filed by the appellant. In such circumstances, the first Appellate Court rightly came to the conclusion that the appellant failed to prove her possession over the suit property on the date of the suit. Based on these submissions, learned counsel for the respondents sought for dismissal of the Second Appeal.

11. As per the admitted case of both the parties, the suit property was originally purchased by Samiappan/father of the second respondent under Ex.A1 dated 21.05.1940. It is also admitted that the sons of Samiappan predeceased him and the second respondent was the only surviving legal heir of Samiappan. In such circumstances, there is no difficulty in coming to the conclusion that after Samiappan the second respondent inherited the suit property. The appellant/plaintiff purchased the suit property from the second respondent under a registered sale deed dated 11.01.1989 which was marked as Ex.A2. Thus, the appellant succeeded in tracing her title from the year 1940.

12. It is the specific case of the first respondent that the suit property was purchased orally by his father Muthulingam from his brother Samiappan. In order to prove the oral sale, the first respondent has not let in any acceptable evidence. The first respondent and other witnesses examined on his behalf had not spoken about the oral sale as they could not have born on the date of oral sale namely 1950.

13. It is seen from the recitals found in Ex.A1 sale deed in favour of Samiappan that the suit property was purchased by him even in the year 1940 for a sale consideration of Rs.100/-. In such circumstances, the plea raised by the first respondent that as if his father Muthulingam purchased the suit property for a value of Rs.40/- by way of oral sale in the year 1950 is not believable. In the absence of any concrete evidence in support of oral sale, there is no difficulty in coming to the conclusion that being a heir of Samiappan, the second respondent was entitled to convey the suit property to the appellant under Ex.A2.

14. Once this Court comes to the conclusion that the oral sale pleaded by the first respondent is not proved through acceptable evidence, as natural corollary, based on Ex.A1 and Ex.A2 the appellant is entitled to succeed in his prayer for declaration of title. As far as the appellant's prayer for injunction is concerned, in order to prove his possession on the date of suit, the appellant produced the revenue documents under Ex.A3 & Ex.A4 in her name and contended that subsequent to purchase by her in the year 1989, the revenue documents got mutated in her name. In order to impeach the said revenue documents Ex.A3 and Ex.A4, the first respondent relied on the proceedings of Revenue Divisional Officer, Cuddalore, dated 07.02.2006 marked as Ex.B8.

15. The extract of Ex.B8 is available in the judgment of the First Appellate Court and a perusal of the same would suggest that the Revenue Divisional Officer has mentioned that the patta in the suit property still stands in the name of Muthulingam/father of the first respondent. Further the patta of the suit property, which in the name of Muthulingam, was produced by the appellant herself as Ex.A9. The patta in the name of the first respondent's father Muthulingam was produced as Ex.B2. The first respondent also produced series of kist receipts as Ex.B3, relevant to the first fasli year 1386 equivalent to the year 1976. Ex.B4 is the water tax receipt for payment of water connection available in the suit property dated 03.06.2006. Therefore, the revenue documents produced by the first respondent from Ex.B2 to Ex.B7 and the proceedings of the Revenue Divisional Officer which was marked as Ex.B8 proved long and continuous possession of the first respondent over the suit property.

16. The first Appellate Court based on the admission of the appellant, who was examined as PW1, that the first respondent has been using the water pump available in the suit property, came to the conclusion that the first respondent succeeded in proving his possession over the suit property on the date of the suit. The said factual findings rendered by the first Appellate Court is based on the admission of PW1 corroborated by the revenue documents as Ex.B3 to B8. I do not find anything to interfere with the factual findings rendered by the first Appellate Court with regard to the possession of the first respondent.

17. In view of the discussions made earlier, the first question of law framed in this Second Appeal is answered in favour of the appellant and consequently the findings of the first Appellate Court with regard to the relief of declaration is set aside. The appellant/plaintiff is entitled to declaration of her title as prayed for. The second question of law is answered against the appellant and in favour of the first respondent. Hence, as far as the relief of injunction is concerned, as this Court comes to the conclusion that there is no convincing evidence available on record to show the lawful possession of the appellant on the date of suit and consequently the appellant is not entitled to decree for injunction. Therefore, with regard to the prayer for injunction, the judgment and decree passed by the first Appellate Court has been confirmed.

18. a) In the result, the Second Appeal stands partly allowed by setting aside the judgment and decree passed by the first Appellate Court with regard to the relief of declaration.

b) The appellant/plaintiff is entitled to decree for declaration of her title.