



SA.NO.732/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 07.04.2022

DELIVERED ON 05.06.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

SA.No.732/2017

& CMP.No.18484/2017

1.L.Duraivel
2.L.Dakshinamurthy
/

.. Appellants
Plaintiffs

Versus

1.N.Padmavathy
2.N.Elumalai
3.R.Thilagavathi
4.S.Raji

.. Respondents /
Defendants

Prayer:- Second Appeal filed under Section 100 of CPC against the judgment and decree dated 12.07.2017 made in AS.No.22/2016 on the file of the learned Subordinate Judge, Madurantakam, reversing the judgment and decree dated 03.08.2016 made in OS.No.192/2011 on the file of the learned District Munsif, Madurantakam.



SA.NO.732/2017

For Appellants : Mr.G.T.Subramanian

For Respondents : Mr.N.Suresh

JUDGMENT

(1) Plaintiffs in the suit in OS.No.192/2011 on the file of the District Munsif Court, Madurantakam, are the appellants in the above Second Appeal.

(2) The appellants/plaintiffs are the sons of late Sri.P.Loganatha Gramani.

The appellants filed the suit in OS.No.192/2011 for declaration, declaring the Sale Deed dated 10.02.2011 executed by defendants 1 and 2 in favour of 3rd defendant and registered as Doc.No.505/2011 on the file of Sub Registrar Office, Cheyyur, as null and void and not binding on plaintiffs and for permanent injunction restraining the defendants in the suit and their men from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit property.

(3) The suit property is an extent of 27 cents with a house and land along with trees and passage in S.No.189/4A comprising in old Patta No.396, new Patta No.1122 in Vennangupattu Village, Kadapakkam Firka, Cheyyur Taluk, Kancheepuram District.



SA.NO.732/2017

(4)The case of the appellants in the plaint is that they are the absolute owners of the suit property. The suit property is described in the plaint with reference to boundaries on all four sides. It is the specific case of plaintiffs that the suit property is their ancestral property in which they have built up a superstructure and paying house tax and having electricity connection for so many decades. It is further stated that the plaintiffs are in enjoyment of the property without any interference from any quarters for several decades and the revenue records also stands in the name of Sri.Loganatha Gramani who is the father of plaintiffs. The Patta Passbook in the name of plaintiffs' grandfather and their father are also filed along with plaint. It is also the case of plaintiffs that defendants 1 and 2 in order to grab the suit property belonged to plaintiffs, created a bogus Sale Deed dated 10.02.2011 in favour of 3rd defendant fraudulently without any title or possession. Stating that the defendants tried to interfere with the plaintiffs' possession by preventing them from removing the wind fallen trees and the local police did not take any action due to pressure and influence of the defendants, the plaintiffs filed the above suit



SA.NO.732/2017

for a declaration, declaring the Sale Deed dated 10.02.2011 as null and void and not binding on plaintiffs and for permanent injunction.

(5) The suit was resisted by defendants 1 and 2. The 1st defendant filed a written statement, adopted by the 2nd defendant, specifically denying all the plaint averments. It was contended by the 1st defendant that the plaintiffs have not impleaded other legal heirs of their father Loganatha Gramani and that the suit is not maintainable and liable to be dismissed for non joinder of necessary parties. It is also contended by defendants 1 and 2 that the entire extent of 1.98 acres in S.No.189/4 belonged to T.Manickam, T.Velu, V.Sadaiyan, V.Krishnan, R.Marimuthu, R.Chinnan, C.Munusamy, C.Varadhappan, P.Kanthasigamani, S.Devarajan and S.Sengazhani. Though it is stated that one T.Manickam and T.Velu who are sons of Thandia Gramani are entitled to 1/6th share, it is contended that T.Manickam alone was given 1/6th share in the suit survey number. Sri.Loganatha Gramani is referred to as one of the sons of Sri.Velu. It is further contended that Manickam sold his share to one Munusamy and therefore, plaintiffs have no right. Defendants 1 to 4



SA.NO.732/2017

came forward with a different story claiming title to the property through one Kanthasigamani without any pleading as to how the said Kanthasigamani got title.

(6) Defendants 3 and 4 filed a written statement which is nothing but the replica of the written statement filed by the 1st defendant.

(7) Before the Trial Court, 1st plaintiff examined himself as PW1 apart from two other witnesses Pws.2 and 3. Exs.A1 to A14 were marked on behalf of plaintiffs. The 1st defendant was examined as DW1 and the 4th defendant was examined as DW3. One Janakiraman was examined as DW2 and one Radha was examined as DW4. On behalf of defendants, Exs.B1 to B15 were marked.

(8) The Trial Court framed the following issues:-

(a) Whether the plaintiffs had the right and possession over the suit property?

(b) Whether the Sale Deed dated 10.02.2011 is null and void?

(c) Whether the plaintiffs are entitled for the relief of permanent injunction?



SA.NO.732/2017

(d) Whether the plaintiff's is entitled for the relief of declaration?

(e) What are all the other reliefs is entitled for plaintiffs?

(9)The Trial Court found that the revenue records and property tax in respect of suit property are only in favour of the predecessors in interest of plaintiffs and that plaintiffs and other heirs of late Loganatha Gramani are the absolute owners of the suit property. Holding that the properties are in joint possession of all the heirs of Loganatha Gramani, the Trial Court held that the plaintiffs could maintain a suit for injunction against any third party who has no title. The Trial Court also held that the suit is not bad for non joinder of necessary parties as the plaintiffs had the right and possession over the suit property. After considering the documents filed by plaintiffs and defendants and the nature of oral evidence given by the witnesses, the Trial Court found that the defendants who have executed the Sale Deed by claiming title under one Kanthasigamani, wife of Thiru.Ponnusamy Gramani, as per the recitals of the Sale Deed marked as Ex.A4, have come forward with a different case that the said



SA.NO.732/2017

Kanthasigamani is the father-in-law of 1st defendant [male]. Apart from the contradiction, the Trial Court found that the defendants have not produced any document to sustain their case that the said Kanthasigamani had title to the property. The defendants have stated that Velu Gramani is also entitled to 1/6th share along with his brother and that the suit property was not allotted to Velu. However, the Trial Court found that patta passbook filed under Ex.A1 stands in the name of Velu Gramani. Loganatha Gramani is the son of Velu Gramani. DW3 admitted that plaintiffs are the sons of Loganatha Gramani. Defendants 1 and 2 executed the Sale Deed under Ex.A4 without any right or title over the suit property and no oral or documentary evidence is produced on behalf of defendants to prove their case that they are also entitled to a specific share in the entire property or the suit property. Since the Trial Court also found that plaintiffs are in possession of the suit property on proper appreciation of oral and documentary evidence, the Trial Court decreed the suit as prayed for. Aggrieved by the judgment and decree of the Trial Court, the defendants preferred an Appeal in AS.No.22/2016 on the file of



SA.NO.732/2017

Sub Court, Madurantakam.

(10)The Lower Appellate Court did not agree with the findings of the Trial Court for the reason that there is no pleading or document to show how the plaintiffs became the absolute owners of an extent of 27 cents out of 85 cents that was found to be the property of the father of Loganatha Gramani. Even though revenue records are standing in the name of Velu Gramani and Loganatha Gramani, the father of plaintiffs, the Lower Appellate Court presumed that all the joint owners shown in the pata are having equal shares in the property and that the plaintiffs failed to explain how they got 27 cents out of the entire extent in S.No.189/4A. Stating that there is a dispute regarding title, the Lower Appellate Court held that the plaintiffs have to necessarily sue for declaration of title and without seeking a declaratory relief, the plaintiffs are not entitled to maintain the present suit for permanent injunction. The Lower Appellate Court found that the revenue records will not create or extinguish right or title in respect of a property and that judgment of Trial Court without framing an issue on the question of title is not sustainable. Despite the



SA.NO.732/2017

WEB COPY

inconsistencies pointed out by the plaintiffs regarding the source of title pleaded by defendants on the basis of document and the recitals of the document, the Lower Appellate Court ignored the same as a typographical error that might have happened while drafting the document and held that the plaintiffs cannot succeed merely because there is some doubt or discrepancies in the case of defendants. The Lower Appellate Court therefore, allowed the appeal and set aside the judgment and decree of the Trial Court in OS.No.192/2011. Aggrieved by the judgment and decree of the Lower Appellate Court, the plaintiffs have preferred the above Second Appeal.

(11)The appellants have raised the following the substantial questions of law:-

- (a) Whether the Appellate Court is right in reversing the Trial Court judgment without any acceptable documentary or oral evidence by the appellant?*
- (b) Whether the Appellate Court is right in not appreciating the evidence of the plaintiffs without any proper reason?*



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SA.NO.732/2017

- (c) *Whether the Appellate Court is right in giving a finding in favour of defendants beyond the case of the defendants?*
- (d) *Whether the Appellate Court is right in allowing the first appeal as if the suit was for declaration of title in favour of plaintiffs while the case for a declaration, to declare that the sale deed executed by 1st defendant in favour of 3rd defendant?*
- (e) *Whether the Appellate Court in right in not appreciating the evidence on record and misconstrued the evidence on record and giving finding in favour of the defendants without any legal basis?*
- (f) *Whether the Lower Appellate Court is right in not considering the relevant facts and considering irrelevant, unnecessary unproved facts?*

(12) Learned counsel for the appellants submitted that the appellants have established their title on the basis of revenue records and other statutory documents and the Lower Appellate Court discarded the oral and



SA.NO.732/2017

documentary evidence of plaintiffs without any other document to contradict the holding and possession of properties as per the revenue records. Pointing out that the defendants have consciously described one Kanthasigamani as mother-in-law of 1st defendant in the only document produced as title deed, learned counsel submitted that the case of defendants in the written statement is contrary to the recitals of the document-Ex.B8 under which defendants 3 and 4 claim title and that therefore, the findings of the Lower Appellate Court are perverse. Referring to the various documents filed by plaintiffs to prove title and possession of the appellants, learned counsel appearing for the appellants submitted that the Lower Appellate Court has not given any reason to presume that defendants are entitled to the suit property.

(13) ***Per contra***, learned counsel for the respondents submitted that the discrepancy between contents of the document-Ex.A4 and the pleadings and evidence of defendants is purely a typographical error and that the appellants cannot succeed merely on the basis of such infirmities.

(14) This Court has considered the submissions made by the learned



SA.NO.732/2017

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counsels appearing on either side and also perused the materials placed.

(15) Considering the pleadings, documents and oral evidence of all parties, this Court carefully examined the question of law raised in this Second Appeal.

(16) In the case on hand, appellants have produced revenue records namely, Patta Passbook in respect of suit property either in the name of appellants' grandfather or appellants' father. The electricity service connection stands in the name of appellants in respect of the house which is constructed in the suit property. Property Tax receipts and other documents shows the exclusive possession by plaintiffs. As regards the oral evidence connecting the document with the suit property, this Court is unable to find any serious argument by the learned counsel for the respondents. The property tax is admittedly paid by plaintiffs/appellants. Exs.A5 to A8 and A13 would show that the appellants are paying property tax. On the strength of documents, this Court is unable to reject the arguments of the learned counsel for the appellants.

(17) The respondents though filed Exs.B1 and B2, the two Sale Deeds



SA.NO.732/2017

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executed by Marimuthu Gramani and Manicka Gramani respectively, both Sale Deeds do not show how the property which are dealt with under the said Sale Deeds pertain to the subject matter of the suit. The Patta Passbook in respect of the suit property stands in the name of Velu Gramani and thereafter, the revenue records had been transferred in the name of father of plaintiffs. The property tax assessment in the name of appellants and the fact that electricity service connection was obtained for the suit property by appellants is not disputed. The findings of Trial Court regarding possession and enjoyment of the property by appellants are not even traversed by Lower Appellate Court. PW1 admitted that she has not produced any revenue records like patta or tax receipts.

(18)Even the defendants/respondents have admitted in their written statement that the appellants are the grandsons of Velu Gramani whose name is found in revenue records. In such circumstances, this Court has no hesitation to hold that the appellants have proved their legitimate right in the absence of any concrete evidence on the side of respondents/defendants in relation to the suit property.



SA.NO.732/2017

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(19) It is well settled that a person in possession of the property is entitled to seek injunction against anyone who has no better title than himself. When a suit is filed for permanent injunction on the basis of one's title, the suit cannot be thrown out on the ground that the same is not maintainable without a prayer for declaration of title, when the suit is against a stranger who has neither possession nor title by acceptable evidence. Though the plaintiff is not entitled to seek injunction against real owner, the person in possession of the property is entitled to injunction against anyone except the true owner. The Trial Court has held that defendants/respondents have no semblance of right over the property. In the written statement, there is no pleading as to how defendants 1 and 2 are entitled to the suit property.

(20) It is now admitted before this Court that defendants 1 and 2 have executed the Sale Deed in favour of the 3rd defendant who is the wife of 4th defendant. The Sale Deed refers to the fact that the suit property originally belonged to the mother-in-law of the 1st defendant by name



SA.NO.732/2017

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P.Kanthasigamani who is the wife of Thiru.Ponnusamy. It is by virtue of the name Kanthasigamani in the 'A' Register, the defendants appears to have claimed right through the said Kanthasigamani while executing the Sale Deed under Ex.A4. As per the recitals in the Sale Deed, it is shown that the property belonged to one Natesan, son of Ponnusamy Gramani, who died on 11.01.1992 and that other heirs of Sri.Ponnusamy by name Loganatha Gramani, Chithra and Arumugam, had relinquished their right in favour of defendants 1 and 2. The respondents have not let in any evidence to prove the recitals of document under which defendants 1 and 2 executed the Sale Deed in favour of defendants 3 and 4. The case of defendants 1 and 2 in the written statement and during evidence is contrary to the recitals in Ex.A4 under which defendants 1 and 2 sold the property to 3rd defendant. The defendants have taken a stand contrary to their own document namely the Sale Deed Ex.A4 : Ex.B8.

(21) It is true that patta is not a document of title. However, patta can still be an evidence to show one's *prima facie* title and enjoyment particularly when the person disputing the title is unable to produce any material



SA.NO.732/2017

WEB COPY

evidence to contradict or controvert such revenue documents. It is admitted during the course of evidence that names of appellants' predecessors in interest are shown in old 'A' Register. Having traced title under Ex.A4 under one Kanthasigamani who is a female, the respondents have come forward with a different story in the written statement admitting the said Kanthasigamani as the sone of one Ponnusamy Gramani. Having regard to the nature of pleadings and evidence, this Court is unable to believe the version of defendants/respondents either in the Sale Deed or in the written statement as no other document is filed by respondents/defendants to discredit or contradict the documents filed by the appellants/plaintiffs. The documents filed by plaintiffs would support their case tracing title through their grandfather. The documents filed by defendants may only indicate the right of one Munusamy under whom the defendants do not claim any right. Since the defendants have not adduced any documents to prove their claim of title or enjoyment, the Sale Deed dated 10.02.2011 as against plaintiffs is null and void and not binding on appellants.



SA.NO.732/2017

WEB COPY

(22) Since this Court has accepted the case of appellants/plaintiffs that they are in possession on the basis of patta and other revenue documents and oral evidence, the corollary that follows is that the appellants are entitled to relief of injunction against defendants/respondents who have no semblance of right. From the findings of the Trial Court it is seen that the Trial Court has considered the documentary and oral evidence in a proper perspective and the Lower Appellate Court has reversed the findings without considering the admitted facts and evidence supported by documents. As a matter of fact, the findings of the Lower Appellate Court are not supported by any document or reason. Since the respondents/defendants are utter strangers and are unable to trace their right or title through a known source by specific pleading and the recitals of title deed relied upon by defendants are contrary to pleadings in defence, this Court has no hesitation to hold that the appellants are entitled to a declaratory relief and the consequential relief of permanent injunction and the suit is not vitiated merely because the appellants have



SA.NO.732/2017

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not prayed for declaration of their title.

(23) In view of the conclusions reached above, this Court finds that the substantial questions of law [a], [b], [c], [e] and [f] are to be answered in favour of appellants/plaintiffs.

(24) In the result, the Second Appeal is **allowed** and the judgment and decree dated 12.07.2017 made in AS.No.22/2016 by the learned Subordinate Judge, Madurantakam, is **set aside and the suit in OS.No.192/2011 on the file of District Munsif Court, Madurantakam, stands decreed as prayed for.** No costs. Consequently, connected miscellaneous petition is closed.

05.06.2023

AP

Internet: Yes

Index : Yes / No

To

1. The Subordinate Judge
Madurantakam.

2. The District Munsif
Madurantakam.

3. The Section Officer



SA.NO.732/2017

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VR Section, High Court
Chennai.

S.S.SUNDAR, J.,
AP

Judgment in
SA.No.732/2017

05.06.2023