WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.1046 of 2022
and
C.M.P.No.22463 of 2022

1. Mukunthan @ Elumalai
2. Lakshmi
3. Valarmathi
4. Rani
5. Jayammal
6. Jeeva
7. Suryaprakash
8. Gayathiri
9. Raman .... Appellants

Vs

1. P.Jeganathan
2. P.Siva
3. M.Kavitha
4. S.Malathi
5. Dhanakodi .... Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 27.10.2021 passed in A.S.No.53 of 2020 on the file of the II Additional Subordinate Judge, Salem, confirming the Judgment and Decree dated 29.01.2020 passed in O.S.No.915 of 2010 on the file of the Principal District Munsif, Salem.

For Appellants : Mr.R.Nalliyappan

https://www.mhc.tn.gov.in/judis

WEB COPY

JUDGMENT

This second appeal is directed as against the Judgment and Decree dated 27.10.2021 passed in A.S.No.53 of 2020 on the file of the II Additional Subordinate Judge, Salem, confirming the Judgment and Decree dated 29.01.2020 passed in O.S.No.915 of 2010 on the file of the Principal District Munsif, Salem, thereby dismissing the suit for permanent injunction.

2. The appellants are the plaintiffs and the respondents are the defendants. The case of the appellants is that they owned suit property by a sale deed dated 06.08.2010. Thereafter, the revenue records were mutated in their name and paid all revenue dues. While being so, the respondents owned property on the western side of the suit property comprised in Survey No.265/2. They competed with the appellants while purchasing the suit property. But they failed in their attempt. Therefore, they started giving trouble to the appellants from enjoying the suit property. Hence, the suit.

3. The respondents resisted the suit and filed a written statement stating that one Rajapal is the son of Rathinam. Chinnaboyan

WEB COPY

was entitled to the property in S.No.267/1 and 221 on the basis of the sale deed dated 30.03.1978. Therefore, the suit property stands in the name of Thirumalaiammal on the sale deed dated 30.03.1978. One Rajapal is entitled to the suit property in S.No.265/2, 266/2 on the basis of sale deed dated 14.04.1981. As per the above sale deeds, Chinnaboyan and others are entitled to have an extent of 7.29 acres of land. After the demise of Chinnaboyan, his wife Thirumalaiammal and his sons, along with Rajapal, had executed agreement for sale dated 23.04.1984 with the respondents herein. The first respondent had paid sale consideration and the possession of the property was also handed over along with all original parent deeds. Even after payment of entire sale consideration, the said Thiurmalaiammal could not execute the sale deed. Thereafter, she died. In fact, the vendor of the appellants is one of the party to the said agreement for sale dated 23.04.1984. The respondents are in possession and enjoyment of the suit property and paying all revenue dues to the authorities concerned. In fact, the first appellant had created a Will dated 26.01.1990 by forging the signature of the said Thirumalaiammal and executed a sale deed in favour of the appellants to grab the suit property. Thereafter, the appellants attempted to interfere with their peaceful possession and enjoyment of the suit property and filed a suit in O.S.No.917 of 2010 on the file of the

https://www.mhc.tn.gov.in/judis

WEB COPY

Principal District Munsif Court, Salem, for declaration declaring that the sale deed executed in favour of the appellants as null and void and it is pending. The respondents had perfected their title to the suit property in the year 1984 by adverse possession. The said Thirumalaiammal never executed a Will and it is forged one. The appellants also filed a suit in O.S.No.448 of 2010 in respect of the suit property and it is pending.

4. Based on the pleadings, the Trial Court framed the following issues :-

(i) Whether it is true the vendor of the plaintiff Rathinam has no salable right in the suit property ?

(ii) Whether the sale deed dated 06.08.2010 in favour of the plaintiff is true and valid ?

(iii) Whether the plaintiff is in possession and enjoyment of the suit property is true

(iv) Whether the plaintiff is entitled for the relief of permanent injunction ?

(v) To what other reliefs ?

5. On the side of the appellants, they had examined P.Ws.1 & 2 and marked Exs.A1 to A8. On the side of the respondents, they had examined D.W.1 and marked Exs.B1 to B9. Exhibits on the side of

WEB COPY

witnesses is also marked as Ex.X1. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the Trial Court dismissed the suit as prayed for. Aggrieved by the same, the appellants preferred an appeal in A.S.No.53 of 2020 before the II Additional Subordinate Judge, Salem and the same was also dismissed and the Judgment and Decree of the Trial Court was confirmed. Aggrieved by the same, the present second appeal.

6. The learned counsel for the appellants has raised the following substantial questions of law:

> a) Whether the Courts below are correct in decreeing the suit for permanent injunction without praying for a relief of declaration especially when the defendants has questioned the title of the vendors to the plaintiffs ?
>
> b) Whether in the suit for permanent injunction, the validity of the Will executed in favour of the vendo of the plaintiff shall not be questioned by the defendants are being the third parties to the Will, especially when the defendants accrued their right, title and possession through

WEB COPY

another undisputed sale agreement Ex.B1 and the same was established with sufficient evidence ?

c) Whether in the suit for permanent injunction the Courts below are correct in holding that the plaintiffs are having valid title especially when the plaintiff has not established that his vendor has valid and rightful title over the suit property ?

d) Whether the Court below is correct in decreeing the suit for permanent injunction especially when the plaintiff has neither pleaded about standing coconut trees in the suit property nor mentioned about same in the description of property.

e) Whether the lower appellate Court is correct in rejecting the application to mark additional documents at the appellate stage to substantiate that the plaintiff are not in possession over the suit property by holding that the defendants has not made sufficient reasons for not producing those documents during the trial of the suit especially when the appellant has specifically stated that those documents were found those documents only after the judgment of the trial Court and at the time of renovation of the house ?

WEB COPY

7 . Heard, Mr.R.Nalliappan, the learned counsel appearing for the appellant and this Court considered the submission made by the learned counsel for the appellant.

8. The learned counsel appearing for the appellants would submit that the respondents failed to establish their valid title and possession of the suit property. The respondents claimed right over the property based on the sale deed executed by one Rathinam, who is one of the legal heir of Thulasiammal, who is not having any valid title to sell the property. The said Thulasiammal executed sale agreement with respect of the properties along with the suit properties and handed over possession to the appellants. Therefore, they have perfected their title by way of adverse possession. The Will was marked as Ex.A8 which is forged one and as such, they cannot be claim title through Will. The suit for permanent injunction is not at all maintainable since the appellants disputed very title over the property. The respondents ought to have filed a suit for declaration.

https://www.mhc.tn.gov.in/judis

WEB COPY

9. A perusal of the records reveals that the appellants claimed title over the property by adverse possession. Admittedly, they are claiming the suit property by way of agreement for sale, which was marked as Ex.B1. Even according to them, except for suit property, the remaining properties mentioned in the sale agreement have been purchased by them from the legal heirs of Thirumalaiammal. However, they failed to produce any piece of evidence to show that they are in possession and enjoyment of the suit property along with the other properties as mentioned in their sale agreement. The plaint in O.S.No.917 of 2010 was marked as Ex.B2. Though they have pleaded that they have executed Will in respect of the suit property on the strength of the sale agreement and other documents have not been marked in the present suit. That apart the appellants also filed a suit for declaration and permanent injunction in respect of the very same property which is pending in O.S.No.448 of 2010.

10. As such the Courts below have analyzed the evidences, both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and allowed the suit. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

https://www.mhc.tn.gov.in/judis

WEB COPY

11. In view of above, this Second Appeal is dismissed and the Judgment and Decree dated 27.10.2021 passed in A.S.No.53 of 2020 on the file of the II Additional Subordinate Judge, Salem, confirming the Judgment and Decree dated 29.01.2020 passed in O.S.No.915 of 2010 on the file of the Principal District Munsif, Salem, is confirmed. However, the appellants are at liberty to raise all the grounds before the Principal District Munsif Court, Salem, in O.S.No.917 of 2010. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

02.01.2023

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
Lpp

To

1.The II Additional Subordinate Judge, Salem

2. The Principal District Munsif, Salem.

WEB COPY

G.K.ILANTHIRAIYAN, J.

Lpp

S.A.No.1046 of 2022
and
C.M.P.No.22463 of 2022

02.01.2023