



S.A.Nos.1099 & 1100 of 1992

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2024

PRONOUNCED ON : 25.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Second Appeal Nos. 1099 & 1100 of 1992

S.A.No.1099/1992

1. Neelavathi @ Chinnaponnu (died)
2. Prabhavathi
3. D. Jaishankar
(Appellants 2 and 3 are impleaded as L.Rs
of deceased first appellant vide order dated 30.04.2019
made in Memo dated 30.04.2019)

.. Appellants

Versus

1. Kannan
2. K. Sinnadurai
3. Kuppusamy
4. R. Venkatesan
5. Veerasamy
6. Jaya @ Jayalakshmi (died)
7. S.Suresh
8. S. Uma
(R7 & R8 are brought on record as
LRs of deceased R6 vide order dated 24.03.2023
made in CMP Nos.6135, 6137, 6138, 6350,
6351 and 6355/2023)

.. Respondents

S.A.No.1100/1992

1. Neelavathi @ Chinnaponnu (died)
2. Payadai Gramany (deceased)



S.A.Nos.1099 & 1100 of 1992

3. Jaishankar

4. Prabhavathy

(Appellants 3 and 4 are impleaded as L.Rs

of deceased first appellant vide order

dated 30.04.2019 made in Memo dated 30.04.2019)

... Appellants

Versus

1. Patchai @ Jayalakshmi(died)

2. Mallika (LR of R1)(died)

3. S. Suresh

4. Uma

(R2 is brought on record as L.R. of deceased R1

R3 & R4 are brought on record as L.R. of deceased R2

vide orders dated 03.04.2024 made in CMP Nos.10878,

10888 & 10891 of 2019 and 6154 to 6156 of 2023)

..Respondents

S.A.No.1099 of 1988 :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 12.08.1988 passed in A.S.No.110 of 1986 on the file of II Additional District Judge, Pondicherry, confirming the Judgment and Decree dated 25.04.1986 passed in O.S.No.145 of 1976 on the file of Additional Sub Judge, Pondicherry.

Prayer in S.A.No.1100 of 1988 :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 12.08.1988 passed in A.S.No.111 of 1986 on the file of II Additional District Judge, Pondicherry, confirming the Judgment and Decree dated 25.04.1986 passed in O.S.No.23 of 1976 on the file of Additional Sub Judge, Pondicherry.

For Appellants
in **Both Appeals**

: Mr. K. Harishankar

For Respondents
in **S.A.No.1099/1992**

: Mr. J. Michael Amalraj
for R7 & R8

R1 :- notice served-No appearance

R2 to R5 :- Dismissed as abated
(vide order dated 03.02.2015)



S.A.Nos.1099 & 1100 of 1992

aggrieved by the judgment and decree dated 12.08.1988 made in A.S. No. 110 of 1986 on the file of the Additional District Judge, Pondicherry, confirming the dismissal of the suit in O.S.No.145 of 1976 by judgment and decree dated 25.04.1986 on the file of the Additional Sub Judge, Pondicherry.

6. Second Appeal No.1100 of 1992 has been preferred by the appellants 1 and 2, who are the defendants in O.S. No. 23 of 1976 on the file of the Additional Subordinate Judge, Pondicherry, questioning the correctness of the judgment and decree dated 12.08.1988 made in A.S. No.111 of 1986 on the file of the II Additional District Judge, Pondicherry, confirming the judgement and decree dated 25.04.1986 made in O.S. No. 23 of 1976 on the file of the Additional Subordinate Judge, Pondicherry

7. Earlier, this Court by its common judgment dated 19.09.2003, allowed both these appeals (S.A. Nos. 1099 & 1100 of 1992) and thereby, dismissed the suit in O.S. No. 23 of 1976 and decreed the suit in O.S.No. 145 of 1976. Aggrieved over the same, Jeya @ Jayalakshmi, who is the 6th defendant in O.S. No. 145 of 1976, preferred a Civil Appeal Nos.1686-1687 of 2004 before the Hon'ble Supreme Court. The Hon'ble Supreme Court by its order dated 06.02.2013 set aside the judgment and decree passed by this Court



S.A.Nos.1099 & 1100 of 1992

in S.A. Nos. 1099 & 1100 of 1992, dated 19.09.2003 and remanded the appeals back to this Court to decide the matters afresh by answering the substantial questions of law framed by this Court.

8. O.S. No. 23 of 1976 has been filed by Patchai @ Jayalakshmi against one Neelavathi @ Chinnaponnu and Pavadai Gramany for declaration to declare that she is the owner and possessor of the suit property and for consequential permanent injunction restraining the defendants not to interfere with the plaintiff's peaceful possession and enjoyment of the same. According to the plaint averments, the plaintiffs in O.S. No. 23 of 1976 have purchased the suit property from one Palani Gramani on 27.09.1975 for a sum of Rs.7500/-, who got the same from his brother Rajagopal Gramani. The vendor Palani Gramani's name stood in the revenue records, including Patta and he was in possession and enjoyment of the same. After purchase of the suit property by the plaintiffs, the defendants attempted to interfere with the peaceful possession and enjoyment of the suit property by the plaintiffs, hence, the suit was filed.

9. The defendants in O.S. No. 23 of 1976 filed written statement, in which, the first defendant, who is the plaintiff in O.S. No. 145 of 1976, denied



S.A.Nos.1099 & 1100 of 1992

threatening the other defendants not to pay the suit and hence, the suit was filed.

11. The 6th defendant in O.S. No. 145 of 1976, who is the plaintiff in O.S. No. 23 of 1976, filed written statement and contested the suit and reiterated the averment in the plaint in O.S.No.23 of 1976 besides contending that the suit property and the property purchased by the 6th defendant are entirely different and the defendants 1 to 5 are not the tenants of the plaintiff and thus, pleaded to dismiss the suit in O.S.No.145 of 1976.

12. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the trial Court in both the suits for consideration :

O.S.No.23 of 1976

- 1. Whether the plaintiff's vendor had title and possession over the suit property and whether the sale deed in favour of the plaintiff is true and valid ?*
- 2. Whether the property belong to the defendant No.1 ?*
- 3. Is the suit barred by resjudicata in view of decision in O.S. No. 412 of 1968 ?*



S.A.Nos.1099 & 1100 of 1992

4. *Whether Court Fee paid is correct?*

5. *To what relief the parties are entitled ?*

In O.S.No.145 of 1976

1. *Whether D1 to D5 are tenants under the plaintiff ? If so whether the plaintiff is entitled to a declaration and permanent injunction against D6 as prayed for ?*

2. *To what relief the parties, are entitled to ?*

13. In the Trial Court, upon a joint memo filed by the counsel for the parties, joint trial was conducted and common evidence was recorded. In support of the plaintiff's case, the plaintiff, Jayalakshmi, examined herself as PW1, M. Joseph Vincent was examined as P.W.2 and Rajaram was examined as P.W.3 and 6 documents were marked as Ex.A.1 to Ex.A.6. On the side of the defendants, the second defendant, Pavadai, was examined as DW1 and 13 documents were marked as Ex.B.1 to Ex.B13. The copy of the report filed by the Advocate Commissioner was marked as Ex.C1 and Plan was marked as Ex.C2.

14. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court by a



S.A.Nos.1099 & 1100 of 1992

common judgment dated 10.10.1980 decreed the suit in O.S. No. 23 of 1976

with costs and dismissed the suit in O.S.No.145 of 1976 without costs.

Aggrieved Over the same, the defendants in O.S. No. 23 of 1976 have preferred an appeal in A.S. No. 5 of 1981 and the plaintiff in O.S. No. 145 of 1976 has preferred an appeal in A.S. No. 6 of 1981 on the file of First Additional District Judge, Pondicherry. The First Appellate Court, after considering the entire materials in both the appeals, by its common Judgment dated 10.09.1983, allowed the appeals and set aside the judgment passed in O.S. Nos. 23 & 145 of 1976 and remitted the matters for fresh disposal according to law.

15. Thereafter, once again, before the Trial Court one A.Loganathan, Advocate a commissioner was appointed to identify the properties with the Assistance of surveyor and he was examined as CW1. Ex.C.1 plan, Ex.C.2 Cadastrale plan and Ex. C.3 resurvey plan were marked. Thereafter, the Trial Court considered the oral and documentary evidence and by its common judgment dated 25.04.1986 granted decree in favour of the plaintiff in O.S. No. 23 of 1976 as prayed for and dismissed the suit in O.S. No. 145 of 1976. Aggrieved by this, again the plaintiff in O.S. No. 145 of 1976 preferred an appeal in A.S. No. 110 of 1986 and the defendants in O.S. No. 23 of 1976 has



S.A.Nos.1099 & 1100 of 1992

preferred an appeal in A.S. No. 111 of 1986 on the file of II Additional District Judge, Pondicherry. The learned Judge, after considering both the appeals, by common Judgment dated 12.08.1988 dismissed both the appeals and confirmed the findings of the Trial Court. Against which, the present Second Appeals have been filed before this Court. As mentioned above, this Court, by its Common Judgment dated 19.09.2003 reversed the finding of the Trial Court and dismissed the suit in O.S. No. 23 of 1976 and consequently, decreed the suit in O.S. No. 145 of 1976 as prayed for. Aggrieved by this, Jaya @ Jayalakshmi, preferred Civil Appeals Nos. 1686 & 1687 of 2004 before Hon'ble Supreme Court. The Hon'ble Supreme Court by its order dated 06.02.2013 set aside the judgment passed in S.A. Nos. 1099 & 1100 of 1992 and remanded the appeals to decide afresh.

16. This Court framed the following questions of law in both the appeals:-

1. Whether the Courts below have erred in not upholding the appellants contention that Ex.B7, the judgment in O.S.No.412 of 1968 concluded that she has got title and that the sixth defendant who has been claiming the same right as predecessor in title cannot get out of the binding effect of the judgment in O.S.No.412 of 1968 (*framed at time of admission on*



S.A.Nos.1099 & 1100 of 1992

31.07.1992)

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2. Whether the suit in O.S.No.23 of 1976 is barred by res-judicata?

3. Whether in law the Courts below are right in omitting to note that the respondents have not produced any documents to establish their vendor's title and therefore, no relief could be granted in their favour ?

4. Whether in law the Courts below are right in holding that the property conveyed under Ex.B2 is different from the property conveyed under Ex.A1 without properly considering the report of the Commissioner and the Surveyor ?

5. Whether in law the Courts below are right in ignoring Ex.B14 which tallies with the property conveyed under Sale Deed Ex.B2?

(2 to 5 framed on 03.02.2015)

6. Whether Court can grant injunction in the face of admission relating to possession during evidence ?

7. Whether a suit for bare injunction is maintainable without seeking relief for declaration of title particularly when the title is questioned?

(6 & 7 framed on 04.01.2019)

17. The learned counsel appearing for the appellants submitted that the judgment and decree of the Trial Court and the First Appellate Court are



S.A.Nos.1099 & 1100 of 1992

substantially erroneous in law without appreciating the oral and documentary evidence. The Courts below erred in holding that Ex.B2 and Ex.A1 properties are different and failed to note the Commissioner's Report and surveyor's report E.C.1 and failed to note that the respondent had failed to prove her vendor's title. Already her vendor's title was negatived in O.S. No. 412 of 1968 and reiterated other grounds raised in the grounds of appeal and thus pleaded to allow both the appeals.

18. Per contra, the learned counsel appearing for the respondent supported the judgment of the Trial Court and the First appellate Court and pleaded to dismiss the second appeal as it has no merit and no substantial question of law involved in this appeals. The case has been decided on fact upon the documentary evidence, it need not be disturbed in the second appeal since no question of law is involved warranting to disturb the findings of facts of the first appellate Court and thus, pleaded to dismiss both the appeals.

19. Pending appeals, the second respondent died and his legal heirs are impleaded.

20. I have considered the matter in the light of the submissions made on



S.A.Nos.1099 & 1100 of 1992

either side and perused the materials on records as well as the Judgments passed by the Courts below.

21. On perusal of the records the following facts could be seen and they are

1. On 11.07.1964, the plaintiff in O.S. No. 145 of 1976 , namely Leelavathy w/o. Pavadai purchased the property from one Subramania grant son of Rathinamal. The sale deed is marked as Ex.B.2.

2. The contention of the plaintiff Pichai @ J.Lala in O.S. No. 23 of 1976 (6th defendant in 145 of 1976) that she had purchased the plaint schedule property as per sale deed dated 27.09.1975 from one Palani Gramani for a sum of Rs.7500/- and she become the owner of the suit property. After the death of his brother Rajagopal Gramani, he was in possession and enjoyment of the suit property and the patta in respect of the suit property also stood in the name of the deceased Rajagopal Gramani. After that the patta was transferred in the name of Palani Gramani, who was in possession and enjoyment of the same without any interference. Thus, after purchase, she is in possession enjoyment of the same.

22. At this stage, it is very important to note that the plaintiff's vendor



S.A.Nos.1099 & 1100 of 1992

Palani Gramani filed a suit in O.S. No.412 of 1968 on the file of the District Munsif, Pondy seeking to declare that he is the absolute owner of the suit land, which was purchased from Rajagopalgramany through private sale deed 24.03.1932 since then, both of them were in possession of the property for 30 years. Subsequently Mr. Rajagopalgramani died issueless and property devolved on Mr.Palani Gramani, vendor of the plaintiff and other prayer for declaration to declare that the sale deed dated 11.07.1964 in favour of Mr.Nelavathi (plaintiff in O.S.No.145 of 1976) is null and void. After considering the oral and documentary evidence, the learned Judge by its judgment and decree dated 31.08.1970 dismissed the suit on the ground that the Palani Grammani has not produced the original sale deed and it was also not registered and Palani Gramani was not in possession of the suit property. Per contra, the defendant Neelavathy @ Chinnaponnu on the other hand had filed documentary evidence supported by oral evidence to prove that she is owner of the suit land and hence, sale deed dated 11.07.1964 was found to be a valid one and thus, dismissed the suit filed by the plaintiff's vendor Palani Grammani.

23. Therefore, with regard to the title over the disputed plaint schedule properties, already the matter was declared in O.S. No. 412 of 1968 by



S.A.Nos.1099 & 1100 of 1992

judgment dated 31.08.1970. The contention of the learned counsel for the appellant is that the suit properties in O.S. No. 412 of 1968 is different from that of the suit property in O.S.No.145 of 1976 and O.S.No.23 of 1976. This contention is falsified by the commissioner's evidence and his report, which reads as follows:-

“ Therefore, I am of the opinion that the property relating to the suit in O.S.No.23/76, O.S.No.145/76, O.S.No.412/68, and A.S.47/71, is one and the same”

24. Therefore, this Court has no doubt that the property in respect of which, the present suit has been filed is not different property than the one described in O.S. No. 412 of 1968. The Trial Court and First Appellate Court have recorded a finding without reference to the Commissioner evidence and report. Therefore, this finding cannot be sustained.

25. On perusal of records and evidence it seen that the plaintiff in O.S. No. 23 of 1976 has miserably failed to establish the title of her vendor. When the vendor has no title at all, besides his claim of title was negated in O.S.F. No. 412 of 1968 (Ex.B7) she has failed in her case. On the other hand, the



S.A.Nos.1099 & 1100 of 1992

defendant in O.S. No. 23 of 1976 and the plaintiff in O.S. No. 145 of 1976 has proved her title by her sale deed dated 11.07.1964 and her predecessor and also her title sale deed 11.07.1964 is upheld in O.S.F. No. 412 of 1968 (Ex.B.7). Therefore, the plaintiff in O.S. No. 23 of 1976 has no valid title at all. Therefore, the declaration granted in favour of the plaintiff in O.S. No. 23 of 1976 deserves to be set aside and consequently, the claim of the plaintiff in O.S.No.145 of 1996 Neelavathi @ Chinnaponnu deserves to be sustained.

26. In the result, the plaintiff in O.S. No. 23 of 1976 fails and the said suit is dismissed. The plaintiff in O.S.No.145 of 1976 deserves to get the suit decreed as prayed for. The Trial Court and the First Appellate Court erred in not taking note of the judgment in O.S. No. 412 of 1968 and also failed to take note of the Commissioner evidence and the report Ex.C.1. The courts below also failed to note that the appellant had not produced any document to establish their vendors title. Therefore, no relief could be granted in her favour. The Trial Court and the First Appellate Court are in error in holding that the property covered in Ex.B.2 is different from the property covered under Ex.A.1 without properly considering the report of the Commissioner and the Surveyor. Thus, the substantial questions of law are answered in favour of the appellant and against the respondents. Therefore, the both the second



S.A.Nos.1099 & 1100 of 1992

appeals are allowed and the Judgment in O.S.No.23 of 1976 on the file of the Additional Sub Court, Pondicherry is set aside with cost to the defendants' through out and the suit in O.S.No.145 of 1976 is decreed as prayed for with cost. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No

Internet : Yes / No

25.06.2024

mrp

To

1. The II Additional District Court,
Pondicherry,
- 2.The Additional Subordinate Court,
Pondicherry.



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S.A.Nos.1099 & 1100 of 1992

V. SIVAGNANAM, J

mrp

Pre-Delivery Judgment made
in S.A.Nos.1099 & 1100 of 1992

25.06.2024