



S.A.No.1203 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2024

PRONOUNCED ON : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.1203 of 2011

A/m.Jagannadha Perumal & Thirumazhisai
Alwar Devasthanam, rep by its Executive Officer,
Thirumazhisai Village & Post,
Chennai 600 124.

...

Appellant

Vs.

1.Dhanalakshmi Ammal,
2.Tamizselvi
3.Bhavani
4.Thanikachala Mudaliar

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgment and Decree of the Subordinate Judge, Poonamallee, dated 25.08.2010, in A.S.No.4 of 2010, confirming the Judgment and Decree of the Additional District Munsif, Poonamallee, dated 29.09.2009, in O.S.No.1096 of 1996.

For Appellant

: Mr.S.Surya
for M/s.A.S.Kailasan

For R1 to R3

: Mr.T.Karunakaran

For R4

: Given up



S.A.No.1203 of 2011

JUDGMENT

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Challenge in this second appeal is made to the Judgment and Decree dated 25.08.2010, in A.S.No.4 of 2010, on the file of the Subordinate Court, Poonamallee, confirming the Judgment and Decree dated 29.09.2009, in O.S.No.1096 of 1996, on the file of the Additional District Munsif Court, Poonamallee.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3.The case of the plaintiffs, in brief, is that the suit property originally belonged to one Valliammal wife of K.M.Mani Mudaliyar. For the purposes of pressing family necessity, Valliammal sold the suit property to her father Thangavelu Mudaliyar and he had agreed to reconvey the suit property either to Valliammal or to her husband K.M.Mani Mudaliyar. Thangavelu Mudaliyar died intestate and after his death, his sons Thanikachala Mudaliyar and Deivasigamani Mudaliyar have executed an agreement of reconveyance on 06.06.1975 and also received an advance of Rs.500/- on the date of the agreement itself for themselves and on behalf of their mother and sister and



S.A.No.1203 of 2011

received the balance amount on subsequent dates. After the receipt of the amounts, Thanikachala Mudaliyar and Deivasigamani Mudaliyar refused to execute the sale deed in favour of K.M. Manimudaliyar and hence, he filed a suit against them in O.S.No.727 of 1976, on the file of the District Munsif Court, Poonamallee, for specific performance of the contract. The said suit was decreed on 30.09.1977. Thanickachala Mudaliyar and Deivasigamani Mudaliyar preferred an Appeal in A.S.No.68 of 1978, on the file of Sub Court, Chengalpet and the said appeal was also dismissed on 11.04.1979. Ever after the dismissal of the Appeal, they have not executed the sale deed. Hence K.M.Mani Mudaliyar filed an application for the execution of the sale deed and the same was ordered in favour of K.M. Mani Mudaliyar on 07.11.1981. Thus, K.M.Mani Mudaliyar became the absolute owner of the suit property. K.M.Mani Mudaliyar sold the suit property to T.K.Kanniappa Mudaliyar, husband of the first plaintiff and father of the plaintiffs 2 and 3 on 06.11.1982 and put him in possession of the suit property. Eversince that date, T.K.Kanniappa Mudaliyar has been in possession and enjoyment of the suit property as an absolute owner and as such, except Kanniappa Mudaliyar, no one has got any manner of right or interest in the suit property. On 10.04.1990, an Amin from the Court came to the suit property, stating that the



S.A.No.1203 of 2011

defendants had obtained a decree in respect of the suit property, about which Kanniappa Mudaliyar had no knowledge. On hearing the news, Kanniappa Mudaliyar was put to shock and surprise. He had given his objection petition in the year 1990 itself and the Amin and the Temple Authorities have informed that a notice would come from the Court to him. But he had not received any notice from the Court. He came to understand that this Court ordered delivery of the suit property in E.P.No.398 of 1987 in O.S.No.132 of 1979 on the file of the District Munsif Court, Poonamallee and the defendants were making arrangements to take delivery of the suit property. Kanniappa Mudaliyar came to know about the suit only on 10.04.1990. T.K.Kanniappa Mudaliyar and his Vendor was residing only in the suit and they have not received any summons or notice in the above case and everything appears to have been done at their back. T.K.Kanniappa Mudaliyar filed a claim petition on 25.04.1990 and the same was kept pending for certain clarifications without giving any number. During the pendency of the same, the said T.K.Kanniappa Mudaliyar died on 29.05.1990, leaving behind his wife Dhanalakshmi ammal, the first plaintiff and two daughters, namely Thamizhselvi and Bhavani, plaintiffs 2 and 3 as his legal heirs. On 01.03.1995, the claim petition was dismissed. On 14.12.1996, the first defendant came to the suit property and demolished the suit property,



S.A.No.1203 of 2011

the plaintiffs are constrained to file the suit.

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4.The first defendant contested the suit, denied the allegations in the plaint and filed a written statement, contending that the identity of the suit property in lieu of measurements and boundaries are contrary to those on ground. The plaintiffs prayed for the appointment of an Advocate Commissioner to identify the suit property in lieu of measurements and boundaries. The suit is not maintainable as the first plaintiff's husband late Kanniappa Mudaliyar had filed a claim petition and the same was dismissed. The remedy is to file an appeal against the decree. The plaintiffs are the legal heirs of the said Kanniappa Mudaliyar. They are not bound by the decree in the claim petition. The suit is not maintainable on facts and in law. Hence, the suit is liable to be dismissed with costs.

5.On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. Whether the description of the suit is vague and erroneous rendering its identification impossible?



S.A.No.1203 of 2011

2. Whether the suit is barred by resjudicata by reason of order of dismissal on a claim application filed by the plaintiff's husband Kanniappa Mudaliar?

3. Whether the suit is barred by resjudicata by reason of purchase of the suit property by first plaintiff's husband Kanniappa Mudaliyar from the purchaser of Judgment debtor in O.S.132/79 on the file of District Munsif Court, Poonamallee?

4. Whether the decree in O.S.132/79 on the file of District Munsif Court, Poonamallee is binding on the plaintiffs?

5. Whether the plaintiffs are entitled to declare that they are the owners of the suit property?

6. Whether the plaintiffs are entitled to injunction restraining the first defendant/temple from executing the decree in O.S.132/99 on the file of District Munsif Court, Poonamallee?



S.A.No.1203 of 2011

7. To what relief?

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6. Before the Trial Court, in support of the plaintiffs' case, PWs 1 to 4 were examined, 5 documents were marked as Exs.A.1 to A4. On the side of the defendants, DW1 was examined and 3 documents were marked as Exs.B1 to B3.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court decreed the suit as prayed for.

8. Aggrieved over the same, the defendants had filed A.S.No.4 of 2010, before the Subordinate Judge, Poonamallee. The First Appellate Court, after considering the entire materials and evidence on record, dismissed the appeal. Aggrieved by the same, the present second appeal has been filed by the defendants.

9. The second appeal has been admitted on the following substantial questions of law:



S.A.No.1203 of 2011

1) Whether the Courts below were right in entertaining a fresh suit to declare that the plaintiffs are owners of the suit property and consequential permanent injunction when the property covered by O.S.No.132 of 1979 was subject matter of a claim petition by late Kanniappa Mudaliyar under Order XXI Rules 97, 99 and 100 C.P.C., which has been dismissed by the learned District Munsiff as early as on 01.03.1995?

2. Whether the Courts below were right in entertaining the suit when a bar has been created for fresh suit under Order XXI Rule 101 C.P.C.?

3. Whether the Courts below were right in ignoring the decree of dismissal in the claim petitions under Ex.A-3 (1) and A-3 (2) and Kanniappa Mudaliyar or his legal heirs not having preferred an appeal against the same under Order XXI Rule 103, th said orders would operates as res judicata for the present suit and appeal?

10.The learned counsel for the appellant/defendants submitted that the



S.A.No.1203 of 2011

suit property originally owned by one Valliammal W/o K.M.Mani Mudaliyar.

The Trial Court and the First Appellate Court failed to consider the fact that the suit is not maintainable as the first plaintiff's husband late Kanniappa Mudaliyar had filed a claim petition in E.P.No.398/87 in O.S.No.132/79 and claimed absolute right over the property. That petition was dismissed and that order was marked as Ex.A3(1) and Ex.A3(2). The plaintiffs are the legal representatives of Kanniappa Mudaliyar. Since the claim petition was dismissed, they should have preferred an appeal. An independent suit is not maintainable. The suit is barred under Order XXI Rule 101 C.P.C. Therefore, the findings of the Trial Court and the First Appellate Court are erroneous and against law and the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the appeal. To support his arguments, the learned counsel for the appellants/defendants relied on the judgment *in S.Rangarajan Vs. The District Registrar, Tiruchirapalli and two others* reported in **2008-4-L.W.411**.

11.The learned counsel for the respondents/plaintiffs supported the judgment of Courts below and submitted that the second appeal is against the concurrent judgment of the Courts below. Plaintiffs filed a suit for declaration of plaintiffs' title over the plaint schedule property and consequential



S.A.No.1203 of 2011

injunction of permanent injunction. Originally, the suit property belonged to Valliammal W/o.K.M.Mani Mudaliyar who sold the property to her father Thanikachala Mudaliyar and he had agreed to reconvey the suit property either to Valliammal or to her husband K.M.Mani Mudaliyar. Thangavelu Mudaliyar died intestate and after his death, his sons Thanikachala Mudaliyar and Deivasigamani Mudaliyar have executed an agreement of reconveyance on 06.06.1975 in favour of K.M.Mani Mudaliyar. Since Thanikachala Mudaliyar and Deivasigamani Mudaliyar refused to execute the sale deed, he filed a suit in O.S.No.727 of 1976, on the file of the District Munsif Court, Poonamallee, for specific performance. The suit was decreed on 30.09.1977 and got the sale deed through Court on 07.11.1981 and thus, K.M.Mani Mudaliyar became the absolute owner of the property. Thereafter, K.M.Mani Mudaliyar sold the property on 06.11.1982 to T.K.Kanniappa Mudaliar, husband of the first plaintiff, the father of the plaintiffs 2 and 3. From that date onwards, they are in possession and enjoyment of the property as the owner. On 10.04.1990, an Amin from the Court came to the suit property, to execute E.P.No.398/87 in O.S.No.132/1979, on the file of the District Munsif Court, Poonamallee. Thereafter they filed the suit. The Trial Court found that the plaintiffs are entitled for the decree and hence decreed the suit. The First



S.A.No.1203 of 2011

Appellate Court also confirmed the judgment and decree of the Trial Court.

There is no ground for interference and no merits in this case and thus pleaded to dismiss the appeal.

12.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

13.The plaintiffs filed the suit against the defendants for declaration of title over the plaint schedule property and consequential relief of permanent injunction. The description of the plaint schedule property are as follows:

Chengai MGR District, Sriperumbudur Taluk, in Nadavilagam Village, the house and house site, bearing Door No.37 (Old No.40/3) feet East Shanmughapuram III Lane, measuring 32 feet East to West on the Northern side as well as on the Southern side and 37 feet North to South on the Eastern side as well as on the Western side with Brick built walls including the parent walls, bounded on the North by Vedachala Mudaliar's house, South by Street, East by Ariappa Mudaliar's house and house site and West by M.S. Devaraja



*Mudaliar's house and site in Gramanatham
S.No.169 (Old No.168).*

13.1.According to the plaintiffs one K.M.Mani Mudaliyar got the property through the sale deed executed by the Court in a specific performance suit in O.S.No.727 of 1976. Thereafter, he sold the property to T.K.Kanniappa Mudaliyar by way of a sale deed dated 06.11.1982. T.K.Kanniappa Mudaliyar is the husband of the first plaintiff and father of the plaintiffs 2 and 3. They are in possession of the suit property from the date of purchase. On 10.04.1990, the Amin came to the house to execute the decree in E.P.No.398 of 1987 in O.S.No.132 of 1979, on the file of the District Munsif Court, Poonamallee, for taking possession of the property. Hence the plaintiffs had filed the suit.

14.The first defendant had filed the written statement and contested the suit. According to the defendants, the suit property belongs to Arulmighu Jagannadha Perumal & Thirumazhisai Alwar Devasthanam temple. The first defendant got the decree of eviction in O.S.No.132 of 1979, on the file of the District Munsif Court, Poonamallee. T.K.Kanniappa Mudaliyar filed a claim petition on 25.04.1990 and the same was dismissed. The plaintiffs are the legal heirs of T.K.Kanniappa Mudaliyar and the order passed by the Court in



S.A.No.1203 of 2011

the claim petition will bind them. An independent suit is not maintainable and it is liable to be dismissed.

15.On perusal of the plaint, it is seen that the origin of the title has started from Valliammal W/o.K.M.Mani Mudaliar. As per the plaint averments, the plaint schedule properties belonged to Valliammal. She sold the property to her father Thangavelu Mudaliyar. After his death, his sons Thanikachala Mudaliyar and Deivasigamani Mudaliyar have executed an agreement of reconveyance on 06.06.1975. Based upon the reconveyance agreement, K.M.Mani Mudaliar filed a suit in O.S.No.727 of 1976 and got the decree. The Appeal filed by Thanickachala Mudaliyar and Deivasigamani Mudaliar in A.S.No.68 of 1978, on the file of Sub Court, Chengalpet, was also dismissed on 11.04.1979. In pursuance of the decree, K.M.Mani Mudaliar filed an execution petition and got the sale deed executed through the Court on 07.11.1981. In pursuance of the sale deed, he sold the property to T.K.Kanniappa Mudaliar, who is the husband of the 1st plaintiff and the father of the plaintiffs 2 & 3.

16.To support the above plaint averments, there is no document to show



S.A.No.1203 of 2011

that Valliammal W/o.K.M.Mani Mudaliar owned the plaint schedule properties. Further, no document has been filed to support the averment that she sold the property to her father Thangavelu Mudaliyar. In such circumstances, after the death of the Thangavelu Mudaliyar, his sons have no right over the plaint schedule properties to execute the reconveyance agreement, dated 06.06.1975, in favour of K.M.Mani Mudaliar. Therefore, any decree obtained in pursuance of the reconveyance agreement dated 06.06.1975 and the sale deed obtained through Court will not bind the defendant temple. The plaintiffs failed to prove that the plaintiffs' vendor had right title over the plaint schedule properties.

17.The first defendant filed a suit in O.S.No.132 of 1979 against Thanikachala Mudaliar for declaration of title over the properties Chengalpet District, Sriperumbudur Taluk, No.46, Madavilakkam Village, Punja S.No.168, which was decreed on 05.07.1980. Thereafter, K.M.Mani Mudaliar sold the property to T.K.Kanniappa Mudaliar on 06.11.1982. Therefore, the first defendant filed an execution petition in O.S.No.132 of 1979 and T.K.Kanniappa Mudaliar filed a claim petition, which was dismissed. This



S.A.No.1203 of 2011

fact is evidenced by Ex.A3 (1) and Ex.A3(2). Against the dismissal order , T.K.Kanniappa Mudaliar had not filed any appeal. In such circumstances, that order will bind T.K.Kanniappa Mudaliar and his legal heirs.

18.The properties are one and the same and it is observed by the Trial Court in its judgment while answering the issue Nos.1 to 4, which is extracted hereunder:

Strictly saying the description of both the suit properties are not one and same, but probing into the description and its surveyor, door number and village, according to the prudent of the court it is revealed both suit refer one and the same property only, but the description and boundaries of the alleged suit property was inter alias wrongly and negligently mentioned. This has caused great confusion and complication to the court proceeding. In spite of wrong description this court can understand the description of the suit mentioned property and it cannot be said to be un-identifiable.

19.The overall facts prove that the plaintiffs have failed to prove that the plaint schedule properties was owned by Valliammal and she had title over the



S.A.No.1203 of 2011

properties and besides, she executed the sale deed in favour of her father Thangavelu Mudaliyar. In this circumstances, Thangavelu Mudaliyar's sons Thanikachala Mudaliyar and Deivasigamani Mudaliyar have no right over the plaint schedule properties to enter into any sale agreement. Therefore, in pursuance of the sale agreement, K.M.Mani Mudaliar, having obtained the sale deed from the Court, have no right over the plaint schedule properties to execute the sale deed in favour of T.K.Kanniappa Mudaliar. Therefore, the plaintiffs have no better title over the plaint schedule properties than the first defendant. The first defendant had already established their title in O.S.No.132 of 1979 and the decree is not set aside so far.

20. Therefore, the findings of the First Appellate Court and the Trial Court are based upon the irrelevant facts. The Courts below have misconceived the evidence and failed to consider the title of Valliammal, ignoring the patta standing in the name the temple. Therefore, the findings of the Court below are erroneous and it is liable to be set aside.

21. For the aforesaid reasons, the judgment and decree of the Courts



S.A.No.1203 of 2011

below are set aside and the second appeal is allowed. No costs. Consequently,

connected miscellaneous petition, if any, is closed.

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31.07.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

1.The Subordinate Judge, Poonamallee.

2.The Additional District Munsif, Poonamallee.

V.SIVAGNANAM, J.

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S.A.No.1203 of 2011

**Pre-Delivery Judgment made
in S.A.No.1203 of 2011**

31.07.2024