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S.A.No.678 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE **G.ARUL MURUGAN**

S.A.No.678 of 2012

and

M.P.No.1 of 2012

K.Ganesan

... Appellant

-Vs-

C.Kannan

... Respondent

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.09.2011 in A.S.No.66 of 2010 passed by the learned Sub-ordinate Judge, Kallakurichi, reversing the judgment and decree dated 13.08.2010 in O.S.No.286 of 2006 passed by the 2nd Additional District Munsif, Kallakurichi.

For appellant : Mr.V.Manohar

For respondent : Mr.S.Kaithamalai Kumaran

J U D G M E N T

The defendant in the suit is the appellant before this Court in this Second Appeal. This Second Appeal has been filed as against the



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judgment and decree dated 30.09.2011 passed in A.S.No.66 of 2010 on the file of the Sub Court, Kallakurichi, reversing the judgment and decree dated 13.08.2010 passed in O.S.No.286 of 2006 on the file of the II Additional District Munsif Court, Kallakurichi.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

The brief facts, which give rise to the present Second Appeal, are as follows:

3. According to the plaintiff, the suit property originally belonged to one Krishnamurthy, son of Kannusamy Udayar, who had purchased the suit property through Court auction sale in E.P.No.118 of 1983 in O.S.No.1983 of 1979, on the file of the District Munsif Court, Kallakurichi. The sale was duly confirmed by the Court on 09.08.1983 and the Court issued sale certificate in favour of the said Krishnamurthy.



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4. It is the case of the plaintiff that Krishnamurthy had taken delivery of the property through Court and he had been in enjoyment and possession by paying necessary kist. Further, according to the plaintiff, he has purchased the suit property from Krishnamurthy, his brother Maduraimuthu and their father Kannusamy Udayar, under a registered sale deed dated 04.08.1988 for a valuable consideration. Pursuant to the purchase, the plaintiff has been in possession of the property and he has made improvement by digging a well and installing a pumpset and also he cultivated the lands in the suit property.

5. According to the plaintiff, he had also perfected the title of the suit property by adverse possession. It is the further case of the plaintiff that the defendant, who is the third party who is having no manner of right or title to the suit property, attempted to trespass into the property on the 2nd week of April 2006. Therefore, the plaintiff came up with the suit for declaration of title and permanent injunction.



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6. The defendant resisted the suit by filing written statement contending that it is not correct that the vendor has purchased the property through Court Auction sale. It is the case of the defendant that the suit property and other properties were purchased by one Ponnammal through a registered sale deed dated 01.12.1958 and she sold the suit property in favour of one Pachiyammal through a registered sale deed on 19.05.1966. Pursuant to the death of Pachiyammal, her husband Kalichetti and their only daughter Ranganayaki, became legal heirs. They have pledged the suit property in favour of Land Development Bank, Kallakurichi on 19.04.1976 and the properties were not redeemed. The said bank has also initiated an execution proceedings. According to the defendant, after the death of Kalichetti on 03.09.1985, the said Ranganayaki became the owner of the entire property and pursuant to the understanding with the defendant, the loan dues were repaid to the Land Development Bank, Kallakurichi, on 24.03.2006 and by sale deed on 27.03.2006, the said Ranganayaki had conveyed the suit property in favour of the defendant. It is the further case of the defendant that neither himself nor his vendor Ranganayaki are aware of any of the legal proceedings as stated by the plaintiff and sought for dismissal of the suit.



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Evidence and Documents:

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7. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and the vendor Krishnamurthy as P.W.2 and marked Exs.A1 to A6. On the side of the defendant, the defendant examined himself as D.W.1 and marked Exs.B1 to B8.

8. Before the Lower Appellate Court, on the side of the plaintiff, Ex.A7 was marked.

Findings of the Trial Court:

9. After considering the pleadings, the Trial Court framed the following issues:

- “1. Whether Plaintiff is entitled for the relief of Declaration as claimed?
2. To what other reliefs is the Plaintiff entitled to?”

Additional Issue:

1. Is the Plaintiff entitled for the relief of Permanent Injunction?



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10. The Trial Court, after analysing the evidences and documents, dismissed the suit holding that since Ranganayaki was not a party in the other suit or execution proceedings, the sale deed executed in favour of the plaintiff's vendor in Ex.A4 is void.

11. Aggrieved by the same, the plaintiff has filed the appeal in A.S.No.66 of 2010 and the Lower Appellate Court after reappreciating the evidences, allowed the appeal and thereby decreed the suit. Aggrieved by the judgment and decree passed by the Lower Appellate Court, the defendant is before this Court by filing this Second Appeal.

Substantial questions of law:

12. This Court, by order dated 07.11.2012, framed the following substantial questions of law:

“1. Whether the Lower Appellate Court has committed an error in holding that the sale certificate issued in favour of Krishnamoorthy shall not affect the share of the vendor of the defendant viz., Ranganayaki in the suit



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property?

2. Whether the finding of the Lower Appellate Court that possession was taken by Krishnamoorthy pursuant to the Court Sale Certificate is not supported by reliable evidence and hence perverse?"

Submissions on both sides:

13. The learned counsel for the defendant/appellant argued that the suit property was purchased by Pachiammal by sale deed dated 19.05.1966 in Ex.B2 and thereafter, she died intestate leaving behind her husband Kalichetti and daughter Ranganayaki to succeed to the suit property. Further, Kalichetti and Ranganayaki had executed a mortgage deed dated 19.04.1976 in Ex.B3 in favour of the Land Development Bank, Kallakurichi and thereafter, Kalichetti died on 03.09.1985.

14. The learned counsel for the defendant/appellant submitted that after the death of Kalichetti, his daughter Ranganayaki is entitled to the whole of the suit property and with the help of the defendant,



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Ranganayaki cleared the loan dues to the Land Development Bank, Kallakurichi, on 24.03.2006 and thereafter, has executed sale deed dated 23.07.2006 in Ex.B5 in favour of the defendant.

15. The learned counsel further contended that in the meantime, Kalichetti seems to have availed a loan from one Kannusamy and the same was not repaid. The said Kannusamy filed a suit in O.S.No.1983 of 1979 for recovery of money and the suit was decreed. In the execution proceedings filed in E.P.No.118 of 1983, the suit property was brought for sale on 06.06.1983 and it was sold in favour of the plaintiff's vendor Krishnamurthy and the sale certificate was executed in his favour in Ex.A2.

16. According to the learned counsel, at the time of Court auction sale, the loan amount for the mortgage pending with the Land Development Bank, Kallakurichi, was not disclosed and Ranganayaki, who was also the co-owner of the property, was not made as a party in the execution proceedings. Further, according to the learned counsel, the



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proper proceedings were not undertaken in the execution proceedings as the auction purchaser Krishnamurthy was none other than the son of Kannusamy, who was decree holder.

17. The learned counsel contended that since the son of the decree holder himself purchased the property, the sale is not valid. Further, since the joint owner of the property was not made as a party, the proceedings before the execution Court were improper and ultimately, the sale certificate issued in favour of the plaintiff's vendor, cannot be legally valid.

18. The learned counsel further contended that the Trial Court rightly went into these aspects and dismissed the suit. But, whereas the Lower Appellate Court, without any proper materials or evidences, has interfered with the finding of the Trial Court, which is erroneous and sought for allowing this Second Appeal.



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19. The learned counsel for the appellant also relied on decision of the Hon'ble Supreme Court in *Lalchand vs. VIIIth Additional District Judge and others* reported in (1997) 4 SCC 356 for the proposition that unless the permission of the Court under Order XXI Rule 72 of C.P.C. is obtained, the son of the decree holder has no right to purchase the property in Court auction.

20. Per contra, the learned counsel for the plaintiff/respondent contended that in respect of the decree passed in O.S.No.1983 of 1979, the execution proceedings in E.P.No.118 of 1983 was filed. In the execution proceedings, the suit property was brought for Court auction sale on 06.06.1983. On proper permission, the vendor of the plaintiff Krishnamurthy/P.W.2 has purchased the property in Court auction sale and the auction was confirmed as early as on 09.08.1983.

21. The learned counsel further contended that the Revenue documents have been mutated and patta has also been issued in favour of the plaintiff in Ex.A3. Further, the plaintiff is in possession and



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enjoyment of the property by paying kist and the kist receipts were filed in Exs.A4 and A5.

22. Further, the learned counsel for the plaintiff/respondent contended that the Execution Court has handed over the possession of the property in favour of the auction purchaser Krishnamurthy and the possession certificate has been duly filed by the plaintiff as additional documents in Ex.A7 before the Lower Appellate Court.

23. The learned counsel further contended that Ranganayaki had never questioned the sale by taking appropriate proceedings before the Execution Court or independently challenged the sale. Only with the *mala fide* intention, the defendant, with the help of Ranganayaki, has created a receipt in Ex.B6 as if the loan amount was pending and repaid after a period of more than 30 years and created documents to usurp the property of the plaintiff. The learned counsel further submitted that the Lower Appellate Court rightly found that Ranganayaki has not taken any steps as against the auction sale or challenged the sale certificate and



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allowed the appeal and decreed the suit, which is based on the materials available on record and therefore, the finding arrived at by the Lower Appellate Court need not be interfered with and sought for dismissal of this Second Appeal.

24. This Court has given its anxious consideration to the submissions made on both sides.

Analysis on the submissions made on both sides:

25. It is the admitted case that the suit property originally belonged to one Ponnammal and she sold the property in favour of Pachiyammal by sale deed dated 19.05.1966 in Ex.B2. Pursuant to the death of Pachiyammal, her husband Kalichetti and daughter Ranganayaki had executed a mortgage deed in favour of the Land Development Bank, Kallakurichi on 19.04.1976 in Ex.B3.

26. Further, Kalichetti has availed loan from one Kannusamy.



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Since the same was not repaid, the suit in O.S.No.1983 of 1979 was filed for recovery of money and the same was decreed. Pursuant to the decree, execution proceedings in E.P.No.118 of 1983 was filed by the decree holder Kannusamy as against the judgment debtor and the suit property was brought for auction on 06.06.1983. In the auction sale, Kannusamy/P.W.2 has purchased the property in the Court auction sale and the Execution Court has confirmed the auction on 09.08.1983.

27. Pursuant to the Court auction sale, the possession of the property has been handed over to the auction purchaser in Ex.A7 and the Revenue documents have been mutated and patta has also been issued in Ex.A3. The auction purchaser of the property, Kannusamy has sold the property in favour of the plaintiff by the registered sale deed dated 04.08.1988 in Ex.A1 and the plaintiff made development in the property by digging well and he is in possession and enjoyment of the property by paying kist. The receipts have been marked as Exs.A4 and A5.

28. The vendor of the defendant, Ranganayaki, who was a minor



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on the date of auction sale conducted by the Execution Court, did not take any steps as against the sale conducted by the Execution Court or challenged the sale certificate issued in favour of the plaintiff's vendor, if she had any right in the suit property or was there any irregularities in the sale. After Ranganayaki became major, it was always open to her to file a petition and take necessary steps as contemplated under Order XXI Rules 90 and 91 of C.P.C.

29. For ready reference, Order XXI Rules 90 and 91 of C.P.C. are extracted hereunder:

“90. Application to set aside sale on ground of irregularity or fraud.—(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.



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(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation.—The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.

91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.—*The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.”*

30. Further, the defendant's vendor Ranganayaki, after attaining majority, has not filed any petition before the Execution Court seeking to set aside the sale, alleging any irregularity or that the judgment debtor



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had no saleable interest. Ranganayaki has also not filed any independent suit challenging the sale certificate issued in favour of Krishnamurthy or the sale made in favour of the plaintiff in Ex.A1.

31. When Renganayaki was aware of these proceedings as the sale in favour of the plaintiff's vendor was as early as on 09.08.1983 in Ex.A.2 and further the Revenue documents have been mutated and auction purchaser Krishnamurthy has also sold the property in favour of the plaintiff as early as on 04.08.1998 in Ex.A1, Renganayaki, without taking any steps as against the sale, with the help of the defendant, obtained receipt from Land Development Bank, Kallakurichi, on 24.03.2006 in Ex.B6, which is evidently after a period of 33 years from the date of mortgage. Immediately, the defendant has obtained the sale deed from the said Renganayaki on 27.03.2006 in Ex.B.5. It could be easily seen that the defendant, for the purpose of getting sale deed from Ranganayaki, has obtained the receipt, three days prior to the date of sale in Ex.B5 to show as if the title to the property remained with Ranganayaki.



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32. It is also pertinent to note that when the defendant has purchased the property and resisted the suit on the ground that no proper proceedings were taken in the Execution Court for selling the suit property, the defendant has not even examined his vendor Ranganayaki, who had all along remained as a silent spectator. When the defendant's vendor has not alleged any irregularity in the execution proceedings or the sale conducted and she has never made any complaint or challenged the sale in favour of the plaintiffs or the vendor and further, when Ranganayaki has not given any evidence to that effect, the arguments of the learned counsel for the defendant/appellant that proper proceedings were not undertaken in the execution proceedings, cannot be sustained. Therefore the decision relied on by the appellant is not relevant for the facts of the present case.

33. It is also pertinent to note that when the plaintiff has specifically pleaded that Krishnamurthy has purchased the suit property in Court auction sale in E.P.No.118 of 1983 in O.S.No.1983 of 1979, before the District Munsif Court, Kallakurichi on 09.08.1983 and then, he



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has purchased the suit property from the Court auction purchaser. The defendant, by filing the written statement, has not stated anything about the irregularities or fraud committed in the execution proceedings. As per Order XIV Rule 1 of C.P.C. issues arise when a material proposition of fact or law is affirmed by one party and denied by the other.

34. From the perusal of the pleadings, it is seen that the defendant, in his written statement, has not raised any averment in respect of the irregularities committed in the execution proceedings and no specific issue in respect of the irregularities in the auction sale or the sale certificate issued in favour of the auction purchaser, was framed by the Trial Court.

35. When the defendant has not filed any document and these aspects were not raised before the Trial Court, the Trial Court has rendered a finding that there were some procedural lapses in execution proceedings and therefore, the sale certificate in Ex.A2 is void. However, the Lower Appellate Court has reappreciated the evidence and has found



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that the vendor of the defendant, even after becoming major, has remained as silent spectator and has not taken any step to set aside the auction sale or challenged the sale execution in favour of the plaintiff's vendor or the plaintiff. When the plaintiff has examined his vendor/action purchaser as PW.2, the defendant has not even examined his vendor, Ranganayaki to support his case. The possession of property has also been handed over to the plaintiff's vendor by the execution court in Ex.A.7.

36. The Lower Appellate Court, has arrived at findings of fact that the defendant's vendor has not challenged the auction sale or sale in favour of the plaintiff and the plaintiff established his title and the possession of the property through the Revenue documents and allowed the appeal, which is based on the materials available on record and are not perverse.

37. Therefore, the substantial questions of law are answered against the defendant/appellant and in favour of the plaintiff/respondent.



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38. In the result, this Second Appeal is dismissed by confirming the judgment and decree passed by the Lower Appellate Court. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
apd/drl

To

1. The Sub-ordinate Judge, Kallakurichi.
2. The 2nd Additional District Munsif, Kallakurichi.
3. The Section Officer, V.R. Section, High Court, Madras.



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G.ARUL MURUGAN, J.

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