



S.A. No.2023 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.2023 of 2000

and

C.M.P.No. 1378 of 2007

Velankanni

2. Malayappan

3. Mary

4. Rani

5. Selvaraj

6. Lilli Rose

(A1 died. A2 to A6 are brought on record
as legal representatives of deceased 1st
appellant vide court order dated 04.08.2023
made in C.M.P.No. 14899 of 2023)

... Appellants

Vs.

M.Vaitheesan

.. Respondent

PRAYER : Second Appeal filed under Section 100 of Code of Civil

Procedure, to set aside the judgment and decree dated 17.08.2000 passed



S.A. No.2023 of 2000

in A.S.No.149 of 1999 on the file of Principal District Judge, Tiruvannamalai reversing the judgment and decree dated 03.11.1999 passed in O.S.No.71 of 1996 on the file of District Munsif Court, Tiruvannamalai.

For Appellant : Mr.P.Mani

For Respondent : Mr.Sadhasharan

JUDGMENT

The appellant, who is the plaintiff had filed a suit in O.S. No. 71 of 1996, against the defendant for the relief of declaration that she is the absolute owner of suit property as described in the schedule, an extent of 2.53 cents of dry land in S.F.No.157, situated at Vadapuzhithiyur Village, Tiruvannamalai Dt. and the same was dismissed. Against which, the plaintiff preferred an appeal suit in A.S.No. 149 of 1999 and on analysing the facts and evidence on record, the first appellate judge allowed the appeal decreeing the suit. Challenging the reversal findings of first appellate court, the defendant preferred this Second Appeal.



S.A. No.2023 of 2000

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2. For the sake of convenience, the parties are denoted as per the ranking in the suit before the trial court.

3. Before the trial court, the plaintiff claimed right and title based on the purchase made by him from the alleged owner George through the sale deed dated 23.11.1995, on the other hand, the defendant not only denied the plaintiff's title and also contended that based upon the sale agreement said to be executed by the original owner George in favour of her husband Ponnusamy, an unregistered sale agreement dated 28.05.1974. Though the document was not registered, entire sale consideration of Rs.2300/- was paid by him and ever since, he was in possession and enjoyment of the property. After his death, his wife, the defendant is in possession and enjoyment of the suit property, thereby she claimed that the plaintiff is not in possession of property and also they perfected title by adverse possession. Accordingly, she prayed to dismiss the suit.



S.A. No.2023 of 2000

WEB COPY

4. Before the trial court, both parties adduced evidence both oral and documentary and on considering the same, the trial judge framed the issues and finally held that the original owner George already handed over the suit property to the husband of defendant Ponnusamy. Thereafter, her husband cultivated the land and patta No.747 was also granted in favour of Ponnusamy. Moreover, at the time of sale made in favour of plaintiff, the original owner George was not in possession of property. Therefore, the sale stands in the name of plaintiff is not valid document. Hence, the plaintiff is not entitled for the relief of declaration. Accordingly, the suit was dismissed.

5. Challenging the said findings, the plaintiff preferred an appeal in A.S.No.149 of 1999 on the file of Principal District Judge, Tiruvannamalai and the first appellate judge independently analysed the facts and the evidence adduced by both parties, had framed a separate issue. Considering the evidence on record, the first appellate judge held that Ex.B1 unregistered sale agreement relied on by the defendant dated



S.A. No.2023 of 2000

28.05.1974 is a void document and no reliance can be placed upon the said unregistered sale agreement and the same was confirmed by this court while disposing C.R.P.No. 572 of 1998 by an order dated 17.09.1998. In spite of that, the trial court relied the said document Ex.B1 and dismissed the claim of plaintiff holding that the defendant is the original owner of the property as such is erroneous one and the same is liable to be set aside. Accordingly, the appeal suit was allowed and consequently, the suit was decreed. Challenging the said findings, the defendant preferred this Second Appeal.

6. The learned counsel for appellant would submit that the first appellate judge ought to have appreciated Ex.B1, the alleged sale agreement of the year 1974, which is much prior to the alleged sale deed stands in the name of plaintiff. He would submit that the first appellate judge failed to take note of the revenue documents relied on by the appellant in order to prove her long and continued possession of the land and established that she perfected title by adverse possession and without appreciating the evidence on record, the first appellate judge allowed the



S.A. No.2023 of 2000

appeal in favour of plaintiff as such is unjust and the same is liable to be set aside. He would also submit that the first appellate judge failed to take note of the fact that the plaintiff not proved his possession on the date of filing of suit, without which, the decree was granted in favour of plaintiff as such is illegal and the same is liable to be set aside.

7. Considering the facts and circumstances and considering his submissions, this Second Appeal is admitted on the following question of law :-

“(1) Whether the findings of lower appellate court are correct in law in holding that the respondent/plaintiff got title under Ex.A1 Sale deed dated 23.11.1995?

(2) When the lower appellate court is correct in law in holding that Ex.B1 Agreement of sale dated 28.04.1974 is a void agreement inspite of Ex.B4 to B12, which proved that the appellant/defendant is in possession and enjoyment of the suit property right from 1974?



S.A. No.2023 of 2000

WEB COPY

(3) Whether the findings of lower appellate court is correct in law regarding adverse possession inspite of pleadings and documentary evidence let in on behalf of appellant/defendant?

8. The case of plaintiff is that the suit property, an extent of 2.53 cents of land was originally assigned to one George, son of Christhian by the State of Tamil Nadu under D.K.No. 606/1976 dated 29.11.1969. Thereafter, the said George was in possession and enjoyment of the property. While so, he sold the property to the plaintiff through the sale deed dated 23.11.1995 by receiving the sale consideration of Rs.2,300/- and eversince, the plaintiff is enjoying the suit property as absolute owner, but the defendant, who obtained Patta without knowledge of plaintiff, had attempted to cause interference. Hence, the suit was filed.

9. The defendant denied not only denied the plaintiff's claim as well as right of George by filing written statement stating that in fact, conditional assignment was granted in favour of one George on 29.11.1969, since he is a retired Army man and one of condition was



S.A. No.2023 of 2000

within ten years, he is not permitted to make any encumbrance over the property. However, he intended to sell the property. Accordingly, the husband of defendant viz., Ponnusamy purchased the property from the said George by paying a sum of Rs.2300/- as sale consideration and due to the condition enforced in the assignment, instead of writing sale deed, sale agreement was executed on 28.05.1974 and the possession was also handed over to him. Thereafter, Ponnusamy, as absolute owner cultivated the property as absolute owner and original patta was also handed over by the said George with him. Therefore, the alleged purchase made by the plaintiff on 23.11.1995 would not bind the defendant. Even after that, the defendant's husband alone was in possession and enjoyment till his life time. Thereafter, the defendant as his legal heir enjoyed the property, besides with the knowledge of true owner, they possessed and enjoyed the property for more than decades, thereby they have perfected title by adverse possession. Accordingly, he prayed to dismiss the suit.

10. The learned counsel for respondent would submit that based on the unregistered sale agreement marked as Ex.B1 dated 28.05.1974, the



S.A. No.2023 of 2000

defendant claimed right and title over the property, but the said unregistered document would not confer any right or title, since it was not registered under Sec.17 of Registration Act and also not admissible in evidence, which was already decided by this court in C.R.P.No.572 of 1998 filed by the defendant against the order passed in I.A.No.81 of 1996 and produced the copy of order for the perusal of this court. It reveals that already the alleged Ex.B1 unregistered sale agreement was not accepted by this court for the reason that after the alleged sale agreement, no valid sale deed entered between parties. Furthermore, the said finding rendered in C.R.P. No. 572 of 1999 is still in force and so far, it is not set aside. Therefore, already the validity of Ex.B1 unregistered sale agreement was concluded by this court and based on that, the appellant has no right or title over the suit property. Hence, she prayed to dismiss this Second Appeal on that score alone.

11. Considering both side submissions, it reveals that the plaintiff claiming right over the property based on the sale deed marked as Ex.A1, dated 23.11.1995. The defendant claimed right over the property based



S.A. No.2023 of 2000

on the unregistered sale agreement dated 28.05.1974. Originally, the suit property was assigned in favour of George, who is a retired army person by the conditional assignment is an undisputed fact. According to the defendant, the said George intended to sell the property to her husband Ponnusamy for a sum of Rs.2300/-. Due to condition imposed in the said assignment, he was not able to execute the sale deed, on the other hand, he executed a sale agreement dated 28.05.1974, but possession was handed over to him on the same day. Eversince, her husband was in possession and enjoyment of suit property. He would further content that the original patta was also handed over to the defendant's husband to conclude the said sale agreement. But, admittedly, on perusal of Ex.B1 sale agreement dated 28.05.1974, it is an unregistered sale agreement, but as per the assignment Ex.B2 the said land was assigned in favour of one George in the year of 1969 with the condition not to make any encumbrance for the period of ten years. However, within five years period, the sale agreement was entered, which stands in the name of Ponnusamy, husband of defendant. Since the value of property is more than Rs.10,000/-, it requires valid registration as per Sec. 17 of



S.A. No.2023 of 2000

Registration Act, without which, it is not permissible to admit as evidence. But, the learned counsel for appellant would submit that though the document was unregistered one, but for the collateral purpose in respect of possession and enjoyment of property, the said document could be considered. To support his contentions, he relied the authority laid down by the Apex Court reported in **2003 (2) CTC 635** in the case of ***Bondar Singh and others vs. Nihal Singh and others***, wherein it has been held as follows :-

“Registration Act, 1908, Sec.17 -Adverse possession – Plea of adverse possession based on unstamped and unregistered document – Validity – Unregistered and unstamped document not admissible in evidence but can be looked into for collateral purpose in order to show possession.”

12. Considering the said proposition, it reveals that the case in hand, the document Ex.B1 is an unregistered sale agreement, which is not admissible in evidence. Whether it can be looked into for collateral purpose in respect of nature of possession by the party is to be verified. According to plaintiff, he purchased the property in the year of 1995 and



S.A. No.2023 of 2000

the sale deed was also produced, which is marked Ex.A1. Eversince then, he claimed right over the property, but the defendant also produced the kist receipts marked as Ex.B6 to Ex.B11 from the year of 1977 upto the year of 1995. But, the case of plaintiff is that since George was not able to cultivate the lands, he permitted the husband of Ponnusamy to cultivate the land, accordingly, they cultivated land. While so, somehow they have obtained patta, but the same was cancelled by the revenue authority after due enquiry and subsequently, Patta was granted in favour of plaintiff. To that effect, already the proceedings initiated by the revenue authority dated 29.03.1996, it reveals that the Tahsildar conducted enquiry by issuing notice to the plaintiff, in which the defendant Velankani has not appeared, on the other hand, the plaintiff has appeared. On perusal of documents, the revenue authorities cancelled the Patta stands in the name of defendant and patta was granted in favour of plaintiff. In that enquiry, original owner viz., George also appeared and he stated that they (defendants) were permitted to cultivate the lands only and he has not given full right to them. This fact was not denied by the defendant by appearing before the revenue authority during the Patta



S.A. No.2023 of 2000

transfer enquiry, Therefore, the documents produced on side of defendant shows that they are not having valid right and title over the property.

Accordingly, Patta was cancelled by the revenue authority in the year of 1996 itself. Therefore, the Kist receipts relied on by the defendant might have obtained for cultivating the land under the original owner viz., George, but not as a true owner of the land. Hence, the documents relied on by the plaintiff showing that he had possessed and enjoyed the property were supported by documents, but on the other hand, the vendor George transferred the property in the year of 1995, at that time, the condition imposed in the assignment also lapsed. Thereafter, from the year of 1995 onwards, he possessed and enjoyed the property and Patta also stands in his name, which was rightly appreciated by the first appellate judge, which needs no interference. One of the defence raised by the defendant that she had also perfected title over the property based on adverse possession, but the entire defence made by the defendant based on Ex.B1 sale agreement and she claimed right and title based on the said sale agreement. Therefore, they are not entitled to claim adverse possession, as inconsistent pleas also not permissible. To that effect, the



S.A. No.2023 of 2000

ratio laid down in the authority reported in **AIR 1996 SC 910**, wherein the Apex Court been held as follows:-

“As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferrer his successor-in-title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. upto completing the period of his title by prescription nec vi nec clam nec precario. Since the appellant's claim is founded on Sec.53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby, the plea of adverse possession is not available to the appellant.”

The aforesaid authority relied on by the first appellate judge is sustainable one. Therefore, the plea of adverse possession made by the appellant is not sustainable one. To that effect, the findings rendered by the first appellate judge needs no interference. Accordingly, the question of law (1) to (3) are answered.



S.A. No.2023 of 2000

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13. In the result, this Second Appeal is dismissed as no merits and the findings of first appellate judge in A.S.No. 149 of 1999 is upheld. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

13.09.2024

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

The Principal District Judge,
Tiruvannamalai.



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S.A. No.2023 of 2000

T.V.THAMILSELVI, J.

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Pre-delivery judgment in
S.A. No.2023 of 2000

13.09.2024