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S.A.No.699 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.699 of 2018

1. P.Selvam

2. P.Muthukumar

... Appellants

Vs.

1. Mohamed Ibrahim

2. Shinesha

3. Paritha Beevi (Died)

4. M.Mohammed Arif

5. Syed Ali Fathima

6. Haji Rishwana

... Respondents

(R4 to R6 are impleaded as legal heirs of the deceased
R3 vide Orders dated 21.08.2024 made in CMP
Nos.15072, 15075 and 15079/2024)

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 10.08.2018 passed in A.S.No.45/2014, on the file of the I Additional District Court, Thiruvallur upholding the decree and judgment dated 28.03.2014 passed in O.S.No.59/2010, on the file of the Sub Court, Ponneri.

For Appellants : Mr.N.Nithianandam

For Respondents : No appearance



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JUDGMENT

The unsuccessful plaintiffs before both the Courts below have filed the present second appeal.

2. The plaintiffs filed the suit in O.S.No.59/2010 before the Sub Court, Ponneri, for declaration of their title to the suit property and for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

4. The case of the plaintiffs in a nutshell is as follows :

The suit property measuring 0.20 cents in old survey no.360/1, new survey no.1026/3 of Gnayiru Village, within the boundaries stated in the plaint schedule was purchased by the plaintiffs through a registered sale deed, dated 03.05.2006 (Ex.A2) from one Govinda Naidu. Govinda



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Naidu purchased the said property from Mohammed Beevi and her children through a registered sale deed, dated 07.02.1963 (Ex.A1). Ever since the date of purchase, the plaintiffs have been in continuous possession and enjoyment of the suit property and the defendants are attempting to interfere with the same since August 2010. Hence, the suit.

5. The suit was resisted by the defendants on the following grounds:

- i. the sale deed dated 03.05.2006 (Ex.A2) executed by the legal heirs of Janarthana Naidu in favour of the plaintiffs is not valid.
- ii. the suit property originally belonged to one Chinna Ayisha Beevi through a registered sale deed, dated 01.02.1945 (Ex.B1).
- iii. Chinna Ayisha Beevi sold the property to one Fathima Beevi through two sale deeds dated 19.07.1948 and 26.07.1948 (Ex.B2 and Ex.B3)
- iv. Fathima Beevi mortgaged the suit property to one K.Mohammed Gani Sahib through a registered Mortgage deed, dated 12.01.1951 (Ex.B4) and subsequently the same was purchased by him through



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a sale deed, dated 22.08.1951 (Ex.B5). Thereafter, the said Mohammed Gani Sahib continued to be in possession and enjoyment of the suit property.

- v. After the death of the said Mohammed Gani Sahib, his wife and daughters are in possession and enjoyment of the suit property and therefore the suit filed by the plaintiffs has to be dismissed.

6. On the basis of the above pleadings, the Trial Court framed the following issues:

- i. *Whether the plaintiffs are entitled for a declaration as prayed for?*
- ii. *Whether the plaintiffs are entitled for a permanent injunction as prayed for by them?*

7. In the Trial Court, the second plaintiff examined himself and marked Ex.A1 to Ex.A6. The first defendant examined himself and marked Ex.B1 to Ex.B15.



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8. After full contest, the learned Subordinate Judge, Ponneri vide his decree and judgment dated 28.03.2014, dismissed the suit filed by the plaintiffs on the following grounds:- :

- i. though the sale deed dated 07.12.1963 (Ex.A1) is more than 30 years old, the plaintiffs have not produced the original sale deed.
- ii. the second plaintiff during the course of cross examination had deposed that he did not know as to how Mohammed Beevi became entitled to the suit property.

9. Aggrieved over the decree and judgment passed by the Trial Court, the plaintiffs filed an appeal in A.S.No.45/2014 before the I Additional District Judge, Tiruvallur. The learned I Additional District Judge, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the Trial Court vide his decree and judgment dated 10.08.2018, as against which the present second appeal is filed.



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10. The second appeal was admitted by this Court on 29.09.2022 on the following substantial questions of law:

- i. Whether the first Appellate Court has committed grave error in disposing of the petition filed by the appellants under Order 41 Rule 27 C.P.C., separately in contravention to Section 105 C.P.C?*
- ii. Whether the first Appellate Court is bound to render judgment in accordance with Section 96 r/w. Order 41 Rule 31 of the Code of Civil Procedure and Whether the impugned judgment of the lower Appellate Court rendered is in violation of the said provisions and is sustainable in law?*

11. Heard Mr.N.Nithianandam, learned counsel for the appellants.

12. There is no representation on behalf of the respondents.



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13. Mr.N.Nithianandam, learned counsel for the appellants contended that the vendor of the plaintiffs had purchased the suit property as early as 1963 through the registered sale deed (Ex.A1) and the plaintiffs purchased the property from them in the year 2006. Thus the plaintiffs have been in continuous possession and enjoyment of the suit property for the past 47 years prior to the filing of the suit. It is his further submissions that though the defendants are residing in the same area, they have not challenged these two sale deeds till date. It is his further submission that since the Trial Court dismissed the suit filed by the plaintiffs mainly on the ground that the plaintiffs have not adduced the original sale deeds (Ex.A1 and Ex.A2) the plaintiffs / appellants filed an application under Order XLI Rule 27 C.P.C., before the first Appellate Court for receiving the original sale deeds (Ex.A1 and Ex.A2). However the first Appellate Court without passing any speaking orders, dismissed the said petition. His contention is that both the Courts below had failed to consider the registered sale deeds (Ex.A1 and Ex.A2).



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14. In order to substantiate that the plaintiffs are the title holders of the suit property, the plaintiffs mainly rely on the sale deed, dated 07.12.1963 (Ex.A1) executed in favour of Govinda Naidu by Mohammed Bevi for herself and on behalf of her minor children and the sale deed, dated 03.05.2006 (Ex.A2) executed by Govinda Naidu in their favour. The Trial Court dismissed the suit since the original sale deeds Ex.A1 and Ex.A2 were not filed by the plaintiffs. However, a perusal of the records shows that in the first Appellate Court, the plaintiffs have filed the original sale deeds of the suit property along with a petition under Order XLI Rule 27 C.P.C. The first Appellate Court without considering these two sale deeds had upheld the findings recorded by the Trial Court by observing that the plaintiffs have not filed the original title deeds before the Trial Court. A perusal of the sale deed, dated 07.12.1963 shows that Mohammed Beevi, wife of late Mohammed Gani Sahib had executed the registered sale deed for herself and on behalf of her minor children in favour of Govinda Naidu, vendor of the plaintiffs.



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15. The defendants in the written statement had contended that Mohammed Gani Sahib, husband of Mohammed Beevi purchased the suit property through a sale deed, dated 22.08.1951 (Ex.B5). The said Mohammed Gani Sahib died intestate in the year 1959 leaving behind his wife Mohammed Beevi, his sons and a daughter viz., Meeran Mohideen, Kathar Mohideen, Sultan Mohideen, Mahaboob Beevi and their legal heirs. According to the defendants, they are the sons and daughters of Meeran Mohideen and that Mohammed Beevi did not have any exclusive right and title over the suit property. Therefore the sale made by Mohammed Beevi for herself and on behalf of her grandchildren in favour of the plaintiffs vendor is not true and valid.

16. Thus it is seen from the pleadings that the vendors of the plaintiffs had purchased the suit property from Mohammed Beevi and her minor children through a registered sale deed (Ex.A1) which is more than 30 years old and now the defendants who claim to be the children of one of the sons of Mohammed Beevi cannot contend that Mohammed Beevi did not have right to execute the sale deed in favour of the vendors of the



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plaintiffs through (Ex.A1) on her behalf and on behalf of her minor children. It is pertinent to point out that the children of Mohammed Beevi did not challenge the sale deed (Ex.A1) after attaining majority. The defendants are only the grandsons of Mohammed Beevi. The sale deed is also more than 30 years old and the Trial Court without considering this aspect dismissed the suit filed by the plaintiffs on the sole ground that the original title deeds have not been filed by the plaintiffs. In fact, the plaintiffs have filed the original title deeds before the first Appellate Court and the first Appellate Court on its part did not give importance to this and had further observed that the original title deeds were not filed before the Trial Court. The observations of the first Appellate Court is totally perverse.

17. It is settled law that possession follows title and when the plaintiffs claim title to the suit property right from the year 1963, they are deemed to be in possession and enjoyment of the suit property. Both the Courts below had wrongly concluded that the sale deed, dated 07.12.1963 (Ex.A1) is not true and valid after a passage of 50 years of



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the execution of the said document and the substantial questions of law 1 and 2 are answered in favour of the appellants.

18. In the result,

- i. The Second Appeal is allowed. No costs.
- ii. The decree and judgment dated 10.08.2018 passed in A.S. No.45/2014, on the file of the I Additional District Court, Thiruvallur and the decree and judgment dated 28.03.2014 passed in O.S.No.59/2010, on the file of the Sub Court, Ponneri, are set aside.

27.11.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vum

To

1. The I Additional District Court, Thiruvallur.
2. The Sub Court, Ponneri.
3. The Section Officer, VR Section,
Madras High Court, Chennai.



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