BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.09.2024

PRONOUNCED ON : 23.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)Nos.98 & 99 of 2016 and
C.M.P.(MD)Nos.2091 & 2092 of 2016

S.A.(MD)No.98 of 2016

Chinnasamy (died) ... Appellant / 2nd Respondent/ 2nd Defendant

1. Shanthi
2. Selvi
3. Minor Navin Kumar,
   Rep. by mother and natural guardian Selvi

4. Minor Arun Kumar,
   Rep. by mother and natural guardian Selvi
   (Appellants 1 to 4 are brought on record as LRs. of the deceased sole appellant vide order dated 21.04.2016 made in C.M.P.(MD)No.3167 of 2016) ... Appellants

Vs.

1. Annadurai
2. Saroja ... Respondents 1& 2 /Appellant 1&2 / Plaintiffs 1 and 2
3. Periyannan ... 3rd Respondent / 1st Respondent / 1st Defendant

PRAYER : Second appeal filed under Section 100 of CPC, to set aside the decree and judgment dated 21.02.2014 made in A.S.No.22 of 2011 on the file of the I Additional Subordinate Judge, Trichy, reversing the decree and judgment dated 17.11.2009 made in O.S.No.260 of 2005 on the file of the District Munsif, Thuraiyur, by allowing the instant second appeal and consequently dismissing the suit.

S.A.(MD)No.99 of 2016

Chinnasamy (died) ... Appellant / 4th Respondent/ 4th Defendant

1. Shanthi
2. Selvi
3. Minor Navin Kumar,
   Rep. by mother and natural guardian Selvi

4. Minor Arun Kumar,
   Rep. by mother and natural guardian Selvi
   (Appellants 1 to 4 are brought on record as LRs. of the deceased sole appellant vide order dated 21.04.2016 made in C.M.P.(MD)No.3169 of 2016) ... Appellants

Vs.

1. Saroja ... 1st Respondent / Appellant / Plaintiff

2. The Government of Tamil Nadu,
   Rep. by the District Collector,
   Trichy, Trichy – 1.

3. The Revenue Divisional Officer,
   Musiri, Trichy District.

4. The Tahsildar,
Thuraiyur, Trichy District. ... Respondents 2 to 4/
Respondents 1 to 3/
Defendants 1 to 3

PRAYER : Second appeal filed under Section 100 of CPC, to set aside the decree and judgment dated 21.02.2014 made in A.S.No.23 of 2011 on the file of the I Additional Subordinate Judge, Trichy, reversing the decree and judgment dated 17.11.2009 made in O.S.No.459 of 2005 on the file of the District Munsif, Thuraiyur, by allowing the instant second appeal and consequently dismissing the suit.

(in both S.As.)
For Appellants : Mr.Raguvaran Gopalan

For R-1 & R-2 : Mr.V.Balaji

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COMMON JUDGMENT

The contesting defendant in O.S.No.260 of 2005 and O.S.No.459 of 2005 on the file of the District Munsif Court, Thuraiyur filed the above second appeals. Both the suits were dismissed on 17.11.2009. Questioning the same, A.S.No.22 of 2011 and A.S.No.23 of 2011 were filed before the I Additional Sub Judge, Thiruchirappalli by the plaintiffs.

The appeals were allowed and the decisions of the trial Court were reversed on 21.02.2014. Challenging the judgments and decrees passed by the first appellate Court, these second appeals have been filed. S.A.(MD)No.98 of 2016 is directed against the judgment and decree made in A.S.No.22 of 2011 which arises out of O.S.No.260 of 2005. S.A.(MD)No.99 of 2016 is directed against the judgment and decree made in A.S.No.23 of 2011 which arises out of O.S.No.459 of 2005. During the pendency of the second appeals, the original appellant passed away and his legal representatives have come on record. O.S.No.260 of 2005 was filed by Annadurai and his wife Saroja for the relief of declaration and permanent injunction. Chinnasamy, contesting defendant figured as the second defendant in O.S.No.260 of 2005 and fourth defendant in O.S.No.459 of 2005. In the second suit, the Government of Tamil Nadu and the revenue officials were shown as defendants 1 to 3. The above second appeals were admitted on 04.03.2016 on the following substantial questions of law:-

> "1. Whether the plaintiffs have discharged their burden of proof and established that they were in possession of the property prior to the filing of suit and thereafter?

2. Whether the lower appellate Court has erred in decreeing the suit for possession on the basis of Exs.A3 to A7 revenue documents alone, particularly when Ex.A.3 has been subsequently modified by defendants 2 and 3?"

2. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds of appeal and called upon this Court to answer the substantial questions of law in favour of the appellants and restore the decisions of the trial Court and thus allow the appeals.

3. Per contra, the learned counsel for the plaintiffs submitted that the impugned judgments and decrees passed by the first appellate Court are well reasoned and that they do not warrant interference. He submitted that the substantial questions of law deserve to be answered against the appellants and he called upon this Court to dismiss the second appeals.

4. I carefully considered the rival contentions and went through the materials on record.

5. The case of the plaintiffs is as follows:-

The suit property is comprised in survey No.126/3A in B.Mettur Village and measures an extent of 90 cents. The property belonged to Annadurai ancestrally. The property lying to the south of the suit property comprised in survey No.126/3B and survey No.126/3C admittedly belonged to Annadurai. Recognizing his title and possession, patta passbook(Ex.A.3) was issued in favour of Annadurai. Patta No.211 in respect of the suit property mentions the name of Annadurai as the pattadar. Annadurai settled the suit property in favour of his wife Saroja vide settlement deed dated 20.07.2005. Since the plaintiffs apprehended that the defendant Chinnasamy may fradulently effect mutation of the revenue record in his favour, (Ex.A.4) legal notice dated 26.09.2005 was issued to the Tahsildar, Thuraiyur. Ex.A.7 legal notice dated 17.11.2011 was issued to the jurisdictional Revenue Divisional Officer. Even though the suit was instituted on 28.06.2005 itself, Chinnasamy managed to obtain mutation of record in his name subsequently. Ex.B.7 to Ex.B.13 and Ex.B.15 are the documents in the name of Chinnasamy. But all of them are post suit documents and hence ought not to be looked into.

6. The learned counsel for the plaintiffs / respondents herein took me through the testimony of Chinnasamy and pointed out that there is nothing on record to show that his mother's vendor had title over the suit property. He also submitted that the evidence on record clearly prove the plaintiffs' possession.

7. I carefully considered the rival contentions and went through the evidence on record. O.S.No.260 of 2005 is a suit for injunction simpliciter. In the written statement filed in the said suit, Chinnasamy pleaded that the suit property was purchased by his mother Marudhayee vide registered sale deed dated 25.01.1954. Marudhayee executed a registered Will dated 01.06.1977 bequeathing the suit property in favour of Chinnasamy. Marudhayee passed away on 07.06.1998 and the Will came into force. Chinnasamy dealt with the property by mortgaging the same in favour of Thuraiyur Co-operative Land Development Bank on 20.03.1995 and discharged the mortgage on 07.06.2002. The defendant thus categorically denied the title of the plaintiffs over the suit property.

8. In the face of such categorical denial of the plaintiffs' title and assertion of the second defendant's title, the plaintiffs ought to have amended the suit prayer in O.S.No.260 of 2005. Failure to so is fatal. The Hon'ble Supreme Court in ***Anathula Sudhakar V. P.Buchi Reddy ((2008) 4 SCC 594)*** had held as follows:-

> " **21.** To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:
>
> (*a*) **Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy.** Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.
>
> ..."

Failure to seek the relief of declaration renders the suit in O.S.No.260 of 2005 as not maintainable.

9. On 20.09.2024, the following additional substantial question of law was framed:-

> *"3. Whether O.S.No.260 of 2005 is not maintainable for having failed to seek the relief of declaration?"*

10. Since the plaintiffs are already represented by a counsel, there is no need to issue fresh notice.

11. I answer the third additional substantial question of law in favour of the appellants. The judgment and decree made in A.S.No.22 of 2011 is set aside and S.A.(MD)No.98 of 2016 is allowed.

12. Of course the lacuna in O.S.No.260 of 2005 has been made good by seeking the relief of declaration in O.S.No.459 of 2005. Saroja, the plaintiff in the suit claims title over the suit property by virtue of the settlement dated 20.07.2005 executed in her favour by her husband Annadurai. Interestingly, though the settlement deed was shown as a plaint document, it was not marked in the suit. Tracing of title as if that the suit property is ancestral. Heavy reliance is placed on Ex.A.3 patta

passbook. No doubt in Ex.A.3, Annadurai's name is found. But then, he is shown only as a joint pattadar in respect of the suit property. Even according to her own document, she can only be called as a joint pattadar. I fail to understand as to how she could seek the relief of declaration that she is the absolute owner of the suit property. On this sole ground, Saroja's suit may have to fail.

13. But there are weightier reasons for non-suiting her. The plaintiff had produced only revenue documents in support of her claim of ownership. The Hon'ble Supreme Court in the decision reported in ***AIR 2014 SC 937 (Union of India V. Vasavi Coop. Housing Society Ltd.,)*** had held as follows:-

> " **21.** This Court in several judgments has held that the revenue records do not confer title. In ***Corpn. of the City of Bangalore v. M. Papaiah [(1989) 3 SCC 612]*** this Court held that:
>
> > "5. … It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law."

In ***Guru Amarjit Singh v. Rattan Chand [(1993) 4 SCC 349]*** this Court has held that:

"*2*. … that entries in the Jamabandi are not proof of title."

In ***State of H.P. v. Keshav Ram [(1996) 11 SCC 257]*** this Court held that:

> "*5*. … an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs."
>
> ...

24. We are of the view that even if the entries in the record-of-rights carry evidentiary value, that itself would not confer any title on the plaintiff of the suit land in question. ... We are of the view that these entries, as such, would not confer any title. The plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased. ... "

As already mentioned, Ex.A.1 sale deed marked by the plaintiff is not in respect of the suit property. Ex.A.2 is the legal notice issued by the plaintiff to the defendants. Ex.A.3 is the patta passbook showing that Annadurai is the joint pattadar. Ex.A.4, Ex.A.5, Ex.A.6 and Ex.A.7 are revenue documents(computer patta / adangal extract / kist receipt). On the basis of such documents, relief of declaration could not have been granted. On the other hand, the contesting defendant Chinnasamy had marked Ex.B.1 dated 25.01.1954. It is a sale deed executed in favour of Marudhayee Ammal, the mother of Chinnasamy conveying the suit property. Of course the learned counsel appearing for the plaintiffs would argue that Marudhayee Ammal's vendor did not have title over the suit property. One should not forget that Ex.A.1 is a registered document of the year 1954. In this document, the suit property with old survey number has specifically been mentioned(339/3A). Ex.B.2 dated 01.06.1977 is the Will executed by Marudhayee Ammal in favour of Chinnasamy. In this document also, the suit property along with old survey number has been specifically mentioned. It is improbable that documents could have been executed by persons with no title 70 years ago. What clinches the issue in favour of the appellants is Ex.B.18. Ex.B. 18 which is of the year 1985. It is the extract of “A” register of Balakrishnampatti East Village. It mentions the name of M.Chinnasamy as the pattadar of survey No.126/3A. In Ex.B.18, one can notice that one Loganathan was shown as co-pattadar of survey Nos.126/3B and 126/3C. Admittedly, Annadurai purchased the lands comprised in survey Nos.

126/3B and 126/3C only in the year 1999 from the said Loganathan. The entry of the name of Annadurai in the revenue record is clearly subsequent in point of time. Before that M.Chinnasamy's name alone was figured in “A”Register in respect of the suit property. Thus the case of the appellants is supported both by title deed documents as well as the revenue record. That is why, the trial Court rightly dismissed the suit. The first appellate Court went wrong in abruptly upholding the title of the plaintiffs merely on the strength of the finding that the plaintiffs are in possession and the defendants are not in possession.

14. The first appellate Court is of course right in rejecting the post suit documents marked by the defendants. It is seen that prior to filing of the suits, notices were issued to the jurisdictional Tahsildar as well as the Revenue Divisional Officer not to make mutation of revenue record. At the time of filing of the suit, Annadurai's name figured as co-pattadar. The revenue authorities subsequently deleted Annadurai's name and issued separate patta in favour of Chinnasamy. This was clearly illegal. When the jurisdictional civil Court is seized of the matter, the revenue authorities should hold their hands. The revenue authorities have to be

censured for effecting mutation in the revenue record after the institution of the suit. This improper conduct on the part of the revenue authorities however cannot enure to the benefit of the plaintiff. Chinnasamy, the contesting defendant had convincingly demonstrated that he has title over the suit property. Saroja's claim of title therefore has to be rejected. Once the primary relief has negatived, the consequential relief also has to fail. I answer the first and second substantial questions of law in favour of the appellants. The judgment and decree in A.S.No.23 of 2011 is set aside and the judgment and decree of the trial Court is restored. S.A.(MD)No.99 of 2016 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

23.10.2024

Index : Yes/No
Internet: Yes/No
PMU

To

1. The I Additional Subordinate Judge,
   Trichy.

2. The District Munsif,
   Thuraiyur.

G.R.SWAMINATHAN,J.

PMU

S.A.(MD)Nos.98 & 99 of 2016

23.10.2024