



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.NO.1810 OF 2002

1.Saroja Ammal(died)

2.Ulaganathan(died)

3.K.Thiriviam Pillai

4.T.Kailash Kumar

5.T.Muthulakshmi

6.T.Sowrnalakshmi

7.Saraswathi

8.Venkatasubramanian

Appellants 4 to 6 are represented by their Power Agent, third respondent herein.

(Third Appellant is permitted to act as Power Agent to represent appellants 4 to 6 as per order of this Court made in C.M.P(MD)Nos. 10514, 10516, 10517 and 10520 to 10523 of 2021 in S.A.NO.1810 of 2002, dated 8.12.2021)

(Appellants 3 to 6 are brought on record as legal representatives of the deceased first appellant as per order of this Court made in C.M.P(MD)Nos.10514, 10516, 10517 and 10520 to 10523 of 2021 in S.A.NO.1810 of 2002, dated 8.12.2021)

(Appellants 7 and 8 are brought on record as legal representatives of the deceased second appellant as per order of this Court made in C.M.P(MD)Nos.10514, 10516, 10517 and 10520 to 10523 of 2021 in S.A.NO.1810 of 2002, dated 8.12.2021)

:Defendants/Respondents/Appellants

.VS.



1.Pushpam

2.Ganesan

:Plaintiffs/Appellants/Respondents

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.12 of 2001, dated 30.11.2001, on the file of Subordinate Judge, Tirunelveli reversing the judgment and decree made in O.S.No.384 of 1995, dated 10.08.2000, on the file of First Additional District Munsif, Tirunelveli.

Appellants 1 and 2 :Died

For Appellants :Mr.T.M.Hariharan
3 to 8For Respondents :Mr.G.Prabhu Rajadurai
1 and 2

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.12 of 2001, dated 30.11.2001, on the file of Subordinate Judge, Tirunelveli reversing the judgment and decree made in O.S.No.384 of 1995, dated 10.08.2000, on the file of First Additional District Munsif, Tirunelveli.

2.The defendants in the suit are the appellants. The respondents filed the suit for declaration of title and injunction. The suit was dismissed by the trial Court. On appeal filed by the respondents/Plaintiffs, the First Appellate Court reversed the



findings of the trial Court and granted a decree as prayed for. Aggrieved over the same, the defendants are before this Court.

3. According to the respondents/plaintiffs, the first plaintiff purchased 92 1/2 cents of eastern A1.28 cents in S.No.305/1 under Ex.A2, dated 11.09.1985 from one Shesilia @ Nallammal. The second plaintiff purchased the remaining 35 1/2 cents in eastern 1.28 cents in the very same survey number under Ex.A3 on the very same date from the very same vendor. It was claimed that the plaintiffs had been in possession and enjoyment of the suit property from the date of purchase on the basis of the sale in their favour. The Patta was granted in favour of the plaintiffs in the year 1987. Though the plaintiffs entitled only 1.26 cents on the eastern side, patta was granted in favour of the plaintiffs in respect of the entire extent of the suit property. Therefore, the plaintiffs submitted an application before the Tahsildar, Tirunelveli to correct the extent as 1 acre 28 cents instead of 2 acres and 26 cents. On 7.4.1965, he passed an order cancelling the patta in favour of the plaintiffs and directed inclusion of defendants' name. The said order was challenged by the plaintiffs before the Revenue Divisional Officer by filing an appeal. The order of the Tahsildar was stayed by the Revenue Divisional Officer. Since the defendants threatened to trespass into the suit property, the plaintiffs were



constrained to file a suit for declaration of title and for injunction.

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4.The defendants filed their written statement denying the title of the plaintiffs vendor specifically. According to them, the suit property originally belonged to Mahalingam Iyer and his brother Balasubramaniam Iyer. In an oral partition between them, the suit property was allotted to the share of Balasubramaniam Iyer and subsequently, the same was purchased by the defendants under sale deed, dated 15.08.1994. The defendants also purchased the western 98 cents in suit survey number from the legal heirs Sabiyal Beevi under sale deed, dated 24.10.1994. Thus the defendants claimed right over the entire extent in the suit survey number. On these pleadings, the defendants sought for dismissal of the suit.

5.Before the trial Court, the husband of the first plaintiff was examined as P.W.1 and yet another witness was examined as P.W.2. 11 documents were marked as Ex.A1 to Ex.A11.The father of the second defendant and father-in-law of the first defendant was examined as D.W.1 and seven documents were marked as Ex.B1 to Ex.B7.

6.The trial Court, on consideration of oral and documentary



evidence available on record, came to the conclusion that the plaintiffs failed to establish their title over the suit property and consequently, dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.12 of 2001, on the file of First Additional Subordinate Court, Tirunelveli. The First Appellate Court reversed the findings of the trial Court and decreed the suit as prayed for. Aggrieved by the same, the defendants are before this Court by way of this Second Appeal.

7.At the time of admission, this Court formulated the following substantial questions of law, by order, dated 31.01.2003:

1.Whether the plaintiffs suing title are not required to establish every link in their title and whether the suit on title can be decreed by finding faults in the defence?

2.Whether the appellate Court is right in not even advertng to the clinching recitals in several registered documents viz., Exs.B4, B5, B6 and B7 which show that the suit property belongs to Mahalingam Iyer and others and whether the judgment of the appellate Court reversing the judgment of the trial Court even without advertng to these clinching recitals is not vitiated?

3.Whether the appellate Court is right in accepting a plea of oral purchase by Mayandi not pleaded and against the very recital in Ex.A10?



8.The learned counsel for the appellants submitted that the plaintiffs traced their title through one Shesilia @ Nallammal in their pleadings.The title documents of the plaintiffs vendor were produced at the time of trial. The learned counsel further submitted that the plaintiffs vendor's vendor Mayandi had no title over the suit property to convey the same to the plaintiffs vendor. In this regard, the learned counsel has taken this Court to the recitals found in Ex.A10-sale deed executed in favour of the plaintiffs vendor. Ex.B4 is the sale deed executed in favour of Mayandi, the plaintiffs vendor's vendor. Ex.B5 is the mortgage deed by Mayandi on 7.12.1969 and Ex.B6 is the sale deed executed by Mayandi in favour of one Eassakkiammal in respect of the properties on the south and east of the suit property. The learned counsel by relying on the recitals found in Ex.B4, ExB5 and Ex.B6, submitted that the suit property had been referred to as the property of Mahalingam Iyer Vagayara in all these old documents. However, in Ex.A10, sale in favour of the plaintiffs vendor, Mayandi claimed that he purchased the suit property orally from a third party. Therefore the learned counsel submitted that a reading of Ex.A10, Ex.B4, Ex.B5 and Ex.B6 would establish that Mayandi had no title to convey to the vendor of the plaintiffs. The learned counsel also assailed the findings of the First Appellate Court on the ground that the First Appellate Court granted the decree for title in favour of the



plaintiffs by picking up the loop-holes in the defendants's side evidence.

9.The learned counsel for the respondents submitted that the plaintiffs proved their title over the suit property by producing registered sale deed from the year 1971 onwards. On the other hand, the defendants only produced the documents of the year 1994 to prove their title over the suit property. In such circumstances, the plaintiffs established their title better over the suit property and hence, the First Appellate Court has rightly granted a decree for declaration of title and injunction as prayed for.

10.Ex.A2 and Ex.A3 are the sale deeds in favour of the plaintiffs, dated 10.09.1985. In the written statement filed by the defendants, title to the plaintiffs vendor Shesilia @ Nallammal was specifically denied. Therefore, it is incumbent upon the plaintiffs to prove the title of their vendor to convey the suit property to them under Ex.A2 and Ex.A3. To prove the title of the plaintiffs vendor, Ex.A10 has been marked through P.W.1. A perusal of the recitals found in Ex.A10 would suggest that the vendor of the plaintiff's vendor traced his title under a oral sale from one Sudalaimuthu Thevar. However, there is no evidence available on record to



suggest that the said Sudalaimuthu Thevar had title over the suit property. On the other hand, in the documents marked by the defendants namely Ex.B4, Ex.B5 and Ex.B6, the suit property has been described as property of Mahalingam Iyer. Ex.B4 is the sale deed in favour of Mayandi by one Abdul Hareem Rowther, dated 9.9.1959. In the said document, while describing the subject-matter of the sale, northern boundary was shown as the property of Mahalingam Iyer Vagayara. Under Ex.B4, Mayandi purchased the property in S.No.304 which situate on the southern side of the suit property and property in S.No.305/2 which situate on the eastern side of the suit property. While describing boundaries of the properties situate in S.Nos.304 and 305/2, the suit property has been referred to as the property of Mahalingam Iyer Vagayara. Ex.B5 is the Mortgage Deed executed by Mayandi, dated 7.12.1969 in respect of the properties purchased by him under Ex.B4. Even in Ex.B5, while describing the subject-matter of the mortgage, the suit property which is an adjacent property is described as a property of Mahalingam Iyer Vagayara. Ex.B6 is the sale deed executed by Mayandi in favour of Easakkiammal in respect of the property situate on the eastern side of the suit property. Even in Ex.B6, the suit property has been described as Mahalingam Iyer's property in the boundary description. Therefore, Mayandi under Ex.B4, Ex.B5 and Ex.B6 clearly admitted that the suit property in



S.No.305/1 belonged to Mahalingam Iyer Vagayara. However, in Ex.A10-sale deed it was recited that Mayandi purchased the suit property from one Sudalaimuthu Thevar. When there is no evidence available on record to suggest that Sudalaimuthu Thevar owned the suit property at any point of time, the title of Mayandi over the suit property is not at all proved and therefore, he cannot convey the suit property under Ex.A10 to the Plaintiffs' vendor Nallammal. The boundary description in Ex.B4, Ex.B5 and Ex.B6 has been taken into consideration by the trial Court properly and as a necessary consequence, the trial Court held that the title of Mayandi over the suit property was not at all proved and hence, the plaintiffs vendor Nallammal would not derive any title under Ex.A10, the parent document of the plaintiffs. The First Appellate Court, without taking into consideration the material documentary evidence let in by the defendants under Ex.B4, Ex.B5 and Ex.B6, on assumption, came to the conclusion that Mayandi should have owned S.No. 305/1 also since he owned the other adjacent survey numbers. The title of the plaintiffs cannot be declared on mere assumptions and the same shall be proved by documentary evidence.

11.The learned counsel for the respondents vehemently contended that the plaintiffs proved their title by producing documents from the year 1971 as against the documents produced



by the defendants from the year 1994 and therefore, the First Appellate Court was justified in upholding the title of the plaintiffs. Though the plaintiffs produced Ex.A10-sale deed in favour of Nallammal, their vendor, as discussed earlier, Nallammal's vendor Mayandi had no title over the suit property to convey the same to Nallammal. Therefore, Ex.A10 would not advance the case of the plaintiffs. Further, though a registered sale deed in favour of Nallammal was produced by the plaintiffs, there is no evidence available on record to suggest that subsequent to the purchase under Ex.A10 Nallammal had exercised control over the suit property. No revenue documents in the name of Nallammal, prior to the purchase by plaintiffs was produced by them. In such circumstance, the plaintiffs/respondents miserably failed to prove their title over the suit property. It is not open to them to take advantage or loopholes in the defendants' case and try to win the suit for title. The substantial questions of law framed at the time of admission are accordingly answered in favour of the appellants.

12. In the result, the Second Appeal stands allowed by setting aside the judgment and decree of the First Appellate Court and the judgment and decree of the trial Court is restored. There is no order as to costs.

03.07.2024



Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

- 1.The Subordinate Judge,
Tiruneveli.
- 2.The First Additional District Munsif,
Tirunelveli.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A.NO.1810 OF 2002

03.07.2024