

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.8.2009

Coram:

The Honourable Mr.Justice M.JAICHANDREN

S.A.No.1367 of 1994

1. Ramalinga Reddy
2. Subba Reddy
3. Krishna Reddy

.. Appellants

vs.

1. Subbammal (deceased)
2. Mrs.Vatsala
3. Mrs.Ranganayagi
4. Mrs.Kandamma
5. Mrs.Govindamma
6. Mrs.Easwari
7. Munibushanam

(RR2 to 7 are brought on record
as Legal representatives of the
deceased sole respondent vide
order of this Court
dated 26.2.2007 made in
C.M.P.Nos.10521 to 10523 of 1996)

.. Respondents

The Second Appeal has been filed against the judgment and decree, dated 11.10.1993, in A.S.No.16 of 1990, on the file of the Subordinate Judge of Tiruvallur, confirming the judgment and decree, dated 6.2.1990, in O.S.No.346 of 1983, on the file of the District Munsif, Tiruvallur.

For Appellants : M/s.Suganya Devi Duraisamy

For Respondents : Mr.M.R.Khapali for R2 to R7

J U D G E M E N T

This second appeal has been filed against the judgment and decree, dated 11.10.1993, made in A.S.No.16 of 1990, on the file of the Subordinate Court, Tiruvallur, confirming the judgment and decree, dated 6.2.1990, made in O.S.No.346 of 1983, on the file of the District Munsif Court, Tiruvallur.

2. The defendants in the suit, in O.S.No.346 of 1983, are the appellants in the present second appeal. The suit had been filed praying for the reliefs of declaration of the plaintiff's title in

the suit properties and for a permanent injunction restraining the defendants and their men and agents from, in any manner, interfering with the plaintiff's possession and enjoyment of the plaintiff's properties.

3. The plaintiff had stated that she is the owner of the suit properties and that she has been in possession and enjoyment of the said properties subsequent to the purchase of the suit properties from one Bajjammal, by a sale deed, dated 14.8.1951, for a sale consideration of Rs.200/-. The suit properties are comprised in patta No.395, which is in the name of the plaintiff. The original survey number for item No.1 of the suit properties was 151/5B and subsequently, it was given the survey number 151/9. The kist for the suit items of the properties were being paid by the plaintiff. She had also exercised the right of ownership over the suit properties after the purchase of the said lands. She had raised certain loans in respect of the suit properties and certain other properties. On 5.6.1965, the plaintiff's husband had mortgaged the suit properties and other properties to one Narappa. The mortgage had been discharged in the year, 1968. Later, the properties had been mortgaged to one Gopi Ramanujam, in the year, 1968, and it was discharged, in the year, 1973. Thereafter, the plaintiff had been in possession and enjoyment of the properties and she has been carrying on cultivation therein.

4. The plaintiff had stated that the defendants have no right in the suit properties. However, they are threatening to dispossess the properties from the plaintiff, by making false claims over the suit properties, from 1.6.1983. They had also caused obstructions, when the plaintiff was trying to store manure in the suit properties. Further, the defendants are attempting to forcibly enter in the suit properties, disturbing the plaintiff's peaceful possession and occupation of the said properties. In such circumstances, the plaintiff had preferred the suit, in O.S.No.346 of 1983, on the file of the District Munsif Court, Tiruvallur.

5. The written statement filed by the second defendant, under Order VIII Rule 1 of the Civil Procedure Code, 1908, has been adopted by the first defendant. In the written statement filed by the second defendant, the claim of the plaintiff that she is the owner of the suit properties and that she is in possession of the said properties had been denied.

6. It has been further stated that the plaintiff had purchased the suit properties, under the sale deed, dated 14.8.1951. The plaintiff had been in possession and enjoyment of the properties till the month of February, 1965. However, she had put in the first and second defendants in the possession of the suit properties, under an oral agreement of sale, in the month of February, 1965, for a sum of Rs.2,300/-. Pursuant to the said sale, the first and second

defendants have been in continuous possession and enjoyment of the suit properties. They have also perfected their title, in respect of the suit properties, by adverse possession. Their rights in the suit properties should also be recognised, under Section 53(A) of the Transfer of Property Act, 1882.

7. It has also been stated that the first and the second defendants are very poor and they have purchased the suit properties for a sum of Rs.2,300/- from their harden money. The first defendant is dumb and the second defendant is deaf. The plaintiff is a close relative of the first and second defendants. Therefore, the said defendants had not thought of registering a sale deed in respect of the suit properties. Since the value of the suit properties had increased, the plaintiff, who has the custody of the sale deed, dated 14.8.1951, and other connected documents, had filed the present suit against the defendants, vexatiously, with the intention of grabbing the properties. The counter statement filed by the plaintiff, before the Tahsildar, Uthukottai, falsifies her claims that she is in possession of the suit properties. The inclusion of the suit properties in the alleged mortgaged deed, dated 5.6.1965 and 9.8.1968, have been done with a mischievous motive. The adangal copy for fasli 1392 does not reflect the correct position, with regard to the enjoyment of the suit properties.

8. It has also been stated that the sale deed filed as Exhibits B.8 and B.9, in I.A.No.1166 of 1983, clearly proves the ownership of the first and second defendants, in respect of the suit properties and that they are in possession of the same. Further, in view of the judgment, in C.M.A.No.31 of 1983, on the file of Subordinate Court, Tiruvallur, the claim of the plaintiff for an order of injunction cannot be sustained.

9. The third defendant had filed the written statement stating that he is not a necessary party in the suit. However, he has been added, since he is personally aware of the oral agreement of sale entered into between the plaintiff and the first and the second defendants in the month of February, 1965, for a sum of Rs.2,300/-.

10. Based on the averments made in the plaint, as well as the written statements, the trial Court had framed the following issues for consideration:

- "1. Whether the oral agreement of sale, alleged by the first defendant, is true and valid?
2. Whether the claim of the defendants to the benefit of Section 53 of the Transfer of Property Act is true and valid?
3. Whether the defendants' claim of adverse possession is true and valid?
4. Whether the 3rd defendant is a necessary party to the suit?

5. To what relief the plaintiff is entitled to?"

11. The plaintiff had marked Exhibits A.1 to A.14 in support of her claims. The defendants had marked Exhibits B.1 to B.9. The plaintiff had examined herself as P.W.1 and the defendants had examined D.W.1 to D.W.6, as witnesses, on their behalf.

12. Based on the evidence available, the trial Court had decreed the suit in favour of the plaintiff. The trial Court had found that the claim of the defendants that they had paid Rs.2,300/-, as sale consideration for the purchase of the suit properties in the month of February, 1965, has not been substantiated by sufficient evidence. The defendants had said that they did not insist on a written or a registered sale deed for the purchase of the suit properties from the plaintiff, since the plaintiff is related to them. Further, the defendants had not been in a position to prove that they have been in continuous and uninterrupted possession of the properties in question to claim title by adverse possession. On the contrary, the trial Court had found that the claims of the plaintiff had been sufficiently proved by reliable evidence to decree the suit in her favour.

13. The trial Court had also found that the claim of the defendants that the suit properties had been purchased by them by an oral sale deed, cannot be accepted, in view of Section 54 of the Transfer of Property Act, 1882. According to which a transfer of a tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument. Therefore, an oral sale deed cannot be said to be legal and no title will pass, in accordance with the oral sale deed.

14. The trial Court had also found that the defendants had not been in a position to state the date and the year when they had taken possession of the suit properties. The witnesses examined on behalf of the defendants are not in position to state the exact details about the transaction alleged to have been made between the plaintiff and the defendants. Even though D.W.1, namely, Subba Reddy, had stated in his oral evidence that the suit properties had been purchased by the defendants with the money obtained by the sale of the properties in Paduvloor, no such sale deed had been filed in the suit. Further, no receipts had been obtained from the plaintiff for having paid the amount of Rs.2,300/-, as sale consideration, for the suit properties. The defendants had not initiated any proceedings against the plaintiff for not having registered a sale deed in favour of the defendants, even after the payment of the sale consideration.

15. With regard to the claim of the defendants that they had perfected the title in respect of the suit properties by adverse possession cannot be accepted, since they have not been in a position to show that they have been in uninterrupted possession of the suit

properties for more than 12 years. From the kist receipts filed by the defendants, as Exhibits B.1 to B.4, it is clear that they are in the name of one Subba Reddy and they are only for three years. The plaintiff had stated that Subba Reddy is her uncle and that he has been cultivating the lands for three years, on lease. Further, the defendants had not been in a position to explain as to why the kist receipts were not available for the other years. On the other hand, the plaintiff had marked Exhibits A.1 to A.3, which are kist receipts and she had also marked U.D.R. patta to support her contention that the suit properties belong to her. Further, the Exhibits B.6 and B.7, marked by the defendants, are relating to third parties and they cannot bind the plaintiff. Further, Exhibit B.8, which is relating to certain proceedings before the Tahsildar, Oothukkottai, cannot be taken as a substantial proof of the claims made by the defendants. In such circumstances, the trial Court had come to the conclusion that the suit properties belong to the plaintiff and that the plaintiff is entitled to the reliefs sought for by her in the suit, in O.S.No.346 of 1983.

16. Aggrieved by the judgment and decree of the trial Court, dated 6.2.1990, made in O.S.No.346 of 1983, the defendants in the suit had filed the first appeal before the Subordinate Court, Tiruvallur, in A.S.No.16 of 1990. The first appellate Court had framed the following points for consideration:

- "1. Whether the plaintiff has any right in the suit properties?
2. Whether the first defendant has got a right in the suit properties by way of the oral sale agreement?
3. Whether the first and second defendants have any right in the suit properties?
4. Whether the third defendant is a necessary party to the suit?
5. Whether the appeal is liable to be allowed?
6. What are the reliefs the appellants are entitled to?"

17. On analysing the contentions raised on behalf of the parties concerned and based on the evidence available on record, the first appellate Court had confirmed the findings of the trial Court. By its judgment and decree, dated 11.10.1993, it had dismissed the first appeal confirming the judgment and decree of the trial Court, made in O.S.No.346 of 1983. The first appellate Court had also come to the conclusion that an unregistered oral sale agreement cannot vest any right or title in the defendants, in respect of the suit properties. Further, the first appellate Court had confirmed the findings of the trial Court, with regard to the claim of the defendants, regarding adverse possession. The first appellate Court had come to the conclusion that the defendants have not shown sufficient proof to substantiate their claims that they had purchased the properties from the plaintiff for a valid consideration of Rs.2,300/- and that they

have been in possession and enjoyment of the suit properties, since then. In such circumstances, the first appellate Court had dismissed the appeal, confirming the judgment and decree of the trial Court, by its judgment and decree, dated 11.10.1993, made in A.S.No.16 of 1990.

18. Aggrieved by the concurrent findings of the Courts below, the defendants in the suit had filed the present second appeal. This Court had admitted the second appeal on the following substantial questions of law:

"1. Whether the claim of adverse possession can be made on the basis of an oral sale?

2. Whether the provisions of the Transfer of Property Act, in Sections 9 and 54 would, in any way, prohibit a claim for adverse possession, based on an oral sale?"

19. The learned counsel appearing for the defendants in the suit and the appellants in the present second appeal had submitted that the Courts below had erred in decreeing the suit for declaration and for permanent injunction, when the defendants were in the possession of the suit properties, pursuant to the oral sale agreement entered into with the plaintiff. In fact, the defendants had purchased the suit properties for a valid consideration of Rs.2,300/-. Further, the Courts below had failed to take into consideration the fact that the plaintiff and the defendants were close relatives and therefore, there was no sale deed, written or registered, in respect of the suit properties.

20. The learned counsel appearing for the appellants had further submitted that the Courts below had failed to take note of the Exhibits marked in favour of the defendants, especially, Exhibit B.8, in which the plaintiff had admitted that the possession of the suit properties was with the defendants. When there was sufficient evidence to show that there was an oral sale agreement between the plaintiff and the defendants, the Courts below had erred in not appreciating such evidence to dismiss the suit filed by the plaintiff.

21. The learned counsel appearing for the appellants had also submitted that the Courts below had failed to properly apply the principles enunciated in Sections 9 and 54 of the Transfer of Property Act, 1882.

22. Per contra, the learned counsel appearing for the respondents had submitted that both the Courts below had concurrently found that the claims made by the plaintiff, with regard to her rights in the suit properties, were sufficiently proved by available evidence. Further, the defendants, who are the appellants in the present second appeal, had not proved their title in respect of the suit properties, either by oral or documentary evidence. The claim

made by the defendants that they have obtained the title, in respect of the suit properties, by way of an oral sale agreement, for a valid consideration of Rs.2,300/-, could not be proved.

23. The learned counsel appearing for the respondents had further submitted that the attempt made by the defendants to prove the title, with regard to the suit properties, by adverse possession, had also failed. In such circumstances, the Courts below had come to the right conclusion in granting the reliefs sought for by the plaintiff in her suit, in O.S.No.346 of 1983.

24. In view of the rival contentions raised on behalf of the appellants, as well as the defendants and on analysing the evidence available and on a perusal of the records, this Court is of the considered view that the appellants have not shown sufficient cause or reason for this Court to interfere with the findings of the Courts below. The trial Court, as well as the first appellate Court, had come to their conclusions based on the evidence adduced on behalf of the parties concerned.

25. The Courts below had found that the claim of the defendants that they had purchased the suit properties by way of an oral sale agreement, for a valid consideration of Rs.2,300/-, had not been proved. Even though it was stated that the suit properties had been purchased from the money, which the defendants had got by selling the properties at Paduvloor, it could not be proved, since the alleged copy of the sale deed had not been filed by the defendants. Further, the kist receipts marked on behalf of the defendants could not be taken to prove the continuous possession of the suit properties by the defendants, either to show that they have been in possession of the suit properties from the date of the alleged purchase of the said properties or to show that they have been in adverse possession for over twelve years, to prove their title in respect of the suit properties. On the other hand, the Courts below had found that the plaintiff had the title to the suit properties, as seen from the U.D.R. Patta issued in her favour.

26. From the evidence available, the plaintiff had shown that she was in possession and enjoyment of the suit properties, as claimed by her. In such circumstances, the Courts below had concurrently found that the claims made by the plaintiff had been sufficiently proved. Hence, the Courts below had granted the reliefs, as sought for by the plaintiff in her suit, in O.S.No.346 of 1983. In such circumstances, the second appeal is devoid of merits. Hence, it stands dismissed. No costs.

Sd/-

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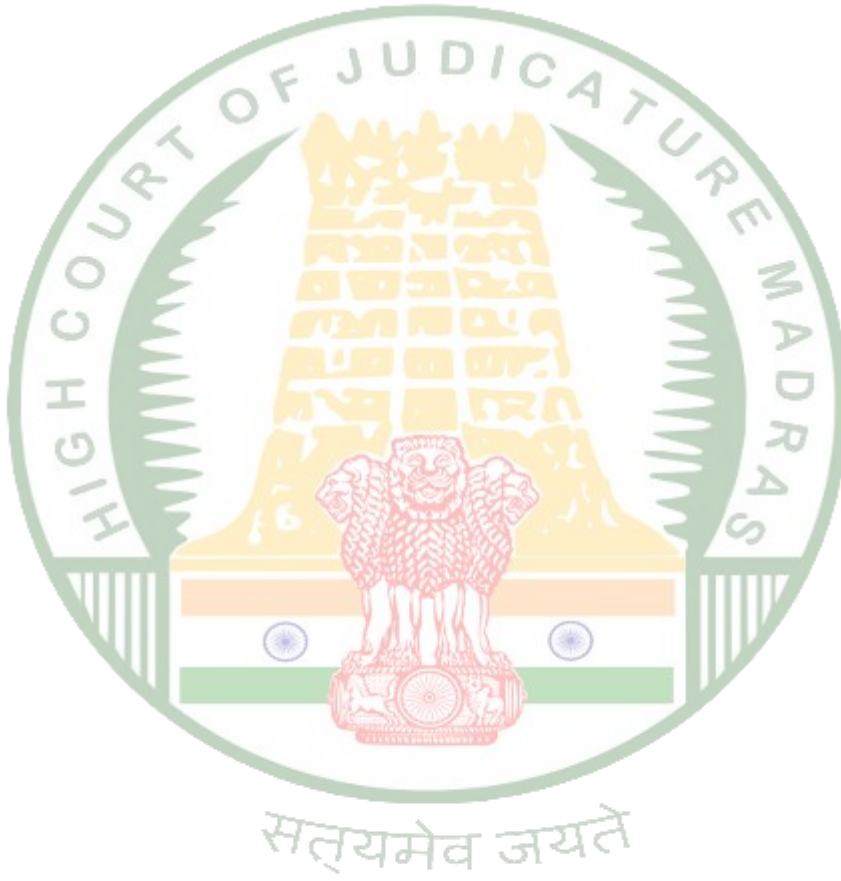
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To:

1. The Subordinate Judge of Tiruvallur
2. The District Munsif, Tiruvallur

S.A.No.1367 of 1994

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