

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2014

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

S.A.No.202 of 2009

1. Chandrasekaran son of Padmanabhan
2. Ramakrishnan son of Padmanabhan
3. Seenu son of Padmanabhan .. Appellants

-vs-

1. K.R.Chidambaram Mudaliar
2. The Government of Tamil Nadu  
rep.by its District Collector  
Tiruvannamalai
3. The Tahsildar  
Polur, Tiruvannamalai District
4. The General Manager  
Dharani Sugar Mills, Karaipondi  
Polur Circle ... Respondents

Memorandum of Grounds of Second Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 31.12.2008 passed in A.S.No.86 of 2007 on the file of the learned Subordinate Judge, Arani, Tiruvannamalai, confirming the judgment and decree dated 14.9.2007 passed in O.S.No.152 of 2003 on the file of the learned District Munsif, Polur.

For Appellants :: Mr.M.Sriram

For Respondents :: Mr.S.Gunaseelan for R1  
Ms.Saraswathi Shivaram Iyer  
Government Advocate (CS)  
for R2 & R3  
Mr.V.Bharathidasan for R4

JUDGMENT

The unsuccessful defendants 1 to 3, against whom the concurrent findings are given by both the Courts below, are the appellants in the second appeal before this Court.

2. Mr.M.Sriram, learned counsel for the appellants, heavily attacking the findings and conclusions reached by both the Courts below, submitted that when the first respondent/plaintiff filed the suit for declaration of title and recovery of possession in respect of the property in Survey No.316/2,3,4 & 7 having an extent of 1.09 cents at Kelur village, Kalambur Sub Division, Polur Taluk, Tiruvannamalai District on the basis of the sale deed dated 2.4.1950, coupled with the patta issued by the revenue authorities that was standing in the name of the first respondent's father till 1993, pleading that the suit property was given to the appellants on an oral waram arrangement from 1992, renewed once in 11 months every year expiring next March, the trial Court has wrongly decreed the suit, ignoring the inconsistent stand taken by the first respondent that at one point of time the first respondent, in his pleadings, had stated that the property in question was given on waram arrangement to the appellants, however, while stepping into the witness box, the stand was completely ignored and a new stand was taken stating that the property in question was given on lease to the appellants. Although the said inconsistent stand was brought to the notice of the trial Court and the possession of the suit property was also established in favour of the appellants, he pleaded that the trial Court has wrongly decided the title in respect of the suit property covered in S.No.316/2,3,4 & 7 in favour of the first respondent. Even the possession, according to the first respondent has been with the appellants, has also been completely negatived without there being any sufficient evidence, supporting the case of the appellants.

3. Arguing further, the learned counsel for the appellants further pleaded that when S.No.316/7 has not been the subject matter of partition that had taken place as per the partition deeds dated 4.5.95 and 20.11.91, the trial Court, ignoring the specific case of the appellants, has wrongly granted the declaration of title along with the recovery of possession in respect of the suit property, as a result, the relief has been erroneously granted to a person who was not a party to the Courts below. Therefore, such a perverse finding recorded by the first appellate Court is liable to be interfered with. Concluding his arguments, it was further stated that in the absence of a specific pleading by the first respondent, the Courts below are not right in holding that mistakenly the name of Mr.Padmanabha Mudaliar is indicated in Ex.A6 instead of Mr.Chidambara Mudaliar. Therefore, the impugned judgments are not perfectly in order, hence, they are liable to be set aside.

4. Mr.S.Gunaseelan, learned counsel for the first respondent submitted that when the suit property covered in S.No.316/2,3,4 & 7 was purchased by the first respondent's father late Mr.Ramanuja Mudaliar from the lawful owners for a valid consideration by the registered sale deed dated 2.4.1950, till his death that took place

in 1985, the first respondent's father was in continuous possession and enjoyment of the property. On the basis of the sale deed dated 2.4.1950 marked as Ex.A1, patta was also issued in respect of the suit property in the name of the first respondent's father. Subsequently, in the year 1990, when the family went for partition on 19.8.90, the suit property was allotted to the share of the first respondent. However, the suit property being a fertile land capable of yielding cash crop in sugarcane, the first respondent was not able to manage and cultivate the same personally, hence, he entered into an oral waram arrangement with the appellants, renewed once in 11 months. However, since 1992, the lease is being renewed once in 11 months every year on the expiry of next March. As per the lease arrangement, the appellants have to pay 50% of the income roughly Rs.15,000/- per annum to the first respondent. The appellants, being the relatives, used to pay the lease amount at their leisure. But all of a sudden, when the first respondent approached the Village Administrative Officer for grant of chitta and adangal for the purpose of obtaining loan for deepening the suit well, it was found that the patta in respect of property was standing in the names of the appellants and on further enquiry, it was found that the same was transferred as per the order dated 12.1.94 in T.R.No.1277 of 1994 by the Tahsildar, Polur. Since the patta of the property was wrongly transferred in the name of the appellants without notice to the first respondent, apprehending more foul play from the appellants, the first respondent demanded the appellants to deliver possession in April, 2003 and also to give a written undertaking not to lay any claim over the suit property taking advantage of the patta transferred in their names. Infuriated over the developments, they refused to pay the lease amount and also failed to handover vacant possession, as a result, the suit was filed seeking for a judgment and decree to declare the right, title and interest of the first respondent to the suit property with a further direction to the appellants to deliver vacant and peaceful possession of the suit property. After the filing of the suit, the appellants filed a brief written statement without making any averment in respect of the land covered in S.No.316/7. Therefore, he pleaded, it is not open to the appellants to lay any claim on the land covered in S.No.316/7, as it is a well settled legal position that what was not pleaded before the trial Court and also before the first appellate Court cannot be claimed or raised before the second appellate Court. In any event, when both the Courts below have rightly considered both the oral and documentary evidence adduced by the first respondent, more particularly, the sale deed dated 2.4.1950 marked as Ex.A1, which indicates clearly that the land covered in S.No.316/2,3,4 & 7 was purchased by the first respondent's father late Mr.Ramanuja Mudaliar from the lawful owners for a valid consideration, it is not open to the appellants to claim any right or title in respect of the property in S.No.316/7 also.

5. This Court, finding full merits on the submissions made by the learned counsel for the first respondent, is unable to find any flaw or infirmity in the impugned judgments. Moreover, as it is well settled legal position that the existence of substantial question of law is a sine qua non for the exercise of jurisdiction conferred under the amended Section 100 of the Civil Procedure Code, this Court, finding no worthwhile substantial question of law is involved in the second appeal, is not inclined to interfere with the concurrent findings of both the Courts below. Accordingly, the second appeal fails and it is dismissed without costs. Consequently, M.P.No.1 of 2009 is also dismissed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss

To

1. The Subordinate Judge  
Arani  
Tiruvannamalai

2. The District Munsif  
Polur.

3.The Collector  
Thiruvannamalai District

1 cc to Mr. M.Sriram, Advocate, SR.No.34095/2014  
1 cc to Mr. S.Gunaseelan , Advocate, SR.No.33909/2014  
1 cc to Mr.V.Bharathidasan , Advocate, SR.No.34200  
1 cc to Government Pleader, Sr.No.33982

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