
(2017) 03 MAD CK 0150
In the Madras High Court
Case No : 1259 of 2010

K.Palaniappan & anr.

APPELLANT

Vs

Sellammal & ors.

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

[Registration Act, 2008](#), Section 17

Citation : (2017) 03 MAD CK 0150

Hon'ble Judges : G.Jayachandran

Bench : SINGLE BENCH

Advocate : G.Jayachandran

Judgement

1. This appeal is preferred by the defendants against the reversing judgment of the lower appellate Court in the suit for declaration and injunction.
2. For the sake of convenience, the parties are referred as per their litigative status and rank shown in the suit.
3. Parties are siblings of late Kandasamy Gounder. The first plaintiff is his daughter. The second plaintiff is the son of the first plaintiff. The second defendant is the son of late Kandasamy Gounder. Kandasamy Gounder, who is arrayed as first defendant, died pending first appeal. After his demise, his wife was impleaded as fourth defendant.
4. The case of the plaintiffs is that on 19.08.1973 the first plaintiff's father-in-law Palani Gounder settled 1.42 acres of land covering the suit property to her and her husband. The adjutant land was purchased by her father on 10.07.1974. Later, on 01.06.1989 the first defendant and the second defendant sold major part of the property purchased by the first defendant to one Govindarajan. Though the first plaintiff is one of the party to the sale deed, she did not receive any sale consideration. The first and second defendants agreed to sell their share in the well and vari to the first plaintiff but, failed to execute the sale deed, which resulted in filing a suit in O.S.No.337 of 1992 for specific

performance in which decree was passed in favour of the first plaintiff against the defendants 1 and 2. The defendants 1 and 2 filed a suit in O.S.No.186 of 1996 against the first plaintiff seeking declaration and recovery of possession in respect of the plaintiffs' house. A compromise was arrived between the parties on 05.07.2001 wherein, the dispute was settled through panchayatars. The defendants 1 and 2 were compensated for withdrawing their claim under O.S.No.186 of 1996 and regarding the excess 4 and 1/2 cents of land found in the patta was issued in favour of the first plaintiff. On receipt of Rs.1,50,000/-, as per the muchalika, the defendants 1 and 2 had handed over the property. On 05.07.2001 the defendants 1 and 2 had also executed the sale deed in respect of share in the common well and vari pursuant to the decree passed in O.S.No.337 of 1992. Thereafter the defendants 1 and 2 have no land in the suit property. Hence, prayed for declaration of title and injunction restraining the defendants 1 and 2 from creating encumbrance over the suit property. The third defendant is arrayed as a formal party to avoid any registration of sale deed.

5. The first and second defendants contested the suit denying the averments made in the plaint. According to them, the description of suit property is false. The suit property was not settled to the 1 st plaintiff or her husband on 19.08.1973 as avered in the plaint. The suit property in survey No.65/1 was purchased by the first defendant on 10.07.1974 from the brother of Palani Gounder and sold a portion of it to Govindarajan family. Though the first plaintiff has a half share in the well and vari, the vari mentioned in the document has extinguished and not available in the ground. The specific performance suit in O.S.No.337 of 1992 is only in respect of 1/2 share in the well and vari and not for entire portion. The possession of the suit property is not with the plaintiffs as alleged in the plaint. Under UDR scheme, patta was issued to the respective parties. 36 cents of land in S.No.65/1 was sub divided into S.Nos.65/ 1C, 65/1D and 65/1E. The patta for land under survey number 65/1C was issued to the 1 st plaintiff. The patta for S.No.65/1E was issued to the defendants 1 and 2. As per the patta, 4 1/2 cents of land was shown less to the 1 st defendant and more to the 1 st plaintiff. The terraced house of the defendants was shown under S.No.65/1C. Therefore, the suit for declaration in O.S.No.186 of 1996 was filed by the defendants 1 and 2 against the first plaintiff. Thereafter, they had compromised and muchalika was entered between the parties, in which it was specifically agreed by both the parties that they will enjoy their respective extent of lands as per the patta and relinquish all other claims. For the difference in extent the defendants will be paid a sum of Rs.1,50,000/- by the plaintiffs. The suit property is not properly described by the plaintiffs in the schedule. By furnishing wrong survey number and without adequate details of the property, the plaintiffs had filed the suit for declaration. Hence the suit is liable to be dismissed.

6. The trial Court after examining the Exhibits A-1 to A-7, B-1 to B-7 and the evidence of PW1, PW-2 and DW-1, has dismissed the suit. On appeal, the first appellate Court has reversed the finding of the trial Court. Aggrieved by the

judgment of the lower appellate Court, the present appeal is preferred by the defendants.

7. At the time of admission, this Court has formulated the following Substantial Questions of law for consideration:- "(i) Whether in law the lower appellate court is right in misappreciating evidence and arriving at a perverse conclusion, thus inviting interference under Section 100 CPC vide AIR 2001 SC 1273?

(ii) Whether in law the lower appellate court was right in granting a decree for declaration without any pleading or proof?

(iii) Whether in law the lower appellate court was not wrong in finding that there could be a transfer of title without any registered document and under an unregistered muchalika, Ex.A4 repugnant to Section 17 of the Registration Act?"

8. On perusal of the documents before the Court, it is seen that 2.84 acres of land was owned by one Palani Gounder in different sub-divisions of S.Nos.64 and 65. Under Ex.A-1, he has settled 1.42 acres of land on the western side along with half share in the well and vari in favour of the first plaintiff on 19.08.1973. The remaining 1.42 acres of land on the eastern side, along with half share in the well and vari was sold to the first defendant on 10.07.1974 under the sale deed Ex.A-2. The survey plans marked as Exs.B-2 and B-3 clearly indicate that the western portion was settled to the first plaintiff and the eastern portion was sold to the first defendant.

9. The common well and vari (i.e) land appurtenant lies in between the composite survey Nos.64 and 65. Therefore, during UDR survey, the land held by the 1st plaintiff was assigned as S.No.65/1C and the land held by the first defendant was assigned as S.No.65/1E. The well and vari portion held in common was assigned as S.No.64/2CA and 65/1D. The parties have entered into muchalika Ex.A-4, after litigating for quite some time by filing suits against each other. They were conscious of the fact about their respective survey numbers and extent of the land in the said survey numbers. They have accepted the difference in the extent of the properties, but to give quietus to the dispute, agreed to maintain status quo as per their respective patta and receive compensation for the difference. On the same day, the defendants 1 and 2 have also executed the sale deed marked as Ex.A-1 in respect of their 1/2 share in the well, as per the specific performance decree. Since both Exs.A-1 and A-4 were executed on the same day i.e on 05.07.2001, it is obviously clear that the compromise and the sale deed were simultaneously executed to give an end to the dispute. Therefore, neither of the party can claim anything more than what is covered under Exs.A-1 and A-4.

10. It is admitted fact that the land in S.No.65/1C is the property of the 1st plaintiff and S.No.65/1E is the property of the defendants 1 and 2. The same has been reinforced by the parties through muchilika. The share in the well held in common and later, sold to the plaintiffs, which falls under S.No.64/2CA and 65/1D. The chitta and the other documents belie the case of the plaintiffs that

after the execution of sale deed Ex.A-1, the defendants have no piece of land in the composite S.No.65/1. The trial Court, after proper scrutiny of the title documents has held that the plaintiffs claim over the suit property falls within the S.No.65/1E. The plaintiffs in their written statement filed in the earlier suit in O.S.No.186/1996 had admitted that S.No.65/1E belongs to the defendants. The said suit is the subject matter of the muchilika Ex.A-4. Therefore, rightly held that the plaintiffs are not entitled for declaration or injunction against the defendants for the suit property.

11. The lower appellate Court has erroneously gone on the premise that the well and vari portion falls only under Survey No.65/ 1D and wrongly held that by virtue of specific performance decree and the subsequent sale deed, the plaintiffs are entitled for 7 1/2 cents of land covered under Survey No.65/1 alone. So, after subtracting 7 1/2 cents in 36 cents of land in S.No.65/1, the remaining 28 1/2 cents has to be shared equally by the plaintiffs and the defendants, which works to 14.25 cents each. Since the defendants have sold 9 1/2 cents to Govindarajan under Ex.A-3, the defendants have only 1.25 cents of land.

12. The lower appellate Court has gone astray by the wrong arithmetics given by the plaintiffs as if 36 cents of land in Survey Number 65/1 includes the entire extent of the well and vari portion and the same was held in common. When in the fact, the well and vari portion fell under two survey Numbers 64 and 65. That is why in UDR re-survey, the well and vari portion was assigned as S.No.64/ 2CA and 65/1D. The fallacy in the conclusion of the lower appellate Court is multifold. First, it has totally ignored the fact that the 7 1/2 cents of land sold by the defendants to the plaintiffs falls under two survey numbers 64/2CA and 65/1D. Second, the sale of 9 1/2 cents to Govindarajan was done jointly by the plaintiffs and the defendants which includes the portion of the property settled in the name of the plaintiffs and subtracting the 9 1/2 cents of land from the share of defendants alone is erroneous. Third, the muchilika entered between the parties to retain the lands as per the UDR re-survey and to give quietus to all the litigation has been brushed aside, on the ground that it is not a registered document. Without looking into the documents Exs.A-1, A-4, B-1, B-2 and B-3, the lower appellate Court has reversed the trial Court judgment.

13. Discarding Ex.A-4 muchilika on the ground that it being an unregistered document, so it has no force and it is violation of Section 17 of the Registration Act, is not legally correct. The lower appellate court has failed to see that under Ex.A-4 no new right created to the parties, it is only a recording of re-adjustment of the existing right over the property among the owners based on the patta.

14. In the judgment of the Hon'ble Supreme Court in Yellapu Uma Maheswari and another v. Buddha Jagadheeswararao and others, it is held in para 15, which reads as under: " 15. Section 17 (1)(b) of the Registration Act, 1908 mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals with the

documents that are required to be registered under Section 17 of the Act."

15. In the above judgment of the Hon"ble Supreme Court the observation of the judgment rendered by the Andhra Pradesh High Court is referred and the same is extracted below:- "The Larger Bench of Andhra Pradesh High Court in Chinnappa Reddy Gari Muthyala Reddy v. Chinnappa Reddy Gari Vankat Reddy, AIR 1969 A.P. (242) has held that the whole process of partition contemplates three phrases ie. Severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose ie., division of joint properties by metes and bounds."

16. Transfer of title is not envisaged in Ex.A4. It is only the acknowledgement of the possession already existing with the respective parties and reflected in the citta Exs.B4 and B5. Therefore, for the collateral purpose the Courts below have relied upon Ex.A4 and this Court finds no error in it.

17. The Learned counsel for the respondents submitted that in case of conflict in survey number or extent, the boundary will prevail over the survey number and extent given in the document. Since the plaint schedule contains boundary, there is no difficulty in identifying the suit property. Wrong survey number given in the plaint schedule will no way prejudice to the appellants.

18. The said proposition can be applied only if there is ambiguity in the description of property and to identify the exact property in dispute. The conflict must be within survey number, extent and boundary. In this case, the said preposition of law is not applicable, because the property shown in the suit schedule does not mention the measurements on all the four sides and the boundaries. The survey number shown in the suit schedule is 65/1E which is admittedly the property of the defendants. It is established through evidence that the plaintiffs are outrightly claiming declaration of title to the land owned by the defendants. The mis-description in the suit schedule is not by inadvertence but, a deliberate one. Therefore, the plea of the respondents counsel cannot be countenanced.

19. Without proper pleadings and proof, the lower appellate court has granted the declaration decree for the property in S.No.65/1E ,which is proved to be the property of the defendants. Thus, the decree of the first appellate Court renders itself perverse and illegal. Hence, it is liable to be reversed. Accordingly, the lower appellate court judgment is set aside. The trial court judgment is restored.

20. In the result, the second appeal is allowed and the suit in O.S.No.1058/2004 is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.