(2017) 03 MAD CK 0065

In the Madras High Court

Case No : 206 and 207 of 2017 and CMP Nos 4834 and 4835 of 2017

T.Mahalakshmi, & Anr. APPELLANT

Vs

Mr.A.Senthilkumar Rep. by Power of Attorney, Mr.T.R.Alagarasamy RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Code of Civil Procedure, 1908, Section 100 - Second appeal

Citation : (2017) 03 MAD CK 0065

Hon'ble Judges : M.Sathyanarayanan

Bench : SINGLE BENCH

Advocate : M.Sathyanarayanan

Final Decision : Dismissed

Judgement

1. These Second Appeals arise out of the common judgment and decree dated 06.02.2013 made in O.S.No.354/2006 and O.S.No.140/2002,

on the file of the District Munsif Court, Chengalpattu and hence, both the appeals are disposed of by this common judgment. This Court, for the

sake of convenience, adopts the array of parties as per the cause title in O.S.No.140 of 2002, filed by the appellant/plaintiff on the file of the

District Munsif Court, Chengalpattu.

2. The appellant/plaintiff would aver that she is the absolute and exclusive owner of the suit property admeasuring to an extent of 0.01 cent (436

sq.ft.,) comprised in S.No.35/1, Potheri Village, Chengalpattu Taluk, Kancheepuram District and she had purchased the same from Tvl.

C.T.Vasudevan, C.T.Narayanan and C.T. Ashok Kumar, represented by their Power of Attorney Agent Rukmani Ammal, through registered Sale

Deed dated 01.11.2001 under Ex.B1. It is further averred by the appellant/ plaintiff that out of larger extent of the suit property admeasuring 0.09

cents, 0.08 cents was acquired by the Government for widening the G.S.T Road and the remaining extent of 0.01 cent was sold in favour of the

plaintiff under the above said sale deed. The appellant/plaintiff would further aver that her vendors also claim title by way of adverse possession

and prior to the purchase under the above said sale deed, she was a tenant and she had put up a small hut in the suit property and running a small

tiffin shop and after purchasing the property, she had approached the Tahsildar, Chengalpattu for transfer of patta and it was denied by the

concerned official and thereafter, she has submitted a representation to the Hon''ble Chief Minister Grievance Cell and the said Tahsildar had also

informed the petitioner, vide communication dated 11.06.2002, that patta has already been issued in favour of the second defendant/respondent

and taking advantage of the same, the defendants started interfering with the peaceful possession of the appellant/plaintiff in the suit property and

further averred that the alleged patta and alleged sale deeds executed in favour of the second defendant are not binding on the plaintiff and

therefore, came forward to file the Suit for Declaration of Title and consequential relief of Permanent Injunction restraining the defendants, their

men, agents and servants in any way interfering with the plaintiff''s peaceful possession and enjoyment of the suit property.

3. The first defendant had filed a written statement, which was adopted by the second defendant and they deny the averments made in the plaint

and would further state that lands admeasuring 0.24 cents in S.No.35/1 was originally owned and possessed by one Nagan, S/o. Late Vellai

Naicker, having obtained by him in the year 1981 by way of family arrangement among himself and the sons of his brothers and he was also issued

with Patta No.152 and was paying statutory levies and he sold the property under registered sale deed dated 20.10.1982, under Ex.A3 to

M.R.Rukmani and after purchase, she formed an approved layout which includes S.No.35/1 admeasure to an extent of 0.24 acre and vide

registered sale deed dated 30.08.1988 under Ex.A4, she along with 3 others had sold the entire extent in favour of K.Mari and M.Sivakumar for a

valuable consideration and also delivered possession. The first defendant would further state that the southern portion of the land in S.No.35/1, 2, 3 and 4 was kept aside for the purpose of School and it was purchased by the defendants under two registered sale deeds dated 14.06.1996 for

valuable consideration and that S.No.35/1 was subdivided as S.No.35/1B for an extent of 12 sq.mtrs and the remaining extent in S.No.35/1 has

been acquired for widening the highway road and the same is subdivided as S.No.35/1A. It is also stated by the defendants that though the

plaintiff''s claimed to have purchased 0.01 cents, applied for patta for 0.02 cents, as revealed in the order passed by the Tahsildar, Chengalpattu,

vide proceedings dated 15.05.2002 and also took a stand that the plaintiff has suppressed the material facts and therefore, prayed for dismissal of

the Suit.

4. The second defendant in O.S.No.140/2002 on the file of the District Munsif Court, Chengalpattu, namely Thiru.A.Senthilkumar, represented by

his Power Agent Mr.T.N.Alagarsamy, filed O.S.No.354/2006 against the appellant as well as Thiyagarajan, reiterating the stand taken in the

written statement in O.S.No.140/2002 and would contend that in the suit in O.S.No.140/2002 filed by the appellant, I.A.No.1694/2005 was filed

for measurement of the land in question by an Advocate Commissioner with the help of Taluk Surveyor and as per the report of the Advocate

Commissioner, except 21.sq.m. registered in S.No.35/1B in the name of the second defendant, no such extent mentioned in O.S.No.140/2002

was available on ground and that the hut falls in S.No.35/1A. It is further averred that the appellant took a second petition for locating the said

0.01 cent with the help of Surveyor and the Advocate Commissioner revisited the area with a new Taluk Surveyor and found that the kutcha hut is

put up partly in S.No.35/1B and in S.No.35/2B and that they are rank trespassers and prays for declaration of title to the land admeasuring to an

extent of 0.12 sq.mtrs in S.No.35/1B and 0.10 sq.mtrs in S.No.35/2B.

5. The appellant herein, who was arrayed as the first defendant, filed the written statement, reiterating the stand taken in the plaint in

O.S.No.140/2002 and would contend that she is not at all interested in Item No.2 of the suit property and the hut is put up in item No.1 and not in

item No.2 and he has right to claim under item No.2 and she is not entitled to give possession and enjoyment of item No.1 and prayed for

dismissal of the suit.

6. During the course of trial, both the parties agreed for a joint trial and and the witnesses examined and documents marked in O.S.No.354/2006,

shall be taken into consideration for the suit in O.S.No.140/2002. The plaintiff in O.S.No.354 of 2006, namely the Power Agent

Thiru.T.N.Alagarsamy was examined as PW1 and Exs.A1 to A10 were marked and the appellant herein, namely Tmt.T.Mahalakshmi was

examined as DW1 and one Thiru.Anandan, Village Karna was examined as DW2 and Exs.B1 to B21 were marked. The reports of the Advocate

Commissioner were marked as Exs.C1 to C5.

7. The Trial Court, on consideration of pleadings, had framed the following issues in O.S.354/2006:

1. Whether the plaintiff is the absolute owner of the suit property?

2. Whether the plaintiff is entitled for the relief of declaration as prayed for ?

3. Whether the defendants are liable to deliver the possession to the plaintiff by removing the mobile tiffin stall and the hut from the

suit items as contended by the plaintiff?

4. Whether the plaintiff is entitled for the damages of Rs.1000/- p.a. from the date of plaint till, delivery, for the defendants

unauthorized use and occupation of suit items, from the defendants?

5. To what other relief, the plaintiff is entitled to?

The Trial Court, on consideration of pleadings, framed the following issues in O.S.No.140/2002:

1. Whether the plaintiff is entitled for declaration and permanent injunction as prayed for ?

2. To what relief ?

The Trial Court, on consideration of pleadings and appreciation of oral and documentary evidence, decreed the Suit in O.S.No.354/2006 as

prayed for and dismissed the Suit in O.S.No.140/2002, filed by the appellant, vide common judgment and decree dated 06.02.2013.

8. The appellant herein, aggrieved by the decreeing of the Suit in O.S.No.354 of 2006 and dismissal of the Suit in O.S.No.140/2002, filed Appeal

Suits in A.S.Nos.13/2013 and 14/2013 respectively on the file of the Principal Subordinate Judge, Chengalpattu. The Lower Appellate Court, on

consideration of the materials available as well as the impugned judgment and decree passed by the Trial Court, found that the plaintiff in

O.S.No.354/2006, namely A.Senthilkumar, had purchased the property in the year 1996 under Ex.A2 dated 14.06.1996 and also obtained Patta

No.427 in the year 2001 and the enquiry conducted by the revenue authorities would also disclose that the extent of property purchased by the

appellant in S.No.35/1 under Ex.B1 dated 01.11.2001 is not tallying with the parent documents and however, in the year 2006, she managed to

get patta under Ex.B3 issued by the Zonal Deputy Tahsildar, Chengalpattu. The Lower Appellate Court also found that the compensation in

respect of the lands acquired in S.No.35/1 were also received by the predecessor in title in O.S.No.354/2006 and after land acquisition, it was

subdivided into S.No.35/1B vide Patta No.427 and as such, there is no such extent of 0.12 sq.mtrs available in S.No.35/1. The Lower Appellate

Court also noted that there are two reports filed by Advocate Commissioners contrary to each other and in the absence of tenable reasons as to

the extent of property purchased, they are not entitled to any relief and therefore, dismissed both the Appeal Suits filed by them, vide common

judgment and decree dated 09.02.2016. The appellant/plaintiff in O.S.No.140/2002, aggrieved by the dismissal of both the appeals by the Lower

Appellate Court, had filed these Second Appeals.

9. In S.A.No.206 of 2017, which arise out of A.S.No.13/2003 on the file of the Principal Subordinate Court, Chengalpattu, which in-turn was

preferred against O.S.No.354/2006, on the file of the District Munsif Court, Chengalpattu filed by Thiru.A.Senthilkumar, represented by his

Power Agent T.N.Alagarsamy, the appellant raised the following substantial questions of law in the memorandum of grounds of appeal:

A) Whether the title of the respondent is valid since the land in survey number 35/1 to an extent of 24 cents being the respondent''s

predecessor in title one Naga Naicker had purchased from one Krishnasamy Iyyenger, vide Ex.A-10 dated 27.8.1973, wherein the

very same Krishnasamy Iyyenger had already sold 9 cents out of 24 cents in Survey No.35/1 to one C.T. Rangachari, vide Ex.B-3

dated 21.08.1958, who is this appellant''s predecessor in title?

B) Whether the title of the respondent is valid when Ex-A2 through which the respondent purchased the suit property from one

K.Mani and his son Sivakumar, the land to an extent of 4 grounds 552 sq.ft. by stating that this land is situated in Survey numbers,

35/1, 35/2, 35/3, 35/4 without mentioning how much extent in each survey number is sold ?

C) Whether the judgment and decree of both the Courts below are correct when the respondent herein who is the plaintiff had not

proved how much extent was acquired in survey no.35/1 by filing proper documentary evidence and substantiating the same by oral

evidence and who had got compensation in the Land Acquisition proceedings, on contrary disbelieved the appellant''s case that it was

8 cents had been acquired in survey no.35/1 and the remaining one cent was purchased by this appellant?

D) Whether the Courts below are right in relying Ex.A6 = Ex.B12, when the contention of the document was not proved by

examining any revenue officials, as mere marking a document will not suffice to prove its content.

E) Whether the judgment and decree of both the Courts below are correct when the same is based on inadmissible documents

namely, Ex.A-10, which is a photocopy of the sale deed dated 27.8.1973, and the photocopy of the sale deed dated 20.10.1982,

marked as Ex.A-3, upon which the respondent relied to prove his title?

F) Whether the Courts below are right in relying Ex.A-5, Patta issued to respondent, when neither notice nor any enquiry was done

with this appellant by the revenue officials, especially when this appellant is in possession of the property?

G) Whether the Courts below are right in not relying on Ex.C-3, the Advocate Commissioner Report which speaks about the Land

Acquisition of about 8 cents in Survey No.35/1 and the appellant''s predecessor in title one Krishnasamy Iyyenger had been given

compensation to that effect vide Land Acquisition proceedings Page No.5, Item No.11 and it is deposited in the Court?

10. In S.A.No.207 of 2017, which arise out of A.S.No.14/2003 on the file of the Principal Subordinate Court, Chengalpattu, which in-turn was

preferred against O.S.No.140/2002, on the file of the District Munsif Court, Chengalpattu, the appellant raised the following substantial questions of law in the memorandum of grounds of appeal:

A. Whether the title of the respondent is valid since the land in survey number 35/1 to an extent of 24 cents being the respondent''s

predecessor in title one Naga Naicker had purchased from one Krishnasamy Iyyenger, vide Ex.A-10 dated 27.8.1973, wherein the

very same Krishnasamy Iyyenger had already sold 9 cents out of 24 cents in Survey No.35/1 to one C.T. Rangachari, vide Ex.B-3

dated 21.08.1958, who is this appellant''s predecessor in title?

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K.Mani and his son Sivakumar, the land to an extent of 4 grounds 552 sq.ft. by stating that this land is situated in Survey numbers,

35/1, 35/2, 35/3, 35/4 without mentioning how much extent in each survey number is sold ?

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proved how much extent was acquired in survey no.35/1 by filing proper documentary evidence and substantiating the same by oral

evidence and who had got compensation in the Land Acquisition proceedings, on contrary disbelieved the appellant''s case that it was

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marked as Ex.A-3, upon which the respondent relied to prove his title?

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compensation to that effect vide Land Acquisition proceedings Page No.5, Item No.11 and it is deposited in the Court?

11. The extent of properties over which declaration is sought by Thiru. A.Senthilkumar, represented by his Power Agent T.N.Alagarsamy as well

as the appellant herein, admeasure 237 sq.ft and 436 sq.ft. respectively. The Trial Court has noted the fact that two Advocate Commissioners

came to be appointed and both of them had given contrary reports. It is to be noted at this juncture that without scrapping the earlier

Commissioner''s Report, second Advocate Commissioner ought not to have been appointed and it seems that parties to the litigation did not make

any serious issues out of that. The Trial Court has taken note of the testimony of DW2, Village Karna and he deposed that at the time of drafting

Ex.B1/Sale Deed dated 01.11.2001, he did not act as Karna and though prior to writing Ex.B1/Sale Deed, he has gone through the documents

and he has traced out the title. The Trial Court also noted that DW2 worked as Karna only for 3 months and that the appellant was granted patta

under Ex.B13 and 1 cent is in her possession and enjoyment and in the light of the revenue records coupled with the Advocate Commissioner''s

Report, she is uncertain about her own title.

12. The Lower Appellate Court noted that after completion of Land Acquisition proceedings, the plaintiff in O.S.No.354 of 2006 was issued with

Patta No.427 and the land was subdivided into S.No.35/1B after acquisition of land under S.No.35/1A and in respect of 1 cent for which right

and title claimed by the appellant, no document is not available on record. The Lower Appellate Court also noted that with regard to appellant''s

possession and enjoyment in respect of 1 cent, she is unable to produce any documents to substantiate and identify proper extent of land and

boundary. The findings rendered by the Courts below are based upon pleadings and evidence placed. The Lower Appellate Court, being the final

Court on facts and law, on an independent application of mind to the materials placed, has reached the conclusion to dismissed both the appeals filed by the appellant herein.

13. The substantial questions of law raised by the appellant herein in these appeals revolve on appreciation of facts and in the considered opinion

of the Court, it can entertain the Second Appeal only within the parameters of Section 100 of Civil Procedure Code, 1908 and it cannot re-

appreciate the evidence in the absence of perversity. In the considered opinion of the Court, the findings rendered by the Courts below cannot be

said to be perverse. There are no substantial question of law arises for consideration in these Second Appeals.

14. In the result, both these Second Appeals are dismissed, confirming the common judgment and decree dated 09.02.2016 made in A.S.Nos.13

and 14 of 2013 on the file of the learned Principal Subordinate Court, Chengalpattu, confirming the common judgment and decree dated

06.02.2013 made in O.S.No.354 of 2006 and O.S.No.140 of 2002 on the file of the District Munsif Court at Chengalpattu. No costs.

Consequently, connected miscellaneous petitions are dismissed.