

(1984) 09 MAD CK 0037
In the Madras High Court

V.S. Meenakshisundaram and Others

APPELLANT

Vs

Kaliyaperumal and Others

RESPONDENT

Date of Decision : 12-09-1984

Acts Referred:

Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 54

Citation : (1985) 98 LW 906 : (1985) 2 MLJ 417

Hon'ble Judges : G. Maheswaran, J

Bench : Division Bench

Judgement

G. Maheswaran, J.—The plaintiffs are the appellants. The suit out of which this second appeal arises was one for recovery of possession filed by the plaintiffs and for recovery of Rs. 900/- towards damages. The suit property is called Thathankuttai Aru Pangu Annabishaga Pudhuvadai. It is covered by Resurvey No. 111/13 in Vishnupuram Village. The plaintiffs claim title to suit property by virtue of certain purchases ranging from 1903 to 1929, According to them, they were in possession and enjoyment of the suit property, that certain sales in their favour were made by registered documents and other sales were by unregistered documents and they are only to confirm the oral sales made by them. The plaintiffs have been paying kist and enjoying the coconut trees planted on the suit property. Though the extent is 20 cents, the road comprised one cent. According to the plaintiffs, the defendants are in illegal possession and enjoyment of the suit property and therefore the plaintiffs have to file the suit for recovery of 19 cents of the suit property.

2. The defendants resisted the suit and stated that the plaintiffs have no title to the property and that in any event the defendants have perfected title by adverse possession.

3. The trial Judge held that the plaintiffs have title to suit property and that the defendants have not prescribed title by adverse possession. He also fixed the past profit at Rs. 250/- per annum. The defendants appealed. In appeal, the

learned appellate Judge found joint possession of the plaintiffs along with other owners of about six cents of land and in regard to the remaining 14 cents, he found that the sale deed which are unregistered documents are not admissible in evidence and, in the end, negated the claim of the plaintiffs and dismissed the suit. He did not grant any relief with reference to six cents of property as exclusive enjoyment of those six cents had not been proved by the plaintiffs. The plaintiffs have filed this second appeal.

4. A learned Judge of this Court admitted the second appeal and formulated the following substantial question of law:

Whether the lower appellate Court is right in rejecting Exhibits A-3 to A-10 on the ground of want of registration, especially when they are for consideration less than Rs. 100/-? ("Exhibits A-3 to A-10" should read as "Exhibits A-4 to A-10").

5. Exhibits A-1 and A-2 are the two sale deeds, which have been indisputably proved to be sale deeds in favour of the predecessor in interest of the plaintiffs. But, what has been purchased is only an undivided 6 cents under these two documents. The appellate Court clearly found that the plaintiffs' predecessor in interest was in joint possession along with the other owners in respect of the 6 cents of property. As regards the remaining 14 cents, it is stated that Exhibits A-4 to A-10, which are unregistered sale deeds, are inadmissible in evidence, even though the sale consideration under each is below Rs. 100/-. Learned Counsel for the appellants-plaintiffs contended that u/s 17 of the Registration Act, there is no need for registration of a sale deed of the value below Rs. 100/-. He also invited my attention to Section 54 of the Transfer of Property Act. Section 54 of the Transfer of Property Act runs thus:

Section 54 : "Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."

"Such transfer in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument."

"In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property."

"Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property."

"A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties."

"It does not, of itself, create any interest in or charge on such property."

A Division Bench of this Court in *Kuppuswami Goundan Vs. Chinnaswami Goundan and Others*, , in dealing with Section 54 of the Transfer of Property Act,

pointed out that the document, which, being a contract in writing, required by law to be registered because u/s 54 a transaction of sale if in writing has to be registered, is not so registered, it is invalid. But, it is pointed out by the learned Counsel for the appellants that Section 17 does not require a sale below Rs. 100/- in value, to be registered. In this connection, reference is made to Section 49 of the Registration Act as it stands after amendment in 1929. That section states:

No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall--

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or concerning such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, or as evidence of part performance of a contract for purposes of Section 53-A of the Transfer of Property Act, or as evidence of any collateral transaction not required to be effected by registered instrument.

In dealing with Section 49 of the Registration Act, the Supreme Court, in *Raghunath and Others Vs. Kedar Nath*, , pointed out that by the enactment of Act XXI of 1929 which, by inserting in Section 49 of the Registration Act the words, "or by any provision of the Transfer of Property Act, 1982, "has made it clear that the documents in the supplemental list, that is, the documents of which registration is necessary under the Transfer of Property Act, but not under the Registration Act, fall within the scope of Section 49 of the Registration Act and if not registered, are not admissible as evidence of any transaction affecting any immovable property comprised therein, and do not affect any such immovable property. Therefore, it is obvious that these documents, viz., Exhibits A-4 to A-8 and A-10 which are registered sale deeds and Exhibit A-9, an unregistered exchange deed, are inadmissible in evidence. That disposes of the substantial question of law formulated in the second appeal.

6. That apart, the appellate Judge has clearly pointed out that it is not the case of the plaintiffs that on the date of these documents, possession was also delivered. But, learned Counsel appearing for the appellants strongly attacks this observation in the judgment which says that it is very much their case that on the dates of the sale deeds possession was delivered. But, it should also be pointed out that the learned appellate Judge has stated that there is absolutely no acceptable evidence by the plaintiffs as to which portion of the land or lands under Exhibits A-4 to A-10 had been handed over to the plaintiffs. On the view,

the appellate Court is right in coming to the conclusion that the plaintiffs have not proved title to 14 cents and that they have established their title only to 6 cents. As regards adverse possession set up by the defendants, both the Courts have concurrently found that the defendants have not proved title to the suit property by adverse possession. It is now contended for the appellants by their learned Counsel that, having found title to the 6 cents of land, the appellate Court ought not to have dismissed the suit in toto. It is seen from the judgment of the appellate Judge that the plaintiffs' predecessor in interest had been only in joint possession along with other owners in respect of the 6 cents of land and therefore, the plaintiffs cannot claim exclusive enjoyment of 6 cents and cannot also claim delivery of the 6 cents. Learned Counsel pointed out that in any event, the plaintiffs will be entitled to 6 cents of land, but the Counsel for the respondents pointed out that the only remedy for the plaintiffs is to ask for partition, bringing on record all the sharers. The appellants can seek their remedy by asking for partition of the 6 cents of land if they are so advised. With these observations, the second appeal is dismissed. There will be no order as to costs.