

Adhikesava Gounder .. Vs. Munusami Gounder, and ors.

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Court : Chennai

Decided On : Jul-07-2010

Judge : M.Jaichandren, J.

Appeal No. : S.A.No.1231 of 2008 and M.P.No.1 of 2008

Appellant : Adhikesava Gounder ..

Respondent : Munusami Gounder, and ors.

Advocate for Def. : Mr.B.Jawahar, Adv.

Advocate for Pet/Ap. : Mr.P.Mani, Adv.

Judgement :

1. This second appeal has been filed against the judgment and decree, dated 30.6.2008, made in A.S.No.19 of 2007, on the file of the Subordinate Court, Cheyyar, Tiruvannamalai District, confirming the judgment and decree, dated 19.4.2007, made in O.S.No.223 of 2005, on the file of the Additional District Munsif Court, Vandavasi.
2. The plaintiff in the suit, in O.S.No.223 of 2005, is the appellant in the present second appeal. The defendants in the said suit are the respondents herein. The suit had been filed by the plaintiff praying for the relief of permanent injunction against the defendants, in respect of the suit schedule properties.

3. The plaintiff had stated that items 1 and 2 of the suit properties had been purchased by the plaintiff, by way of a sale deed, dated 26.11.1973, from one Dhandapani. Thereafter, the plaintiff has been in possession and enjoyment of the said properties. Item 3 of the suit properties, with an extent of 0.15 cents had, originally, belonged to the first defendant and the same had been sold to the plaintiff by the first defendant, through an oral sale, in the year, 2002. It had also been stated that, in respect of items 2 and 3, the Government had issued patta, in Patta No.538 in the New S.No.252A/1C3. The plaintiff has been in possession of items 1, 2 and 3 of the suit properties, by carrying on cultivation in the said properties.

4. In the written statement filed on behalf of the second defendant and adopted by defendants 1, 3 and 4 it has been stated that the suit is not maintainable, both in law and on facts. It had been stated that the defendants 2 to 4 are the sons of the first defendant and the plaintiff is the brother of the first defendant. It has been admitted that items 1 and 2 of the suit schedule properties are in the possession and enjoyment of the plaintiff. However, item 3 of the suit schedule properties has been in the possession of the first defendant, after it had been purchased, along with some other property, from one Dhandapani, by way of a sale deed, dated 26.11.1973.

5. In view of the averments made on behalf of the plaintiff, as well as the defendants, the trial Court had framed the following issues for consideration:

1. Whether the plaintiff is in possession of item 3 of the suit property?
2. Whether the plaintiff is entitled to the relief of injunction as prayed for?
3. To what relief?

6. P.W.1 had been examined on the side of the plaintiff and Exs.A-1 to A-4, had been marked on the side of the plaintiff. On the side of the defendant, D.W.1 had been examined and Exs.B-1 to B-14, had been marked.

7. It has been admitted by the defendants that items 1 and 2 of the suit properties belonged to the plaintiff, in view of Ex.A-1. The trial Court had found that the case

of the plaintiff is that items 1 and 2 of the suit properties had been purchased by him, vide Ex.A-1 sale deed, dated 26.11.1973, and item 3 of the suit schedule properties had, originally, belonged to the first defendant.

8. The claim of the plaintiff was that he had purchased item 3 of the suit schedule properties from the first defendant, through an oral sale and that he is in possession and enjoyment of all the three items of the suit properties. Though the defendant had admitted that items 1 and 2 of the suit schedule properties belongs to the plaintiff in view of Ex.A-1, the main contention of the defendant is that item 3 of the suit schedule properties had been purchased by the first defendant, by way of a sale deed, dated 26.11.1973, marked as Ex.B-1, and that he has been in possession of the same, from the date of its purchase.

9. The trial Court, had also found that joint pattas had been issued in the name of the plaintiff, as well as the first defendant, as seen from Exs.A-2 and B-2. Even the chitta stands in the name of the plaintiff and the first defendant, for items 2 and 3 of the suit properties, as per Ex.B-3. It has also been admitted that items 2 and 3 of the suit schedule properties forms part of the same survey number, in S.No.252A/1C3.

10. The only issue, which the trial Court was called upon to decide, was the issue relating to the possession of item 3 of the suit schedule properties. The trial Court had found that the plaintiff had not produced documentary evidence to substantiate his contention relating to the oral sale of item 3 of the suit schedule properties. Further, it had also been held that the plaintiff had not been in a position to prove that he was in possession of item 3 of the suit schedule properties. Ex.A-2 is the joint patta issued in the name of the first defendant and the plaintiff, with regard to items 2 and 3 of the suit schedule properties and therefore, it cannot be taken as substantial evidence to show that the plaintiff was in possession of items 2 and 3 of the suit schedule properties. The plaintiff had produced only one kist receipt for the year, 2005 and the said document cannot be taken as sufficient proof to show the possession of the plaintiff, in respect of the suit schedule properties.

11. The plaintiff had not produced any other document, such as the revenue records, kist receipts etc., to show that he is in possession of item 3 of the suit schedule properties, nor had he adduced oral or documentary evidence to show that there was an oral sale between the plaintiff and the first defendant, in respect of the third item of the suit properties. Further, the trial Court had found that the plaintiff had not been in a position to state the date of the oral sale, with regard to item 3 of the suit properties and that there was a valid consideration which had passed from the plaintiff to the first defendant. In such circumstances, the trial Court had partly decreed the suit in favour of the plaintiff holding that he is entitled to the relief of permanent injunction, in respect of items 1 and 2 of the suit properties. However, in respect of item 3 of the suit properties, the suit had been dismissed.

12. Aggrieved by the judgment and decree of the trial Court, dated 19.4.2007, made in O.S.No.223 of 2005, in respect of item 3 of the suit properties, the plaintiff in the suit had filed an appeal, in A.S.No.19 of 2007, on the file of the Subordinate Court, Cheyyar, Tiruvannamalai District.

13. The First Appellate Court had framed the following points for consideration:

1) Whether the judgment and decree of the trial Court is to be modified?

2) Whether the appeal is to be allowed?

3) Whether the interlocutory application in I.A.No.22 of 2008 is to be allowed?

14. Considering the submissions made on behalf of the appellant, as well as the respondents and on examining the evidence available on record, the First Appellate Court, while confirming the judgment and decree of the trial Court, had held that the appellant was entitled to a decree of permanent injunction, in respect of items 1 and 2 of the suit properties. However, in respect of item 3 of the suit properties, the First Appellate Court had found that the appellants had not proved, by sufficient evidence, that he was in possession of the said property at the relevant point of time.

15. It had found that there was no documentary or oral evidence to show that the appellant was in possession of item 3 of the suit schedule properties. The oral sale, alleged to have been entered into by the plaintiff with the first defendant in the suit, had not been proved. Therefore, the First Appellate Court had held that the plaintiff/appellant had not proved his claims, with regard to his title and possession, in respect of Item 3 of the suit properties. As such, the First Appellate Court had dismissed the appeal, confirming the judgment and decree of the trial Court.

16. Aggrieved by the judgment and decree of the First Appellate Court, dated 30.6.2008, made in A.S.No.19 of 2007, the plaintiff in the suit, who was the appellant in the first appeal, had filed the present second appeal before this Court, raising the following questions, as substantial questions of law: A. Whether the courts below erred in dismissing the suit for permanent injunction merely because the plaintiff did not prove his title over the 3rd item of the suit properties even though the plaintiff established his possession of the said property before and at the time of the filing of the suit? B. Whether the judgment and decree passed by the courts below are sustainable when they have failed to consider and appreciate the oral and documentary evidence in their proper perspective?

17. The learned counsel appearing on behalf of the appellant had submitted that the judgment and decree of the Courts below are contrary to law, against the weight of evidence and the probabilities of the case. He had submitted that the Courts below ought to have decreed the suit, even in respect of item 3 of the suit properties, based on the oral and documentary evidence adduced on behalf of the appellant. He had also submitted that the Courts below had erred in law and they had misdirected themselves in holding that the plaintiff had not proved the oral purchase of the third item of the suit properties.

18. The Courts below ought to have considered the admission of D.W.1 stating that no tax had been paid from the year, 1992 to 2006, and that the claim of the plaintiff, that he had been in possession of the suit property for more than 12 years, is sustainable, based on the evidence available on record. The Courts below ought to have seen that the appellant had also received the compensation

amount paid by the Government for the acquisition of the portion of the third item of the suit properties, as admitted by D.W.1. The Courts below had also noted the fact that the plaintiff has been in possession of the third item of the suit properties and that he has been raising crops in the said property. Even if it had been found that the appellant could not prove his title in respect of the third item of the suit properties, the Courts below ought to have decreed the suit in favour of the appellant by granting a decree of permanent injunction, as prayed for by him.

19. Per contra, the learned counsel appearing on behalf of the respondents had submitted that the Courts below were right in coming to their conclusions that the appellant had neither proved his title in respect of the third item of the suit properties, nor had he proved that he was in possession of the suit property, as claimed by him. Both the Courts below had rightly considered the evidence available on record, while disbelieving the alleged oral sale said to have taken place between the plaintiff and the first defendant, in respect of the third item of the suit properties.

20. The Courts below were right in concluding that the plaintiff/appellant was entitled to a decree of permanent injunction only in respect of items 1 and 2 of the suit properties and that he was not entitled to the relief claimed by him, with regard to the third item of the suit properties. The documents marked on behalf of the appellant were rightly found to be insufficient to prove the case of the appellant, in respect of the third item of the suit properties. It had also been submitted that the questions of law raised by the appellant in the present second appeal are not substantial questions of law to be considered by this Court.

21. In view of the submissions made by the learned counsels appearing on behalf of the appellant, as well as the respondents and on a perusal of the records available, this Court is of the considered view that the appellant could not show sufficient cause or reason to grant the reliefs, as prayed for by him, in the present second appeal. The conclusions arrived at by the Courts below cannot be said to be erroneous or illegal, as they are based on the evidence available on record. Even though the appellant had claimed that there was an oral sale, in respect of the third item of the suit properties, by which he had obtained title in respect of the

said property, there was no evidence, either oral or documentary, to substantiate such a claim.

22. The exhibits marked on behalf of the appellant do not show that the appellant was in possession of the third item of the suit properties, as claimed by him. Both the Courts below had rightly found that the appellant was in possession of items 1 and 2 of the suit properties, as the said fact had not been contested by the respondents. Further, in respect of the third item of the suit properties, the Courts below had rightly held that the appellant did not adduce sufficient evidence to substantiate his claims. In such circumstances, this court is of the considered view that the second appeal is devoid of merits and therefore, it is liable to be dismissed. Hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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