

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1254 of 2014 and
M.P.No.1 of 2014

1.Anjaya
2.Chandra

... Appellants/Plaintiffs

Vs.

1.Periyasamy
2.Kaliyammal
3.Kuppusamy
4.Palani
5.Chidambaram

... Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree made in A.S.No.15 of 2012 on the file of the learned Subordinate Judge, Neyveli dated 07.03.2014 confirming the judgment and decree made in O.S.No.160 of 2010 on the file of the learned District Munsif cum Judicial Magistrate, Neyveli, Cuddalore District dated 01.11.2012.

For Appellants : Mr.Durai Gunasekaran

JUDGEMENT

The plaintiffs in O.S.No.160 of 2010 on the file of the learned District Munsif cum Judicial Magistrate, Neyveli are the appellants herein. The respondents are the defendants in the suit. The respondents 1 to 4 had executed a sale deed in favour of the 5th defendant / 5th respondent on 31.08.2004, thereby selling away the suit property. The plaintiffs have filed the said suit for declaration that the registered sale deed dated 31.08.2004 is void and for permanent injunction to restrain the 5th defendant from entering into the suit property. The suit was dismissed by the trial Court by decree and judgement dated 01.11.2012. As against the same, the appellants herein have filed an appeal in A.S.No.15 of 2012 on the file of the learned Subordinate Judge, Neyveli. By decree and judgement dated 07.03.2014, the First Appellate Court dismissed the appeal. As against the same, the appellants/plaintiffs are before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellants and I have also perused the records carefully.

3.The case of the appellants is that the suit property was originally owned by the Government. The Government assigned the said land to the father of the first defendant. The defendants 2 to 4 are the sons of the first defendant. The plaintiffs are the daughters of the first defendant. After the demise of the father of the first defendant, he along with the other defendants enjoyed the suit property. Now, the defendants 1 to 4 have sold away the suit property to the fifth defendant by means of registered sale deed dated 31.08.2004. In the year 2010, the plaintiffs have filed the present suit for the reliefs as mentioned above alleging that the sale made by the defendants 1 to 4 without their knowledge is void. The defendants 1 to 4 have remained exparte before the Court below. The fifth defendant contended that he is a bona fide purchaser as he purchased the said property for a valuable consideration from the defendants 1 to 4 and he has been in possession and enjoyment of the property. He has further alleged that the patta has been transferred with the knowledge of the plaintiffs and he has been in possession and enjoyment of the same.

4.Based on the above pleadings, the trial Court framed appropriate issues and called upon the parties to let in oral as well as documentary evidence. On the side of the plaintiffs as many as 3 witnesses were examined and 2 documents were exhibited. On the side of the defendants as many as 2 witnesses were examined and 6 documents were exhibited. Ex.A.1 is the adangal extract for fasali 1378.

5.Having considered the above oral as well as documentary evidences, the trial Court dismissed the suit which was confirmed by the First Appellate Court. That is how the appellants/plaintiffs are before this Court with this second appeal.

6.The learned counsel for the appellants/plaintiffs would submit that the suit property was sold away by the defendants 1 to 4 to the fifth defendant without the knowledge of the plaintiffs. Further, the sale is void because, the land has been classified as "Panchami land".

7.In my considered opinion, these issues are purely on facts which are to be resolved by the two Courts below. In this case, the Courts below have held that the sale made by the defendants 1 to 4 in favour of the fifth defendant is valid and the same was to the knowledge of the appellants/plaintiffs.

8.At any rate, since, the first defendant is the Kartha of the family and since, he has sold away the same for the benefit of the entire family, the same cannot be found fault with.

9.The second contention of the appellants is that since, the suit property has been classified as "Panchami land", the same cannot be sold. In this regard, the First Appellate Court has held that no document has been produced before the Court in evidence in respect of the any condition and also the nature of the land. Thus, in my considered opinion, the factual issues raised by the appellants herein have been resolved by the Courts below and there is no substantial question of law involved in this case so as to admit this second appeal.

10.In the result, the second appeal fails and accordingly, the same is dismissed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

jbm

-s/d-

Assistant Registrar(CO)

Dt:16/2/2015

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Neyveli.

2.The District Munsif cum Judicial Magistrate,
Neyveli, Cuddalore District.

+ 1 cc to Mr.Durai Gunasekaran, Advocate SR 5727

ts(co)

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