

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2015

CORAM

THE HON'BLE Ms.JUSTICE K.B.K.VASUKI

S.A.No.683 of 1998

Veeramani

... Appellant/plaintiff

Vs.

1.Kuppanna Gounder

2.Chinnan

3.Nayan

... Respondents/Defendant

PRAYER: Second Appeal is filed under Section 100 of Code of Civil Procedure against the Judgment and decree, dated 27.01.1997 in A.S.No. 51 of 1994 on the file of the Sub Court, Namakkal confirming the Judgment and Decree dated 23.12.1993 made in O.S.No. 253 of 1984 on the file of the District Munsif Court, Rasipuram.

For Appellant : Mr.T.Chandrasekaran

For 1st Respondent : Mr.N.Varadarajan

For 3rd Respondent : M/s.Vijay & Anand

JUDGEMENT

The plaintiff is the appellant herein. The suit has been filed by the plaintiff for the relief of declaration of his title and for permanent injunction in respect of an extent of 50cents in S.No.61/2 Ponkurichi village, Rasipuram taluk within the four boundaries mentioned in the suit schedule. The reliefs sought for in the suit are based on three sale deeds (i)Ex.A1 dated 15.12.1983 executed by the 2nd defendant/Chinnan and the third defendant/Nathan in respect of 25cents; (ii)Ex.A2 dated 16.04.1984 document executed by one Arumugam s/o.Chinnan in respect of 8 1/3 cents and (iii)Ex.A3 dated 26.04.1984 executed by the defendants 2 and 3 in respect of remaining extent of 16 2/3 cents in the same survey number. According to the plaintiff, from the date of purchase of 25 + 8 1/3 + 16 2/3cents in the suit S.No.61/2 under three different sale deeds, the plaintiff has been in possession and enjoyment of the same for the entire 50cents by obtaining patta and by paying kist etc.,

2.The suit relief was resisted by the contesting first defendant/Kuppanna Gounder who while accepting the title of the plaintiff in respect of 25cents under Ex.A1 sale deed dated

15.12.1983, denied the claim for title and possession made by the plaintiff in respect of remaining 25cents in the same suit survey number by denying the right of vendor Arumugam over the suit disputed extent and to execute Ex.A2 sale deed dated 16.04.1984 and by denying validity of Ex.A3 sale deed dated 26.04.1984 executed by the defendants 2 and 3 in favour of the plaintiff and by claiming independent title in respect of the same on the strength of Ex.B2 sale deed dated 25.04.1984 executed in his favour by the defendants 2 and 3. According to the contesting first defendant, the second defendant was alone entitled to the suit property under Ex.A6 sale deed dated 05.03.1966 and the vendor by name Arumugam who was none else than his son, had no right over the same, as such, no right was conveyed to the plaintiff under Ex.A2 sale deed dated 16.04.1984. It is his further case insofar as the Ex.A3 sale deed dated 26.04.1984 is concerned that it is the first defendant who acquired absolute right over the remaining 25cents in suit survey number under Ex.B2 dated 25.04.1984 which is one day earlier to Ex.A3 and the defendants 2 and 3 having already lost their right had no right to effect further transaction in respect of the same property.

3.The contesting parties in order to substantiate the respective claim examined the plaintiff and his witnesses as PW1 to PW6 and the first defendant and his witnesses as DW1 to DW3 and produced Exs.A1 to A9 and Exs.B1 to B15 documents.

4.Both the courts below have on the basis of Exs.A1 to A3 and A6 sale deed and Ex.B2 sale deed and Ex.B1 statement of the third defendant before the Sub Registrar and B3-Pronote executed by the second defendant in favour of the first defendant and Ex.B4 to B9 and B11 to B15 documents relating to the steps taken by the first defendant to have compulsory registration of Ex.B2 dated 25.04.1984 before the competent authority and the orders passed in his favour and the compulsory registration of the sale deed, negatived the plaintiff's claim in respect of 25cents and upheld the first defendant's claim in respect of same 25cents and decreed the suit for the relief of declaration in respect of 25cents and dismissed other suit reliefs in respect of the entire property.

5.Aggrrieved against the same, the plaintiff preferred AS.No.51 of 1994. The lower Appellate Court, after due appreciation of entire evidence, found the findings of the trial court to be correct and accordingly confirmed the judgment and decree of the court below insofar as the relief of declaration of 25cents is concerned and dismissed the appeal. Hence, this Second Appeal by the plaintiff before this Court.

6.The Second Appeal is admitted on the following substantial question of law :-

“Whether the Courts below were right in holding that the suit property belonged to the second defendant only,

when specially, the appellant/plaintiff had purchased the suit property under Exs. A-2 and A-3?"

7. Heard the rival submissions made on both sides and perused the records.

8. The narration of the facts in the foregoing paragraphs would disclose that the plaintiff claimed the suit reliefs as if he is the prior purchaser of the entire suit extent of 50cents on the strength of Exs. A1 to A3 sale deeds. Both the Courts below have after due analysis of the oral and documentary evidence, arrived at the right conclusion that no right was conveyed to the plaintiff under Exs. A2 and A3 sale deeds in respect of 25cents. Insofar as Ex. A2 sale deed is concerned, the finding is based on the facts that the second defendant alone was the owner of the property and his son Arumugam since deceased had during the life time of his father no right to effect any sale transaction in respect of the same in favour of the plaintiff. Insofar as Ex. A3 sale deed is concerned, the Courts below found that the execution of Ex. B2 sale deed was in all respects completed on 25.04.1984 and on the failure of the defendants 2 and 3 to come for registration of the sale deed, the first defendant approached the authorities concerned for compulsory registration and obtained due order for compulsory registration of the same and the sale deed was compulsorily registered on 30.05.1984 and thereafter the registration related back to the date of execution of the sale deed i.e. dated 25.04.1984 and in that event, the plaintiff did not get any right under Ex. A3 sale deed dated 26.04.1984. Thus, both the Courts below have found the plaintiff to be entitled to only 25cents and the first defendant to be entitled to remaining 25cents. Both the courts below were also while doing so, not inclined to believe the plaintiffs case regarding his possession either in respect of entire 50cents or in respect of specific extent of 25cents purchased under Ex. A1 and have hence dismissed the suit in respect of other suit reliefs and such factual findings rendered after due appreciation of evidence cannot be found fault with. As rightly argued by the learned counsel for the first defendant/respondent the plaintiff is unable to make out any ground much less valid ground to interfere with such factual findings which are based on sufficient material and are supported by proper reasoning by the Courts below.

9. Thus, considering the nature of the findings rendered by the Courts below regarding the validity of Exs. A2 and A3 sale deeds and the claim of the plaintiff regarding his possession the plaintiff is rightly held disentitled to the suit reliefs in respect of disputed 25cents, as such no substantial question of law arises herein against such factual findings and the substantial question of law is accordingly answered against the plaintiff.

10.In the result, the second appeal is dismissed by confirming the judgment and decree of the Courts below. No costs.

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

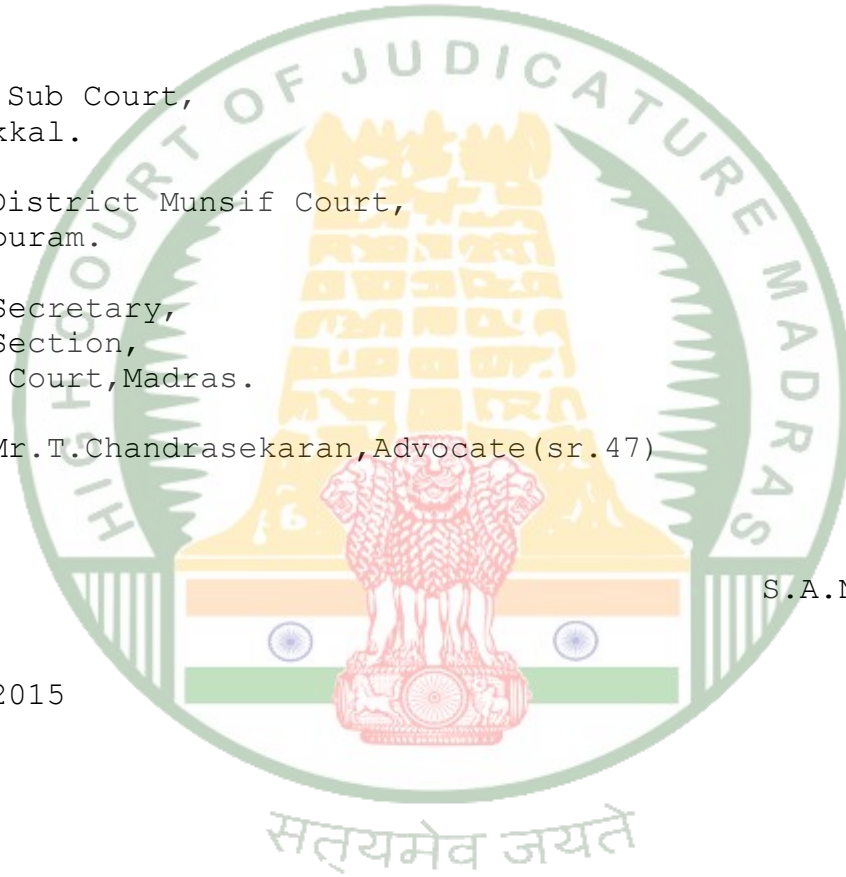
To

1. The Sub Court,
Namakkal.
2. The District Munsif Court,
Rasipuram.
3. The Secretary,
V.R.Section,
High Court, Madras.

+1 cc to Mr.T.Chandrasekaran, Advocate (sr.47)

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TEJ(co)
cp 07/10/2015



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