

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2015

CORAM:

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

S.A.No.2067 of 2000

Thangaraju

...Appellant/Appellant/1st Defendant

Vs.

1.Gopal

...Respondent/1st Respondent/Plaintiff

2.Ramalingam

...Respondent/2nd Respondent/2nd Defendant

Prayer :

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree of the Learned Additional District Judge, Perambalur in A.S.No.9 of 2000 dated 31.08.2000 confirming the Judgment and decree of the Learned District Munsif, Perambalur in O.S.No.597 of 1989 dated 25.06.1993.

For Appellant : Mr.V.Chandrakanthan

For Respondents : Mrs.P.T.Asha for R1
for M/s. Sarvabhauman Associates

For Respondent 2 : No Appearance

JUDGMENT

The first defendant is the appellant herein. The present appeal is filed against the concurrent judgment of the Courts below thereby declaring the right of the plaintiff and by granting the relief of permanent injunction in respect of the suit property in favour of the plaintiff.

2.According to the plaintiff, he became the owner of the suit property by way of succession from his mother who was the purchaser of the property by registered sale deed dated 21.04.1937. The suit relief is resisted on the ground that the sale deed is sham and nominal and without any consideration. However, the Trial Court on

the basis of the oral and documentary evidence adduced on both sides arrived at a finding that the suit property belonged to the plaintiff's mother who had been in possession and enjoyment of the same by obtaining patta, chitta, adangal and paying kist and after the death of the mother the plaintiff's son succeeded to the same and while doing so, the theory raised on the side of the defendant against the genuineness of the sale transaction is negatived for want of any proof adduced on the side of the defendant.

3.The lower Appellate Court also by duly appreciating the evidence available herein accepted the finding of the Trial Court and confirmed the judgment and decree granted by the Trial Court. Aggrieved against the same, the first defendant is now before this Court by way of the present Second Appeal.

4.The Second Appeal is admitted on the following Substantial Questions of Law:

1. Whether the plaintiff and the defendants are in joint possession of the suit property, and
2. Whether in the light of the judgment in O.S.No.632 of 1982 in respect of the very same schedule, can the judgment and decree of the Trial Court maintain?

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

6.The plaintiff has claimed the suit relief on the strength of Ex.A8 sale deed dated 21.04.1937 in the name of his mother and Exs.A1 to A7 and A9 patta, chitta, adangal and kist receipts standing in the name of the plaintiff/Gopal. The plaintiff's claim is that the mother, after having purchased the property separately in her name, had been in possession and enjoyment of the property and the plaintiff, after succeeded to the same has been continuously in possession and enjoyment of the same by transferring patta, chitta, adangal etc.,

7.The contesting defendant though admitted the factum of the sale transaction in favour of the plaintiff's mother denied her absolute title over the same on the ground that the property continued to remain as joint family property and continued to be enjoyed by the heirs of three brothers in equal shares even after the independent sale in favour of the plaintiff's mother. Both the Courts below having found that the theory so raised on the side of the contesting defendant was not established through satisfactory and sufficient materials, rejected the claim of the defendant. Both the Courts below have also on due appreciation of Exs.A10 to A12 documents, rightly arrived at the conclusion that the earlier suit in O.S.No.632 of 1982 was not in respect of the very same schedule, but in respect of the different properties adjoining the suit property. As the

issue involved herein are only on factual aspects without involving any legal aspects and as the entire factual findings arrived at by the Courts below having been based on sufficient materials and supported by proper reasonings no substantial questions of law arise herein to interfere with the same.

8.In the result, the Second Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Perambalur.

2.The District Munsif,
Perambalur.

1 CC to Mr.V.Chandrakanthan, Advocate SR.No. 609

1 CC to M/s. Sarvabhauman Associates, Advocate SR.No. 352

S.A.No.2067 of 2000

CNR (CO)
PSI (10.07.2015)

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