

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 02.02.2015

CORAM

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

S.A. No.373 of 2010

Munuswamy .. Appellant/Defendants 2

Vs.

Ponnuswamy Gounder (died)

1.Valliammal

2.Kamala

3.Rani

4.Sivalingam

5.Manjula

6.Anandi

7.Venda

8.Sarala

9.P.Anbu

Manickammal (died)

10.Sivaprakasam

11.Thanigachalam

12.Arumugam

13.Mani

14.Unnamalai

15.Valarmathi

16.Venkatesan

.. Respondents/R1 to 9 Plaintiffs /
Defendants R10 to 16

Prayer:- Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 21.07.2009 made in A.S. No.18 of 2005 on the file of Subordinate Court, Vellore reversing the judgment and decree dated 30.08.2004 made in O.S. No.93 of 1992 on the file of Principal Munsif Court, Vellore.

For appellant : Mrs.Zeenath Begum for M/s.T.R.Rajaraman

For respondents : Mr.T.M.Hariharan for R1 to R9 & R16

No Appearance : R10 to 15

JUDGMENT

The second defendant in the suit is the appellant herein. The suit is filed by one Ponnuswamy Gounder for recovery of possession of the suit property and for mesne profits. The suit relief is claimed on the strength of Exhibit A2/Sale deed dated 19.05.1984, executed by the first defendant/Manickammal in favour of plaintiff Ponnuswamy Gounder.

2.At the time of admission, the following substantial questions of law were framed:

"a)Whether the Lower Appellate Court has committed an error in reversing the finding of the Trial Court that the sale deed under which the respondent/plaintiff claims the relief is a sham and nominal deed created with an intention to evict the appellant for the benefit of the vendor under the said deed?

b)Whether the Lower Appellate Court has committed an error in deciding the question of limitation in favour of the plaintiff/respondent ?"

3.Heard both sides.

4.Admittedly, the suit came to be filed during the pendency of earlier proceedings in A.S. Nos.148 of 1983, 7 of 1984 and 228 of 1984 on the file of District Court, Vellore. There are also other proceedings in O.S. Nos.207 of 1976 and 564 of 1984 between the same parties.

5.It is not in dispute that right title and interest of Manickkammal from whom the plaintiff Ponnuswamy Gounder purchased the suit property, is declared in the earlier suits, in which the second defendant Munuswamy is also one of the parties. The only ground on which the right title and interest of Ponnuswamy Gounder and Exhibit A2/Sale deed is questioned herein is that the sale transaction has been effected during the pendency of the earlier litigation.

6.Though the Trial Court has arrived at a conclusion that the sale deed executed in favour of the plaintiff is sham and nominal document and no consideration was paid as he had no sufficient source to pay the sale consideration. The Lower Appellate Court has on the basis of the available evidence, reversed such finding. While doing so, the Lower Appellate Court has taken into consideration the stand taken by the parties in respect of the validity of Ex.A2/sale deed in the earlier proceedings and has duly relied on the admission made by the first defendant/Manickkammal, who is the vendor of the plaintiff. The said Manickkammal in her written statement admitted that the execution of the sale deed is for sale consideration of Rs.25,000/-. If that is so, there is absolutely no reason to disbelieve the genuineness and validity of Ex.A2/Sale deed and the finding of the Lower Appellate Court to that effect warrants no interference.

7.Regarding the claim for possession, as the plaintiff since deceased, duly established his title, his legal heirs are entitled to recover possession from the person in possession and occupation of the same. The person in possession and occupation of the same unless and until proves his better right to continue in the property, is not entitled to resist the relief for possession and is not entitled to any legal protection to her possession. Though the Lower Appellate Court observed that the second defendant has in the present suit only defended his possession by raising a plea of

adverse possession, the Lower Appellate Court considering the pendency of the litigation in respect of the suit property relating to right title, interest and possession of the same, final disposal of the earlier litigation and the institution of the present suit, rightly negatived the plea of adverse possession raised by the second defendant and consequently decreed the suit for possession in favour of the plaintiff. As the finding rendered by the Lower Appellate Court is based on sufficient materials and supported by proper reasoning no substantial questions of law arises for consideration of this court in this second appeal and the judgment and decree dated 21.07.2009 made in A.S. No.18 of 2005 on the file of the Subordinate Court, Vellore calls for no interference.

8.In the result, the Second Appeal is dismissed. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1.The Subordinate Judge, Vellore
 - 2.The Principal District Munsif, Vellore.
 - 3.the Section Officer, V.R.Section, High Court, Madras.
- +1 cc to M/s.T.M.Hariharan, Advocate,SR.5103.

Tej (co)
krd 26/6

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