

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2015

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

S.A.No.1020 of 2015

S.Elumalai

... Appellant/7th Defendant/
Plaintiff

Vs

1.Arulmigu Angala Parameshwari and
Kasi Viswanatha Swamy Thirukkoil,
Rep by its Executive Officer,
having office at temple premises at
Choolai, Chennai-112.

2.M.Rajalakshmi

3.M.Devi

4.M.Thiyagu

5.M.Revathi

6.M.Vinodh

7.Vijayalakshmi

2 to 7 represented by their Power Agent
M.Seshadri

8.The Sub Registrar in the cadre of Distirct Registrar,
having office at
Purasawalkam Sub Registrar Office,
Purasawalkam, Chennai-7.

9.The Collector of Chennai,
Rajaji Salai, Chennai-1.

... Respondents

Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree in A.S.No.81 of 2014 dated 19.03.2015 on the file of the learned III Additional Judge, City Civil Court, Chennai confirming the judgment and decree in O.S.No.4467 of 2010 dated 17.04.2012 on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.B.Ullasavelan

For 1st Respondent : Mr.S.D.Ramalingam

J U D G M E N T

The 7th defendant in OS.No.4467 of 2010 on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai is the appellant herein. The 1st respondent in this appeal is the plaintiff in the suit and the others are the other defendants in the suit. The

said suit was filed for permanent injunction to restrain the defendants 1 to 7 from in any manner medding, alienating or assigning the leasehold right or executing any document either between themselves or in favour of anybody else in respect of the leasehold right, of the land owned by the plaintiff in the property bearing No.3, Janagama Mayapathar Street, Choolai, Chennai-112, comprised in old survey No.2873 and getting any document registered with the Sub Registrar in the cadre of District Registrar, Purasawalkam, or with any registering authority without the necessary permission or no objection certificate from the Commissioner, Hindu Religious Charitable and Endowment Department. The trial court by decree and judgment dated 17.04.2012 decreed the suit as prayed for. As against the same, the appellant/7th defendant in the suit filed an appeal in AS.No.81 of 2014. The III Additional Judge, City Civil Court, Chennai by decree and judgment dated 19.03.2015 dismissed the appeal, thereby confirming the decree and judgment of the Trial Court. Challenging the same, the appellant/7th defendant in the suit is 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 appellant and the learned counsel for the 1st respondent and I have also perused the records carefully.

3. The case of the plaintiff is as follows:

The suit property, admittedly, belongs to the plaintiff which is a Temple governed by the Tamil Nadu Hindu Religious Charitable and Endowment Act. One Pandu Gopal entered into a lease agreement with the temple in respect of the land for a monthly rent of Rs.5/-, but, he was not regularly paying the rent. While so, the husband of the 1st defendant appears to have purchased the superstructure put up by Pandu Gopal without getting necessary sanction or permission from the Hindu Religious Charitable and Endowment Department, as required under Section 34 of the Hindu Religious Charitable and Endowment Act. The defendants 1 to 6 are the legal heirs of the husband of the 1st defendant. It appears that the defendants 1 to 6 had created a sale deed, thereby transferring the lease hold rights in favour of the 7th defendant, without getting prior permission. The said document was presented to the Registrar for registration. Despite objections by the Department, the document appears to have been registered. It was, in those circumstances, the present suit was filed.

4. The 7th defendant/appellant herein took the stand that the sale deed executed in favour of the 7th defendant by the defendants 1 to 6 is valid and thus, he is in possession and enjoyment of the same.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, one C.Manivannan was examined as PW1 and as many as four documents were exhibited. On the side of the defendants, neither oral nor documentary evidence was let in. Having considered all the above, the trial Court decreed the suit and the first Appellate Court confirmed the same. Challenging the same, the appellant is before this Court with this Second Appeal.

6. In this appeal, the learned counsel for the appellant would submit that the sale deed dated 28.01.2010 executed by the defendants 1 to 6 was duly registered and returned to the appellant before filing of the suit and thus, there was no cause of action for the plaintiff. This argument does not persuade me at all. The decree granted by the trial court will cover any transaction or any deed either executed or entered into after the date of filing of the suit. If the sale deed dated 28.01.2010 had already been returned to the 7th defendant by the Sub Registrar before the filing of this suit, the same would not be covered by the decree granted in the present suit. In this suit, it is not at all in question as to whether the sale is valid and whether the 7th defendant has got any substantive interest over the suit property by virtue of the said sale deed and whether the transaction entered into between defendants 1 to 6 and 7th defendant without prior permission under Section 34 of Hindu Religious Charitable and Endowment Act is valid or not. In respect of these issues, the parties can work out their remedies in the manner known to law. So far as the present suit is concerned, it is only to restrain the defendants 1 to 7 from in any manner alienating or creating encumbrance over the property. The suit has been decreed as prayed for. I do not find any infirmity in the same. Further, there is no question of law much less a substantial question of law at all involved even to admit this Second Appeal.

7. In the result, the Second Appeal fails and accordingly the same is dismissed and the decree and judgment of the trial court confirmed by the first Appellate Court is confirmed.
Gya

Sd/-
Assistant Registrar (IV)

/True Copy/

Sub-Assistant Registrar

To

1. The III Additional Judge,
City Civil Court, at Chennai
2. The XVIII Assistant Judge,
City Civil Court, Chennai

+1 C.C. To MR.B.Ullasavelan, Advocate in SR.NO.65289

+1 C.C. To MR.S.D.Ramalingam, Advocate in SR.NO.65038

S.A.No.1020 of 2015

JSV(CO)

sd : 28/12/2015

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