

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.142 of 2015 and

M.P.Nos.1 and 2 of 2015

1. Deenamma
2. K.S.Siromani
3. K.S.Raju
4. K.S. Balu
5. K.S.Sailaja ... Appellants/Plaintiffs

Vs.

1. Jada Swarthama
2. Lizia
3. Samuel Prabhudoss @ Govindaraj
4. Syamala Premkumari ... Respondents/Defendants

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., against the judgement and decree passed in A.S.No.38 of 2012, dated 07.11.2014 on the file of the I Additional City Civil Judge, Chennai, confirming the decree and judgment in O.S.4163 of 2005 dated 11.11.2011 on the file of XVII Assistant City Civil Court, Chennai.

For Appellants : Mr. G.Veerapathiran

For Respondents : Mr. M.G.Harikrishnan

JUDGEMENT

The plaintiffs in O.S.No.4163/2015 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai, are the appellants herein. The respondents are the defendants in the suit. The said suit is filed for declaration that the sale deed executed by the defendants 2 to 4 in favour of the 1st defendant, registered as document No.2528/1995, dated 30.10.1995 on the file of the Sub-Registrar, Royapuram, Chennai, is null and void and not binding on the plaintiffs and for permanent injunction to restrain the 1st defendant from demolishing, repairing or dealing with the suit property in any manner. The trial court, by decree and judgment dated 11.11.2011, dismissed the suit. As against the same, the appellants filed an appeal in A.S.No.38 of 2012. The learned I

Additional Judge, City Civil Court, Chennai, by decree and judgment dated 07.11.2014 dismissed the appeal, thereby confirming the decree and judgment of the trial court. As against the same, the appellants are before this Court with this second appeal.

2. According to the plaintiffs, the suit property was originally owned by one Mr. Shantha Rao. The 1st plaintiff Deenamma claims to be the wife of Mr. Shantha Rao. The plaintiffs 2 to 5 are the children born to Mr. Shantha Rao and Deenamma. According to the plaintiffs, the defendants 2 to 4 have got no right to execute any sale deed in respect of the suit property, which was left behind Mr. Shantha Rao. But, the defendants 2 to 4 have executed a sale deed dated 30.10.1995 in favour of the 1st defendant and registered the document No.2528/95, dated 30.10.1995. It is, this document, which the plaintiffs want to be declared as null and void and also they seek decree for permanent injunction to restrain the 1st defendant from meddling with the suit property.

3. The case of the defendants is that there was no valid marriage between Mr. Shantha Rao and the 1st plaintiff and thus, the plaintiffs are not entitled for any right whatsoever over the suit property. According to the defendants, the 2nd defendant is the wife and the defendants 3 and 4 are the children born to Mr. Shantha Rao. Now, the defendants 2 to 4 have sold away the property to the 1st defendant, under the document in question.

4. When this Second Appeal was taken up today for hearing, the parties have come up with a Compromise Memo. As a matter of fact, the appellants have filed M.P.No.2 of 2015 in S.A.No.142 of 2015 under Order XXIII Rule 3 of CPC. seeking a decree, in terms of compromise by accepting the compromise memo.

5. The 1st Plaintiff has filed an affidavit, wherein, she has stated about the compromise and the terms of the compromise. All the appellants are present before this Court. On enquires, the appellants would submit that the matter has been compromised and decree may be passed in terms of the compromise memo.

6. The 1st respondent is also present before this Court. She would also confirm the compromise. According to the terms of the compromise, the 1st defendant has to pay a sum of Rs.50,000/- in full quit of all their claims and the plaintiffs have to declare that the 1st defendant is the absolute owner of the suit property, over which, the appellants have got no right whatsoever.

7. Today, in open court, the above said sum of Rs.50,000/- (Rupees Fifty Thousand Only) has been paid in cash and the same has been received by the appellants.

8. The learned Counsel on either side would also submit that the compromise is real and the same may be recorded and decree may be passed in terms of the said compromise. I am satisfied that the compromise is real and therefore, I am inclined to accept the compromise and to dispose of the appeal in terms of the compromise.

9. In the result, M.P.No.2 of 2015 is allowed and consequently S.A.No.142 of 2015 is dismissed in terms of the compromise memo, dated 25.03.2015. The compromise memo shall form part of the decree and the same shall form part of the records. It is declared that the 1st defendant/1st respondent is the absolute owner of the suit property, over which, the plaintiffs/appellants have got no right whatsoever hereafter. Consequently, connected Miscellaneous Petition in M.P.No.1 of 2015 is also closed. There shall be no order as to costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The I Additional Judge, City Civil Court, Chennai.
2. The XVII Assistant Judge, City Civil Court, Chennai.
- +1 cc to Mr.G.Veerapathiran, Advocate,SR.16911
- +1 cc to Mr.G.Harikrishnan, Advocate,SR.16806.

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Second Appeal No.142 of 2015

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