

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03 - 08 - 2015

Coram

The Hon'ble SMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 195 of 2015

and

M.P. No. 1 of 2015

Palani .. Appellant/Plaintiff

vs.

1. Dhamodharan
2. Panneer selvam
3. Madhu
4. Gandhi
5. Anbu

... Respondents/Defendants

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 11.10.2011 in A.S. No. 42 of 2010 on the file of the Subordinate Judge, Harur, confirming the judgment and decree dated 22.02.2005 made in O.S. No. 84 of 2000 on the file of the District Munsif, Harur.

For Appellant : Mr. R. Subramanian

For Respondents : Mr. C. Prabhakaran

JUDGMENT

This is a plaintiff's Second Appeal challenging the judgments and decree of the Courts below wherein the suit of the plaintiff for declaration of title and permanent injunction, was dismissed.

2. According to the plaintiff, who claims to have purchased the suit property from one T.K. Govindasamy Pillai's family, through their power agents, for a sum of Rs.60,000/- under sale deed dated 04.11.1999, he is in possession and enjoyment of the same from the date of his purchase. It is stated that the defendants, with an intention to purchase the suit property, trespassed into the same on 16.3.2000 and tried to the forceful possession of the same. Hence, he filed the suit for declaration of title and permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property.

3. The first defendant filed written statement, adopted by the other defendants, who are his sons, denying the averments made by the plaintiff stating that the plaintiff never purchased the suit property and he had fraudulently changed the revenue records. It is stated that the plaintiff had purchased the suit property from the legal heirs of Govindasamy Pillai through their power of attorney by name Nagaraj and Rajagopal and that the said power deed executed on 25.5.1999, was cancelled by his legal heirs subsequently on 26.8.2009. According to the defendants, the legal heirs of Govindasamy Pillai executed a General Power of Attorney on 02.02.2000 in favour of the said Nagaraj and Rajagopal and only thereafter, they executed the sale deed legally in favour of the first defendant on 04.02.2000. Hence, the defendants prayed for dismissal of the suit.

4. The trial Court, before which the parties examined themselves and marked documents, after analysing the oral and documentary evidence available on record, by judgment and decree dated 22.02.2005, has come to a resultant conclusion that the plaintiff is not entitled for the relief as prayed for and accordingly, dismissed the Suit O.S. No. 84 of 2000. On appeal, the Lower Appellate Court / learned Subordinate Judge, Harur, on appreciation of the facts and the materials available thereon, concurred with the finding of the trial Court and dismissed A.S. No. 42 of 2010 by judgment and decree dated 11.10.2011. Feeling aggrieved by the unanimous decision of dismissal of the suit by the Courts below, the plaintiff is before this Court with this Second Appeal.

5. Heard Mr. R. Subramanian, learned counsel appearing for the appellant / plaintiff and Mr. C. Prabhakaran, learned counsel appearing for the respondents / defendants and perused the records.

6. The fact remains that the property belonged to one Govindasamy Pillai and after his death, his legal heirs were entitled to the same and that the same is not disputed. Admittedly, both the plaintiff and the defendants purchased the suit property from the same vendor. Originally, the wife of the said Govindasamy Pillai had executed a Power of Attorney on 25.5.1999 in favour of one Nagaraj based on which the plaintiff claims to have purchased the suit property under Ex. A.1 sale deed dated 04.11.1999 whereas, from a perusal of the materials, it is seen that the said Power of Attorney was cancelled by the legal heirs of the said Govindasamy Pillai under Ex. B.4 dated 26.8.1999. In such circumstance, it is clear that the Power of Attorney had no right to execute Ex. A.1 sale deed dated 04.11.1999.

7. The one and only contention raised by the learned counsel appearing for the plaintiff / appellant is that the cancellation of the deed of Power of Attorney was not informed to the agent.

8. A perusal of the records would show that the cancellation of deed of Power of Attorney on 26.8.1999 is a registered document. It is settled that any document after registration is open to public. In the instant case, since the cancellation of deed of Power of Attorney has already been registered, no notice is necessary as contended by the learned counsel for the appellant and as rightly pointed out by the Lower Appellate Court, it is the bounden duty of the purchaser to know the encumbrance of the property even before proceeding with the sale. Hence, the above contention of the learned counsel fails.

9. That apart, the suit is based on title in respect of the purchase from the power of attorney. Though the plaintiff claims to have purchased the suit property at earlier point of time, since the same was sold by the power agent under Ex. A.1 dated 04.11.1999, ie., subsequent to the cancellation of the Power of Attorney, the same has become invalid as no right flows to the power agent in view of Ex. B.4 registered cancellation deed dated 26.8.1999. It is also seen from the materials available on record that the legal heirs of the original owner Govindasamy Pillai have executed another power of attorney under Ex. B.1 dated 02.02.2000 in favour of the said Nagaraj and Rajagopal based on which the first defendant has purchased the suit property under Ex. B.2 on 04.02.2000. As such, the relief of title as claimed by the plaintiff cannot be granted as the same has been purchased under an invalid document.

10. As regards the relief permanent injunction as claimed by the appellant / plaintiff, it is to be pointed out that except contending that he purchased the suit property at the earlier point of time under Ex. A.1, the plaintiff is not able to produce any other document to prove his possession. In the absence of any evidence, the plaintiff is not entitled to the relief of permanent injunction.

11. In view of the above, it is clear that the plaintiff has failed to prove that he has got better title and also failed to prove his possession. Since both the Courts below, viz., fact finding authorities, have categorically found that the respondents / defendants are in possession and enjoyment of the suit property, this Court, sitting under Section 100 CPC, finds no reason to interfere with the same. The appeal, thus, has no force and is liable to be dismissed.

In the result, the Second Appeal fails and the same is dismissed confirming the concurrent finding of the Courts below. However, in the circumstances of the case, there shall be no order as to

costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

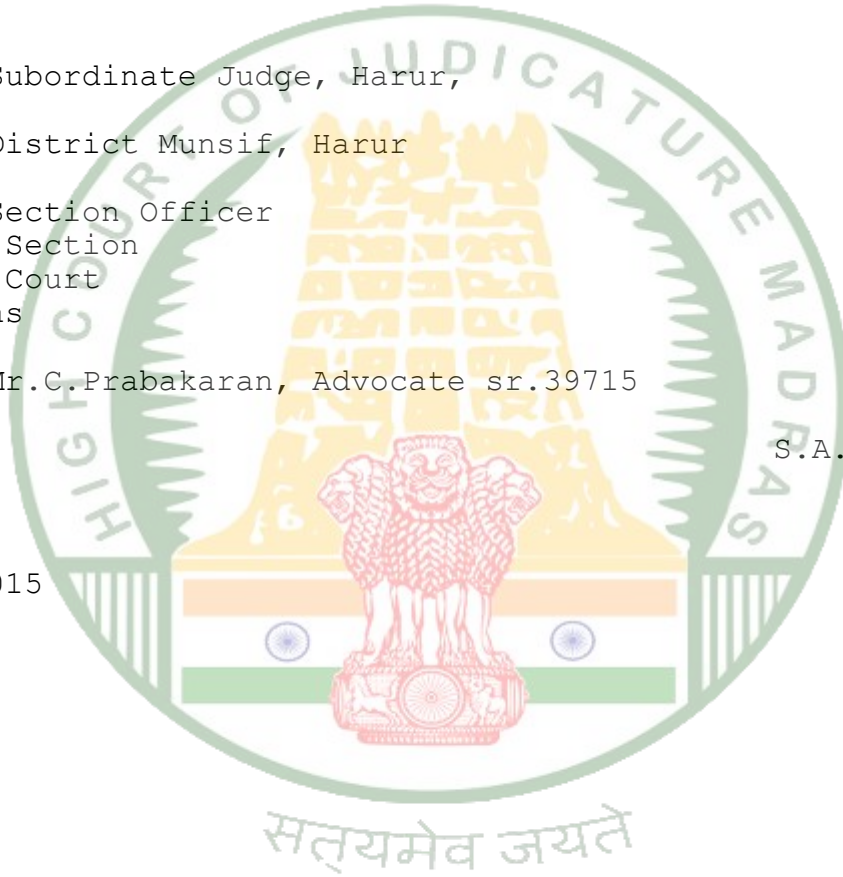
To

1. The Subordinate Judge, Harur,
2. The District Munsif, Harur
3. The Section Officer
V.R. Section
High Court
Madras

+1 cc to Mr.C.Prabakaran, Advocate sr.39715

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