

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.428 of 2015

and

M.P.No.1 of 2015

1. R.Prakash

2. B.Saroja

... Appellants/Defendants

Vs.

1. Bitchiammal

2. Sennikiammal

3. Halammal

... Respondents/Plaintiffs

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 19.10.2012 made in A.S.No.14 of 2010 on the file of the Subordinate Judge and Appellate Authority of Nilgiris at Udhagamandalam, confirming the judgment and decree dated 10.08.2010 made in O.S.No.34 of 2008 on the file of District Munsif, Kothagiri.

For Appellants : Mrs.Bhavani Subbarayan
for Royan Law Associates

For Respondents : Mr.Srinath Sridevan

J U D G M E N T

The defendants, who lost their case before the Courts below, have filed the second appeal, challenging the decree granted permanent injunction in favour of the plaintiff.

2.The case of the plaintiff is that the suit property originally belongs to one M.Kari Gowder. Having purchased the same on 31.01.1940, the said M.Kari Gowder sold the entire extent of land to one Mathan in the year 1941. The said Mathan died in the year 1969. After the death of Mathan, the plaintiffs, being the wife and daughters, became his legal heirs and from the date of his death, the plaintiffs have been in enjoyment of the suit property. While so, the first defendant with the help of the second defendant had fabricated a sale deed and was making a claim over the suit property. The second defendant has no right or title in the suit property. The claim of the first defendant that he has got right over the suit property having purchased the same from the second defendant is unlawful. Therefore, the plaintiffs had filed the suit for permanent injunction and for declaration that the two sale

deeds dated 05.05.2008 executed by the second defendant in favour of the first defendant are null and void.

3. The suit was resisted by the defendants contending that the first plaintiff's husband mathan was not the absolute owner of the suit schedule property. The second defendant's father Bellie and the first plaintiff's husband mathan are brothers. As the said Mathan was elder member of the family, the properties were enjoyed by them jointly and that out of the joint family income, the suit property was purchased and the second defendant also claimed that in the family arrangement, the suit property was exclusively allotted to her father. Further, the defendants also contended that the second defendant had been in the possession of the property by cultivating plantation crops till 2008. She has conveyed the suit property to the first defendant only in the capacity of the owner. As the defendants claimed to be in possession of the property only in the capacity of the owner, they prayed for dismissal of the suit as the same is not legally or factually sustainable.

4. On the side of the plaintiffs, their Power of Attorney was examined as P.W.1 besides examining one Bheeman as PW.2 and Exs.A1 to A10 were marked. On the side of defendants, five witnesses have been examined as DW.1 to DW.5 and ten documents were marked as Exs.B1 to B10.

5. The Trial Court as well as the Appellate Court, after elaborate consideration of the facts and evidence, decreed the suit. Aggrieved, the defendants have come up with the above second appeal.

6. The learned counsel for the appellants contended that the first plaintiff's husband Mathan and second defendant's father Bellie were brothers and have been in joint enjoyment of the suit property and later, divided the same orally in the year 1960. As the second defendant had been in exclusive possession of the suit property from the year 1960 till 2008, the suit property was sold to the first defendant by the second defendant as owner of the property having absolute title over the same, under Exs.A5 and A6.

7. From perusal of the records, the plaintiffs had produced Exs.A2 and A3 sale deeds to substantiate their right and title to the property whereas the defendants had not produced any document of title. In fact, in Exs.A5 and A6, the second defendant had not even given the correct description of the property with correct survey number. The defendants having not produced any title deed in support of the suit claim, the trial Court disbelieved the contention of the defendants and decreed the suit.

8. The plaintiffs had claimed that the suit property was purchased by M.Kari Gowder under Ex.A2 and the plaintiff's husband mathan, purchased the same under Ex.A3 on 29.11.1940. While so,

the second defendant, who has no right or title to the suit property, has sold the property on 05.05.2008 under two sale deeds to the first defendant and had tried to trespass into the suit property. The theory put forth by the defendants that the said mathan and the second defendant's father Bellie were brothers and the said properties were orally partitioned in the year 1960 and the second defendant's father was allotted the suit property were all not disbelieved by the Courts below, as they were not supported by any evidence, excepting oral testimony.

9. The plaintiffs also examined one Bheeman-P.W.2 who had deposed that the plaintiffs are in possession and enjoyment of the suit property. Though the defendants have claimed that from the date of purchase i.e., 05.05.2008, they have been in possession of the suit property, there is no material evidence put forth by the defendants. In fact, D.W.1 and D.W.2 were examined. The first defendant who is the purchaser of the property from the second defendant has clearly admitted that he did not know anything about the suit property prior to 05.05.2008. He had also further admitted in the cross examination that he was not aware of the details of the suit property, title, possession and revenue records of the suit property. D.W.1 had further admitted that the revenue records are in the name of first plaintiff's husband mathan. The first defendant also puts blame on the second defendant contending that he had trusted the second defendant before purchasing the suit property.

10. The Appellate Court had also clearly discussed about the evidence of D.W.1, wherein DW.1/first defendant has admitted that the Encumbrance Certificate had only in the name of the first plaintiff's husband mathan and in spite of the same, believing the words of the second defendant had purchased the suit property. Having noticed that the properties standing only in the name of first plaintiff's husband, the first defendant had purchased the property at his own risk. The first defendant had also admitted that he never perused any of the revenue records before his purchase. He has also not investigated the title and interest of the second defendant before purchasing the properties under Ex.A5 and A6. When the second defendant has not produced any scrap of evidence to distort the right and title of the first plaintiff with his evidence by Exs.A2 and A3, the Courts below have rightly held that the second defendant did not have any right over the property. The alleged family arrangement in the year 1960 has also not proved by the defendants. Thus the Courts below had categorically given the finding, after considering the documents and evidence that the plaintiffs have proved their title and the second defendant without any right or title to the property had sold the same to the first defendant. The Lower Appellate Court had also rejected Exs.B1 to B10 holding that they were not proved in the manner known to law by the second defendant. Hence, both the Courts have concurrently held that the plaintiffs have established

their title with the suit property and the second defendant who has got no right or title over the same has fraudulently sold the same to the first defendant in order to defeat the legal and valuable rights of the plaintiff. In such circumstances, there is no substantial question of law arising for consideration.

11. In fine, the Second Appeal is dismissed, confirming the judgment and decree dt.10.08.2010 passed by the learned District Munsif, Kothagiri, as affirmed by the learned Subordinate Judge and Appellate Authority of Nilgiris at Udhagamandalam, by judgment and decree dt.19.10.2012 in A.S.No.14 of 2010. However, there will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

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Sub Asst. Registrar

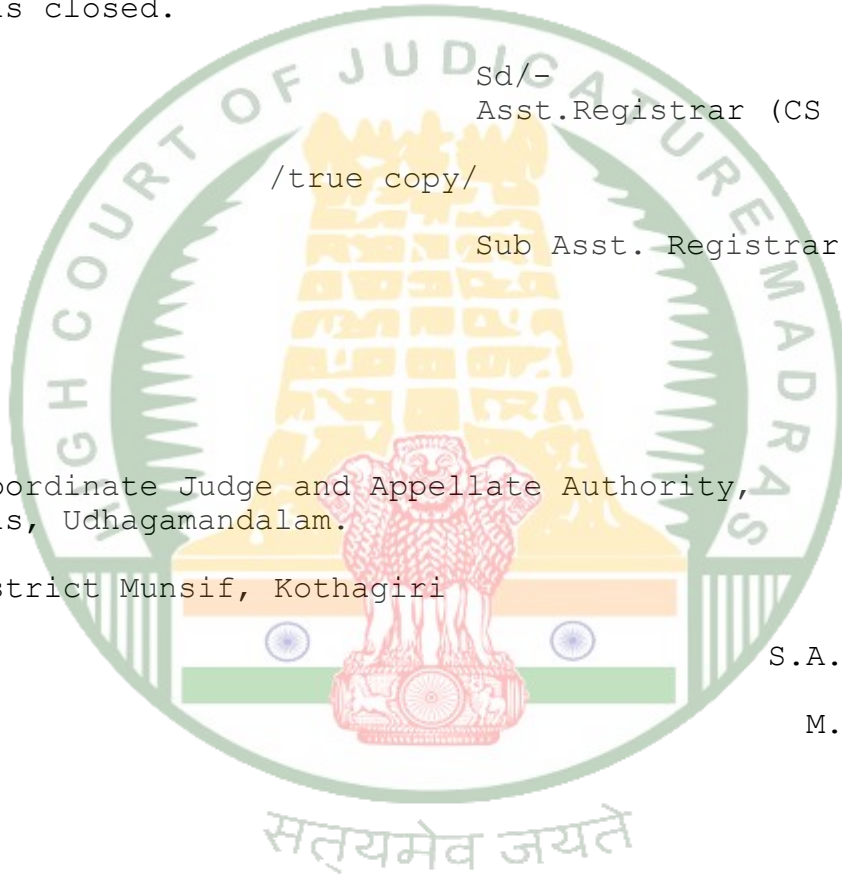
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To

1. The Subordinate Judge and Appellate Authority,
Nilgiris, Udhagamandalam.
2. The District Munsif, Kothagiri

S.A.No.428 of 2015
and
M.P.No.1 of 2015

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