

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-06-2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 469 of 2015

and

M.P. No. 1 of 2015

S. Shanmugham

...Appellant/Defendant

Vs.

Kousalya (Deceased)

P. Narayanamurthi

...Respondent/Plaintiffs

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 28.08.2014 passed by the Subordinate Judge, Udhagamandalam, in A.S. No. 54 of 2011 confirming the judgment and decree passed by the District Munsif, Udhagamandalam, in O.S. No. 285 of 2007 on 19.08.2011.

For Appellant : Mr. S. Kingston Jerold

JUDGMENT

The defendant in a suit for permanent injunction, has filed the above appeal challenging the judgment and decree dated 28.08.2014 passed by the learned Subordinate Judge, Udhagamandalam, in A.S. No. 54 of 2011 confirming the judgment and decree dated 19.08.2011 passed by the learned District Munsif, Udhagamandalam, in O.S. No. 285 of 2007.

2. Heard the learned counsel appearing for the appellant and perused the records.

3. From the materials available on record, it is seen that the plaintiff has based his claim on Ex. A.1 sale deed dated 02.7.2007 for having purchased the suit property from the defendant's father for valid consideration. The defendant's father had purchased the said property under Ex. A.2 dated 22.8.1959. The above said

transactions under Exs. A.1 and A.2 are not disputed or denied by the defendant. A perusal of Ex. A.1 clearly shows that the plaintiff had purchased 0.050 Cents out of 1 acre from the defendant's father and has been in possession of the same from the date of purchase. His possession also is not disputed by the defendant.

4. The defendant, as D.W.1, has clearly admitted that he had not pleaded that the suit property is a joint family property and that he has a right over the same. When the purchase under E. A.2 is admitted by the defendant as the self-earned property of his father, he cannot challenge the sale under Ex.A.1 by his father. The defendant also had categorically admitted that the extent and boundaries described in Ex. A.1 are correct. Hence, the plaintiff has proved his title for the suit property independently and also based on the admission of D.W.1.

5. The next question to be seen is whether the plaintiff is in possession of the suit property pursuant to the sale under Ex. A.1. In this regard, the plaintiff has produced and marked Ex. A.3 patta proceedings and kist receipts in Ex. A.5 series. The police complaint given by the plaintiff against the defendant for disturbing his possession and the receipt for the same are marked as Exs. A.6 and A.7. The above said documents are admitted by the defendant as relating to the suit property only. The defendant admittedly had not challenged the Ex. A.1 sale before any Court of law.

6. Thus, the defendant, having admitted the title and possession of the plaintiff in respect of the suit land and since he defendant failed to raise a substantial question of law in the above facts for admission, the judgment and decree granted by the courts below do not suffer from any infirmity or illegality warranting interference of this Court.

Hence, the second appeal is dismissed confirming the judgment and decree of the Courts below. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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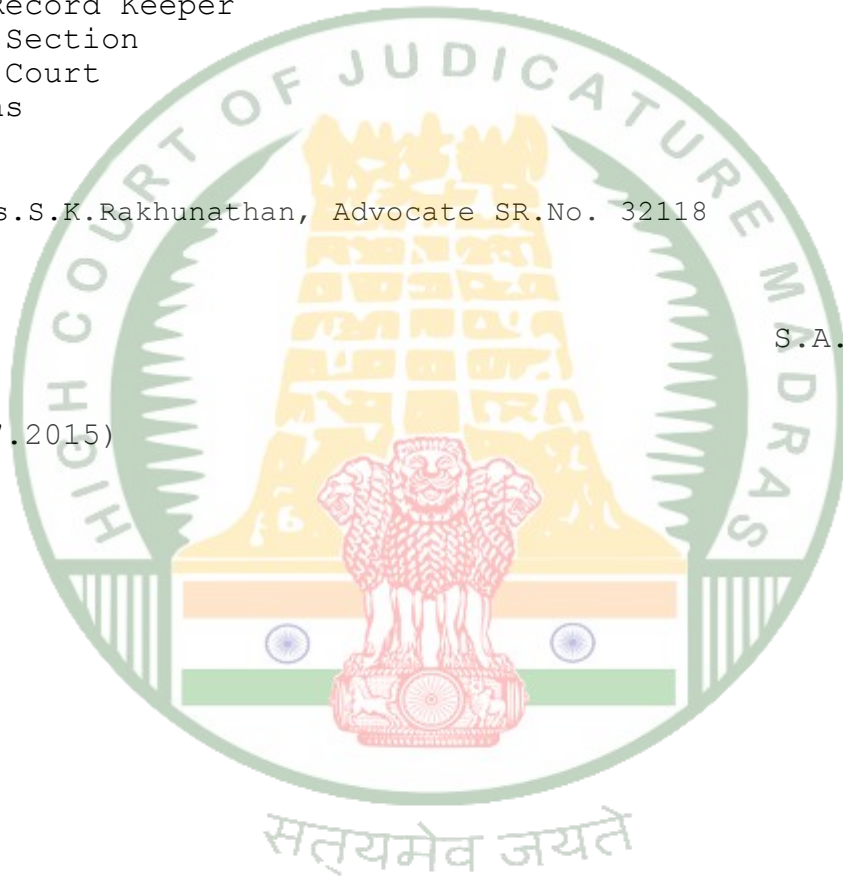
To

1. The District Munsif
Udhagamandalam
2. The Subordinate Judge
Udhagamandalam
3. The Record Keeper
V.R. Section
High Court
Madras

1 CC to M/s.S.K.Rakhunathan, Advocate SR.No. 32118

S.A. No. 469 of 2015

SAI (CO)
PSI (23.07.2015)



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