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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.50 of 2015 and M.P.No.1 of 2015

G.Srinivasan

.. Appellant/Plaintiff

-Vs-

1. Seshayya

2. G.Govindaraj

3. G.Nagarajan

.. Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 07.11.2014 of the learned XV Additional Judge, City Civil Court, Chennai passed in A.S.No.376 of 2012 reversing the judgment and decree dated 17.04.2012 of the learned III Assistant Judge, City Civil Court, Chennai passed in O.S.No.4586 of 2010.

For Appellant : Mr.M.Rajaraman

For Respondent : ...

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J U D G M E N T

The plaintiff in O.S.No.4586 of 2010 on the file of the learned III Assistant Judge, City Civil Court, Chennai is the appellant herein. The respondents are the defendants in the suit. The said suit was filed by the plaintiff for partition and for separate possession of his 1/3rd share in the suit property. The trial court decreed the suit as prayed for. As against the same, the 3rd defendant G.Seshayya filed an appeal in A.S.No.376 of 2012 on the file of the learned XV Additional Judge, City Civil Court, Chennai. The lower appellate court by decree and judgment dated 07.11.2014 allowed the appeal and reversed the decree and judgment of the trial court and dismissed the suit. As against the same, the appellant is before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.



3. The case of the plaintiff is that the 3rd defendant and one Venkataiah are his brothers. Venkataiah died leaving behind the defendants 1 and 2 as his legal heirs. The plaintiff, the 3rd defendant and Venkataiah are the sons of one Mrs. Kondammal. The suit property was originally owned by the Tamil Nadu Slum Clearance Board. According to the plaintiff, the Tamil Nadu Slum Clearance Board allotted the said property to Kondammal, namely, the mother of the plaintiff. The father of the plaintiff constructed superstructure on the suit property and all of them were residing in the suit property for some time. On account of his occupation, the plaintiff left the suit property and started living separately. Similarly, Venkataiah, namely, the brother of the plaintiff also started living separately. Seshayya was in possession of the suit property. Kondammal, the mother of the plaintiff died intestate. But Seshayya did not come forward to partition the suit property and allot the share of the plaintiff and the defendants 1 and 2 separately. According to the plaintiff, there was an attempt made by the 3rd defendant to get the sale deed executed in his wife's name by the Tamil Nadu Slum Clearance Board. Therefore, the plaintiff filed a suit in O.S.No.4279 of 2005 before the learned V Assistant Judge, City Civil Court, Chennai for permanent injunction to restrain Seshayya from alienating or encumbering the plaintiff's 1/3rd share in the suit property. Seshayya as well as the Tamil Nadu Slum Clearance Board, the 2nd defendant in the said suit remained ex-parte and therefore, an ex-parte decree was passed as early as on 07.07.2006. Thereafter only, the plaintiff filed the present suit for partition.

4. In the written statement, Seshayya, the 3rd defendant contended that it is true that the property was allotted to their mother Kondammal by the Tamil Nadu Slum Clearance Board. However, it is not correct that the superstructure was constructed by their father. According to the 3rd defendant, since he was very affectionate to his mother and since his mother was the eldest member of the family, he also appealed before the Tamil Nadu Slum Clearance Board to allot the land in the name of his mother. However, in the house, the 3rd defendant was residing all through and the photo identification card showing that the occupants of the house has been issued in favour of the family members of the 3rd defendant. It is also contended that subsequently the Tamil Nadu Slum Clearance Board has executed a sale deed on 22.07.2005 itself in the name of Kondammal, the wife of this 3rd defendant. The said sale deed is Ex.B.2. According to the said sale deed, his wife Kondammal has become the absolute owner of the suit property and she has been enjoying the same. Neither the plaintiff nor the defendants 1 and 2 has got any right whatsoever.

5. The trial court framed appropriate issues. On the side of the plaintiff, the plaintiff himself was examined as P.W.1 and as many as 5 documents have been exhibited. On the side of the defendants, the 3rd defendant was examined as D.W.1 and as many as 8



documents have been exhibited. The trial court decreed the suit and the lower appellate court reversed it. That is how, the appellant is before this Court with this Second Appeal.

6. The learned Counsel for the appellant would submit that it has been admitted by the 3rd defendant that the suit property was allotted to their mother Kondammal. Now, by misusing the name of his wife Kondammal, the 3rd defendant has got the sale deed executed in the name of his wife Kondammal. Though the sale deed stands in the name of Kondammal, the wife of the 3rd defendant, it belongs to joint family property. Therefore, the lower appellate court was not right in reversing the decree and judgment of the trial court, he contended.

7. I find it very difficult to accept the said submission of the learned Counsel for the appellant for the simple reason that the Tamil Nadu Slum Clearance Board, who was the owner of the suit property, has executed a sale deed under Ex.B.2 on 22.07.2005 in the name of Kondammal, the wife of the 3rd defendant. Admittedly, she is not a member of the Coparcenary and therefore, it cannot be said that though the document stands in her name, the property should be treated as a joint family property. Kondammal, the wife of the 3rd defendant is not a party to the present suit. The lower appellate court has accepted the contention of the 3rd defendant that until the sale deed executed by the Tamil Nadu Slum Clearance Board in favour of Tmt.Kondammal is set aside, the plaintiff cannot claim any right over the same. In this finding, I do not find any perversity. Apart from this, I do not find any substantial question of law at all involved in this matter.

8. At the most, this Court can only clarify that it would be open for the plaintiff to work out his remedy to get the sale deed Ex.B.2 either cancelled or set aside or declared as void and then, to file a fresh suit for partition, if he is able to succeed in which case the dismissal of this suit will not be a res judicata, the reason being that in the present suit for partition, the plaintiff has not proved that the suit property is available for partition since the property stands in the name of Kondammal, who is the wife of G.Seshayya, the 3rd defendant herein and the said Kondammal is not a party to the present suit. Except this clarification, this Court cannot grant any relief to the appellant in this Second Appeal. This Second Appeal deserves only to be dismissed as there is no substantial question of law at all involved.



9. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

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Sd/-
Assistant Registrar
Dated:18.2.15

True Copy

Sub Assistant Registrar

To

- 1.The XV Additional Judge, City Civil Court, Chennai.
 - 2.The III Assistant Judge, City Civil Court, Chennai.
- +2 cc to Mr.M.Rajaraman, Advocate,SR.5358.

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