

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.929 of 2015 & M.P.No. 1 of 2015

Ameerjan (deceased)

1. A.John Betti

2. A.Baajan

3. A.Jubitha Sultana .. Appellants/Defendants/LRs
of Defendants

-Vs-

Shantha

.. Respondent/Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree passed in A.S.No.38 of 2011 on the file of the Subordinate Judge, Namakkal dated 28.10.2014 confirming the judgment and decree in O.S.No.843 of 2004 on the file of the Principal District Munsif, Namakkal dated 23.02.2007.

For Appellants : Mr.J.Thilagaraj
for M/s.S.Joel

For Respondent : Mr.V.Raghavachari
for Mr.Ma.P.Thangavel

J U D G M E N T

The defendants in O.S.No.843 of 2004 on the file of the learned Principal District Munsif, Namakkal are the appellants. The plaintiff in the suit is the respondent herein. The respondent filed the said suit for declaration of title and for injunction to restrain the defendants from in any manner interfering with her peaceful possession and enjoyment of the suit property. The trial court, by decree and judgment dated 23.02.2007, decreed the suit as prayed for. As against the same, the appellants filed an appeal in A.S.No.38 of 2011 on the file of the learned Subordinate Judge, Namakkal. By decree and judgment dated 28.10.2014, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. Challenging the same, the appellants are 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 appellants and the learned Counsel for the respondent and I have also perused the records carefully.

3. The case of the plaintiff in brief is as follows:

The suit property was originally owned by one Baptist Trust which is a society at Irukkur Village. One Mr. Gnanathickam was the Chairman. Gnanathickam, in the capacity of Chairman of the society, sold away the suit property by means of a registered sale deed dated 05.03.1992 to one Ravi. Ravi in turn had executed a General Power of Attorney in favour of one Mohan on 28.12.1994. In exercise of the said power, Mohan, acting on behalf of his principal Ravi, sold away the suit property to the plaintiff for a valuable consideration under a registered sale deed dated 27.11.1995. From the date of purchase, the plaintiff has been in exclusive possession of the suit property. She is the absolute owner of the same. Since the defendants disturbed her possession, she filed the present suit for declaration and injunction.

4. In the written statement, it was admitted that the suit property was originally belonged to the Trust. But the 1st defendant (now no more) had entered into a sale agreement with the Trust in the year 1982 under Ex.A.7. But the possession was not handed over as per the agreement. It was an unregistered agreement. According to the defendants, as per the terms of the agreement, the defendants could perform his part of contract after the property was discharged from lease. The lease was discharged in the year 1989. Thereafter, the 1st defendant filed a suit in O.S.No.1434 of 2002 before the learned Subordinate Judge, Namakkal against the Trust for specific performance. The Trust remained ex-parte. An ex-parte decree for specific performance was therefore passed by the trial court. Thereafter, in the execution proceedings, a sale deed was duly executed by the court in favour of the 1st defendant on 16.04.2002. However, the possession was not taken over. In the execution proceedings, when the court Amin went to the suit property to deliver the possession to the 1st defendant herein, the plaintiff filed an Obstruction. In order to remove the obstruction, a petition was filed and the same is now pending.

5. While so, according to the defendants, the plaintiff has come up with this suit for declaration of title and for injunction to protect her possession. It is the specific case of the defendants that the plaintiff has got no title because title has been transferred to the 1st defendant by the court by execution of the sale deed dated 16.04.2002.

6. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case, on the side of the plaintiff, two witnesses were examined and as many as 19 documents have been exhibited. On the side of the defendants, the 1st defendant was examined as D.W.1 and one Palanisamy was examined as D.W.2 and as many as 13 documents have been exhibited. During the course of trial, an Advocate Commissioner was appointed whose report and the plans were marked as Ex.C.1 to Ex.C.3. Having considered all the above, the trial court decreed the suit which was confirmed by the lower appellate court. That is how the appellants are before this Court with this Second Appeal.

7. In the Second Appeal, the learned Counsel for the appellants would submit that the courts below have committed serious error in acting upon the patta issued by the revenue authorities. According to him, the patta upon which much reliance has been placed was issued during the pendency of the trial of the suit. The learned Counsel for the appellants would further submit that the plaintiff has got no title because title was transferred by the court by executing a sale deed dated 16.04.2002. He would also submit that since the defendants are the true owners of the property, the trial court ought not to have granted injunction also.

8. The learned Counsel for the respondent would stoutly oppose the said contentions. According to him, there is no question of law much less a substantial question of law even warranting admission of the Second Appeal. He would further submit that the plaintiff's vendor had purchased the suit property as early as on 05.03.1992 itself. The specific performance suit was filed by the 1st defendant only in the year 2002 in O.S.No.1434 of 2002 and the sale deed was executed by the court on 16.04.2002 based on ex-parte decree. Thus, as on the filing of the suit, the original vendor had no title for the suit property so as to convey the same under the sale deed executed by the court. The learned Counsel would further submit that so far as possession is concerned, because of the obstruction made by the plaintiff herein, possession was not delivered by the court concerned. Thus, admittedly, the plaintiff is in possession and enjoyment of the suit property.

9. I have considered the above submissions.

10. As rightly submitted by the learned Counsel for the respondent, I do not find any question of law much less a substantial question of law warranting admission of the Second Appeal. There is no controversy over the fact that the original

owner of the suit property was the Baptist Trust. Gnanathickam was the chairman of the Trust. He had sold away the suit property to one Ravi as early as on 05.03.1992. Thus, on or before 05.03.1992, the Trust had no title to convey. It is obvious that the sale agreement dated 03.04.1982 said to have been entered into between the plaintiff and the Trust is an unregistered document and therefore, there would have been no occasion for the plaintiff to know about the sale agreement. The suit was filed only in the year 2002 i.e. after 20 years of the sale agreement. For the reasons best known to the Trust, they remained ex-parte in O.S.No.1434 of 2002 paving way to pass an ex-parte decree in the specific performance suit. Even in the execution proceedings, the Trust remained ex-parte. It was, in those circumstances, the court passed ex-parte decree in O.S.No.1434 of 2002 and also executed the sale deed on 16.04.2002.

11. From the very fact that the original owner of the property had parted away with his title by execution of the sale deed dated 05.03.1992 in favour of Ravi, it is clear that as on the date of filing of the suit in O.S.No.1434 of 2002 as well as on the date, when the sale deed was executed by the court on 16.04.2002, the Trust had no title to convey and thus, the sale deed dated 16.04.2002 executed by the learned Subordinate Judge, Namakkal has not conveyed any title at all to the 1st defendant. As I have already pointed out, the title is only with the plaintiff and the courts below have rightly concluded the same.

12. So far as the possession is concerned, admittedly, the plaintiff is in possession of the suit property. It is very obvious that in the execution petition filed by the respondent in O.S.No.1434 of 2002, the possession has not been delivered to the defendants. In such view of the matter, the courts below were right in decreeing the suit as prayed for. As I have already stated, there is no substantial question of law at all involved in this Second Appeal warranting admission.

13. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

sd/-

Assistant Registrar (CS-IV)

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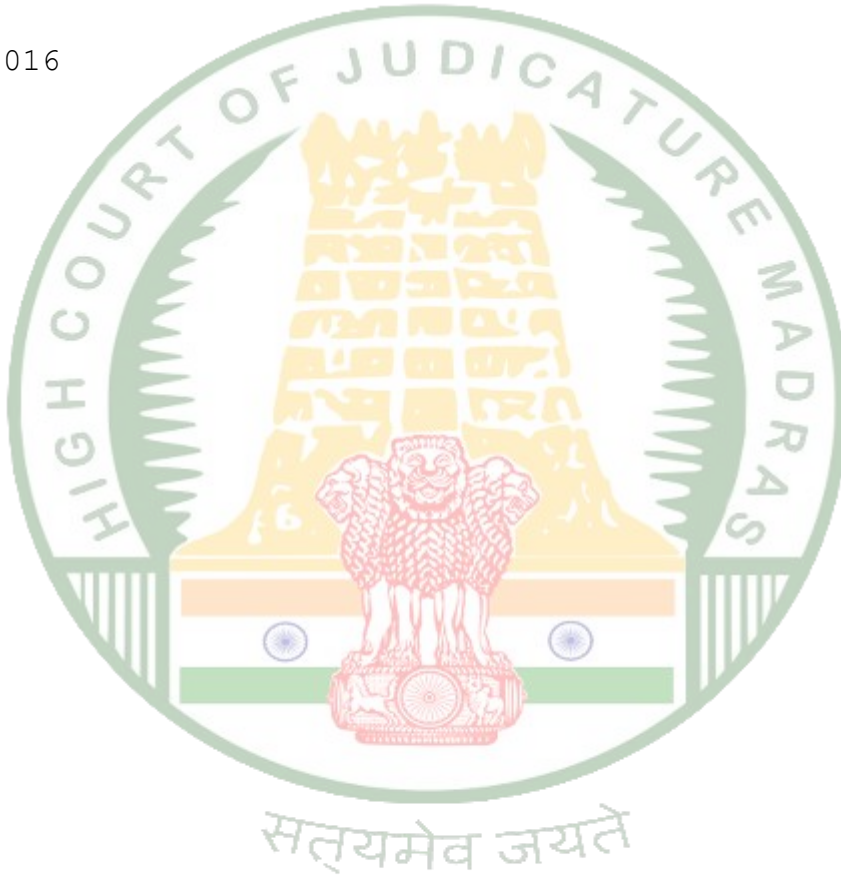
To

- 1.The Subordinate Judge, Namakkal.
2. The Principal District Munsif, Namakkal.

+1 CC to MR.Ma.P.Thangavel Advocate. SR.NO. 68990
+1 CC to MR.S.Joel Advocate. SR.NO. 69450

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