

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.335 of 2007

and

M.P.No.1 of 2007

1. Venkataswamy
2. K.Chinnaswamy (deceased)
3. K.Duraiswamy
4. Saraswathi
5. Kannan
6. Santhamani
7. Subbammal

Appellants 4 to 7 were brought on record as L.Rs. of the deceased 2nd appellant vide order of Court dated 31.3.2009 made in M.P.1/2009 in S.A.No.335/2007

..Appellants/Plaintiffs

-VS-

1. Chinammal (deceased)
2. Rajamani
3. Sundarammal
4. Krishnammal
5. K.Marannan

R5 brought on record as L.Rs. of the deceased 1st Respondent vide order of Court dated 31.07.2015 made in M.P.Nos.1 to 3/2015 in S.A.No.335/2007

..Respondents/Defendants

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 09.03.2006 passed in A.S.No.196 of 2005 on the file of III Additional Sub-Court, Coimbatore confirming the Judgment and decree dated 29.09.2005 passed in O.S.No.66/1998 on the file of the District Munsif Court, Mettupalayam.

For Appellants : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondents : Mr.S.Kadarkarai for R2 to R4
Mr.K.Venkatasubban for R5

J U D G M E N T

The appellants are the plaintiffs in a suit for bare injunction. They filed the above suit against the respondents herein by contending that they purchased the suit property from one Marannan and his daughter Minor.Nithyananthi. Therefore, they contended that they are in possession and enjoyment of the suit property in pursuant to the said sale deed dated 09.03.1998.

2. The defendants contested the suit by claiming that the vendor of the plaintiffs have no absolute right to alienate the property as there are other sharers having interest over the suit property including the defendants.

3. The trial Court, after hearing both the parties, dismissed the suit. The appeal filed by the plaintiffs also came to be dismissed. Hence, the present Second Appeal is filed before this Court which has not been admitted so far. Today, the matter is listed before this Court under the caption 'adjourned admission'.

4. Learned counsel appearing for the appellants submitted that in pursuant to the sale deed executed by the vendor of the appellants, they are in possession and enjoyment of the suit property which the Courts below have concurrently failed to consider. On the other hand, learned counsel appearing for the respondents 2 to 4 submitted that the appellants are not in possession and enjoyment of the suit properties and on the other hand, the respondents are in possession and enjoyment of the same. Therefore, he submitted that the concurrent finding rendered against the appellants, by considering the factual aspects of the matter, need not be interfered with.

5. Though the learned counsel appearing on either side made their respective submissions on the merits of the findings rendered by the Courts below with regard to the possession of the suit property, they fairly submitted that pursuant to the present suit, a comprehensive suit for partition and for other reliefs is filed by the respondents herein in O.S.No.302 of 2006 on the file of Sub-Court, Coimbatore, against the 5th respondent herein namely, vendor of the appellants and the said suit is still pending. They also submitted that because of the pendency of the present Second Appeal before this Court, the above said suit cannot be proceeded with further.

6. Heard both sides.

7. The present suit is the one for bare injunction and both the Courts below have concurrently found against the appellants. At any event, as the respondents have already approached the competent Court and filed a comprehensive suit for partition and

other reliefs against the vendors of the appellants and when the said suit is said to be still pending adjudication, I am of the view that both the parties to the present proceedings have to work out their remedies against each other only in the above said comprehensive suit. It is stated that the present appellants were not made as parties in the above said suit so far. Learned counsel for the respondents who filed the other suit in O.S.No.302/2006 submitted that the respondents will take steps to implead these appellants as party defendants in the said suit immediately.

8. Considering the above stated facts and circumstances, the above Second Appeal is disposed of by directing the respective parties to agitate their rights and contentions in the comprehensive suit already filed in O.S.No.302 of 2006 in a manner known to law. The respondents are directed to implead these appellants in the said suit O.S.No.302/2006 as party defendants immediately.

9. With the above observations and directions, the Second Appeal is disposed of. Since the present suit is one for bare injunction, the findings rendered by both the Courts below for and against the parties herein will not operate as resjudicata in the comprehensive suit filed for partition and other consequential reliefs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi
TO

1. The Additional Subordinate Judge,
Coimbatore.
2. The District Munsif, Mettupalayam.
3. The Section Officer, VR Section,
High Court, Madras.

+1cc to M/s. Sarvabhuman, Advocate, S.R.No.47970
+1cc to M/s. S. Kadarkarai, Advocate, S.R.No.47976

MP(CO)
EU(03/11/2016

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