

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal No.591 of 2012
and
MP Nos.1 of 2012, 1 and 2 of 2013

1.Lakshamma
2.Susilamma

... Appellants/Plaintiffs

Vs.

Muniyamma (died)
1.Venkatramanappa
2.Chikkodu @ Munisamy
3.Rajagan @ Gopal
4.Ramesh
5.Lagumamma
Gujamma (died)
6.Muniappa
7.Dodda Nanjappa
8.Chikka Nanjappa
9.Muniyappa
10.Nanjamma
11.Venkatalakshamma
12.Ramakka
13.Chandramma

... Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Subordinate Judge, Hosur dated 29.02.2012 made in A.S.No.4 of 2009 thereby confirming the judgment and decree of the learned District Munsif, Hosur in O.S.No.390 of 1996 dated 20.01.2009.

For Appellant : Mr. S.Siva Shanmugam

For Respondents: Mr.V.Nicholas for R1, 3 and 5

Mr.G.M.Ananthakumar for R7 to 13

R2 & R4 set exparte vide order dated
18/02/2016

J U D G M E N T

The unsuccessful plaintiffs before the courts below are the appellants. They filed a suit for declaration to declare their title to the suit property and for permanent injunction

restraining the defendants from trespassing into the suit property and disturbing with the possession of the plaintiffs. They claimed title to the suit property based on a sale deed dated 21.02.1995 executed by the husband of the first plaintiff. The defendants contested the said suit and denied the title of the plaintiffs, more specifically by contending that the relief sought for in the suit is barred by res judicata in view of the earlier proceedings in respect of the suit filed by the defendants 1 and 2 against the respective husbands of the present plaintiffs seeking for declaration and possession in O.S.No.51 of 1989 which came to be decreed and confirmed up to this court in S.A.No.747 of 1998. Both the courts below accepted the contentions of the defendants and rejected the claim of the plaintiffs. Challenging the same, the present second appeal is filed.

2. Heard the learned counsel appearing for the appellant. The matter is listed before this court under the caption notice of motion. Hence, this court has to see as to whether any substantial question of law arises for consideration for entertaining this appeal.

3. It is not in dispute that the subject matter property is one and the same, both in the present suit viz., O.S.No.390 of 1996 and O.S.No.51 of 1989. It is also not in dispute that the said suit in O.S.No.51 of 1989 filed by the present defendants 1 and 2 seeking for declaration and recovery of possession came to be decreed on 27.01.1995 and such judgment and decree was confirmed by the Appellate Court in A.S.No.21 of 1997 on 31.03.1998. It is also an admitted fact that further appeal preferred before this court in S.A.No.747 of 1998 also came to be rejected on 21.12.1998. Therefore, the judgment and decree passed in O.S.No.51 of 1989 granting the decree of declaration and recovery of possession in respect of the present suit property in favour of the present defendants 1 and 2, have become final and conclusive and binding the parties. Admittedly, the said suit was filed by the defendants 1 and 2 against respective husbands of the present plaintiffs who executed the sale deed in favour of the plaintiffs on 21.02.1995, after the decree passed by the trial court in O.S.No.51 of 1989. Therefore, the said sale deed after such decree is not valid and therefore, the present plaintiffs cannot seek the relief based on such invalid sale deed. The purchaser cannot have better title than the vendor. Once the vendor's title has been negatived by the court earlier, his creation of the sale deed thereafter is illegal.

4. Considering the fact that the title to the suit property has already been declared in favour of the present defendants 1 and 2 in S.A.No.747 of 1998 and considering the fact that the husbands of the present plaintiffs who suffered the decree in

the said suit are not entitled to alienate the suit properties in favour of the present plaintiffs, I find both the courts below have rightly rejected their claim with which I find no infirmity or illegality. Consequently no substantial question arises for consideration to entertain this appeal for further hearing of the same on such question of law. Accordingly, the second appeal fails and the same is dismissed. No costs. The connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Court,
Hosur.

2.The District Munsif,
Hosur.

+1cc to M/S.V.Nicholas, Advocate Sr.37338
+1cc to M/S.S.Sivashanmugam, Advocate Sr.37348
+1cc to M/S.G.M.Ananthakumar, Advocat sr.37819

S.A.No.591 of 2012

rsi[col]
srg 28/07/2016

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