

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.235 of 2015
and M.P.No.1 of 2015

1.Ramayammal
2.Sellakumarasamy
3.Samiyathal
4.Jayamani
5.Devi

... Appellants/Plaintiffs

vs.

1.Ponnusamy
2.Lakshmi
3.Krishnaveni
4.Premkumar
5.Gowriammal
6.Selvaraj
7.Kamalam

...Respondents/
Defendants 3 to 9

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 14.07.2014 made in A.S.No.52 of 2012 on the file of the I Additional Sub Judge, Erode, confirming the judgment and decree dated 21.03.2012 and made in O.S.No.68 of 2009 on the file of II Additional District Munsif, Erode.

For Appellants : Mr.N.Manokaran
For Respondents: Mr.P.Valliappan

J U D G M E N T

The unsuccessful plaintiffs are the appellants in the suit for declaration and for permanent injunction.

2.The case of the plaintiffs is that they are in possession by virtue of a registered mortgage deed dated 27.08.1929, executed by one Ramana gounder and Angappa gounder in favour of one Ramana gounder, son of Sengoda gounder and Nallappa gounder, son of Avanasi gounder. It is their case that the mortgagors namely, Ramana gounder and Angappa gounder are related to the first and second plaintiffs, as their respective fathers. Thus, by claiming that the present suit property, which was mortgaged

by their predecessors in title, was subsequently discharged and that the defendants, who were strangers to the suit property, without having any right over the same, attempted to disturb the plaintiffs' peaceful possession and enjoyment, they filed the said suit.

3.The suit was contested by the defendants by specifically contending that the suit property was not mortgaged on 27.08.1929 as alleged by the plaintiffs and those mortgagors were not in possession and enjoyment of the suit property at the relevant point of time. It is their contention that the suit properties are owned by them for several years by virtue of sale deed executed as early as in the year 1929.

4. The trial Court, after considering the rival pleadings of the parties and evidence let in by them, dismissed the suit.

5.The appeal filed by the plaintiffs also came to be rejected by the lower Appellate Court, confirming the judgment and decree of the trial Court. Hence, the present appeal is filed before this Court, which is listed before me under the 'Notice of Motion' caption, after serving notice on the respondents before admission. Therefore, this Court has to see as to whether any substantial question of law arises for consideration for entertaining this second appeal for further hearing of the matter on such question of law.

6. Heard Mr.N.Manokaran, learned counsel appearing for the appellants and Mr.P.Valliappan, learned counsel appearing for the respondents and perused the judgments and decrees passed by the Courts below.

7. The plaintiffs namely, the appellants herein claim title to the suit property as absolute owners of the same and thus, seek decree of declaration. They also seek decree of permanent injunction by contending that they are in possession and enjoyment of the suit property. Therefore, the burden is on the plaintiffs to prove their title to the suit properties and also their possession over the same, not merely by pleadings alone in the plaint and also by letting an evidence in support of such pleadings. Only when they discharge such onus, the burden will be shifted on the defendants to disprove the case of the plaintiffs by adducing evidence in support of their contentions.

8. In this case, the plaintiffs solely relied on Ex.A1 Mortgage deed in support of their contention to claim title to the suit property. It is their categorical case that their predecessors namely, their respective fathers executed the said mortgage deed as early as in the year 1929 in respect of the suit property in favour of some third parties and got discharged the mortgage later. Therefore, they contended that they became

the owners of the property after discharge of mortgage and thus, they are entitled to the relief of declaration.

9. The Courts below found that the suit property referred to in the9 plaint is not the property referred to in the mortgage deed under Ex.A1. The Courts below have also taken note of the evidence of P.W.1 deposing that he did not know directly about Ex.A1 and the place of its execution. The Courts below have raised a doubt by pointing out that Ex.A1 was said to have been executed both at Erode and also Coimbatore. In any event, in view of the specific finding of the Courts below based on the appreciation of Ex.A1 and the deposition of P.W.1 that the property described in the plaint is not the property referred to in Ex.A1, the very basis of the plaintiffs to seek for declaration of title to the suit property goes and consequently, the plaintiffs are not entitled to succeed as has been rightly found by both the Courts below. Even, in respect of the issue with regard to possession, it is the categorical finding of the Courts below that no document is filed by the plaintiffs to show that they are in possession and enjoyment of the suit property on the date of filing of the suit. Ex.A2 Encumbrance Certificate , which was marked, is also not in the name of the plaintiffs and on the other hand, it has been obtained in the name of one Pavayammal, who is not a party to the suit.

10. On appreciation of entire facts and circumstance of the case and also by considering the documents marked on the side of the defendants showing their possession and enjoyment namely, the title deed and other revenue document, the Courts below have rightly rejected the contention of the plaintiffs and dismissed the suit. When such being the factual findings rendered by the Courts below on appreciation of the facts and circumstance of the case and evidence let in by the parties, I do not find any substantial question of law in this case to entertain the appeal for further hearing.

Accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition stands closed.

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Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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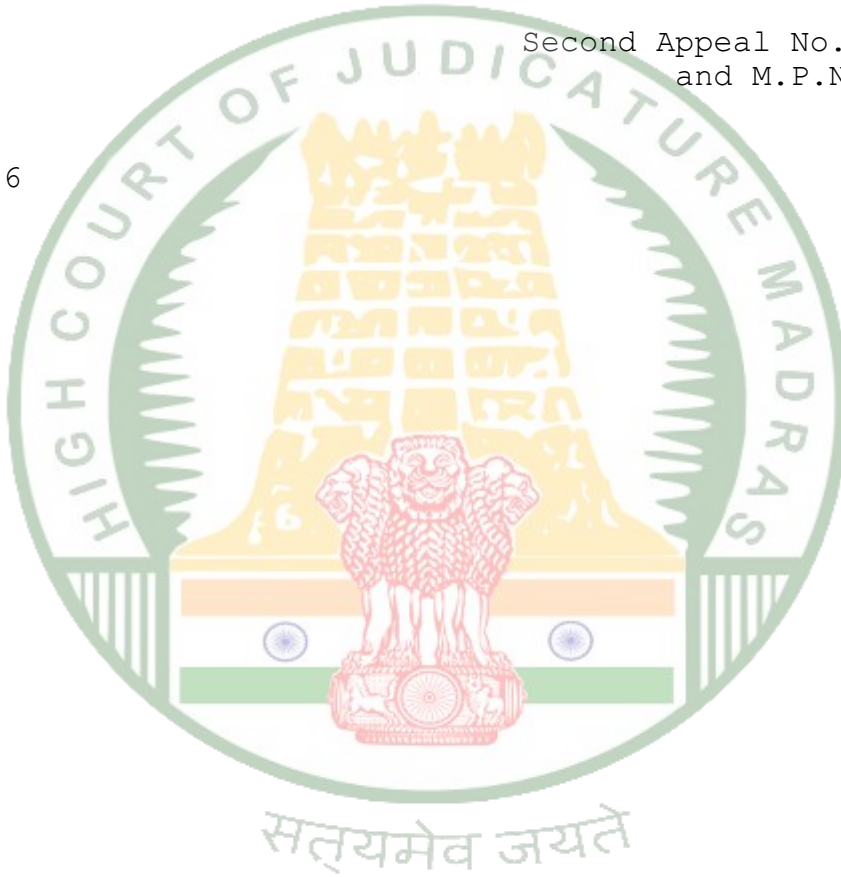
To

1. I Additional Sub Judge, Erode.
2. II Additional District Munsif, Erode.
3. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to MR.N.Manokaran, Advocate Sr.36082
+ 1 cc to Mr.P.Valliappan, Advocate SR.35913

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KJI (CO)
Eu 17.08.16



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