

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.2 of 2016

M.Palanisamy

.. Appellant/Appellant/2nd Defendant

-Vs-

Lake View Friends Park,
No.331-A, 10th Avenue,
Panaiyur, Chennai
rep. by its partners
1. R.Chandrasekaran
2. R.Partheepan

..Respondents/ Respondents/Plaintiffs

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree passed in A.S.No.16 of 2014 on the file of the Subordinate Judge, Namakkal dated 06.03.2015 confirming the judgment and decree passed in O.S.No.576 of 2010 on the file of the Additional District Munsif, Namakkal dated 23.01.2014.

For Appellant : Mr.C.K.M.Appaji

For Respondents : Mr.R.Sundara Kamath

J U D G M E N T
सत्यमेव जयते

The 2nd defendant in O.S.No.576 of 2010 on the file of the learned Additional District Munsif, Namakkal is the appellant herein. The respondent is the plaintiff in the suit. There was yet another defendant, i.e., 1st defendant, by name Muthusamy. The respondent herein is a Partnership Firm and the same is represented by its partners. The said suit was filed by the respondents for permanent injunction restraining the defendants from in any manner interfering with their peaceful possession and enjoyment of the suit properties. By decree and judgment dated 23.01.2014, the trial court decreed the suit as prayed for. As against the same, the appellant herein filed an appeal in A.S.No.16 of 2014 on the file of the learned Subordinate

Judge, Namakkal. By decree and judgment dated 06.03.2015, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. Challenging 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 the learned Counsel for the respondents. I have also perused the records carefully.

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

The suit properties were originally owned by the 1st defendant. In execution of the decree in O.S.No.419 of 1994 on the file of the learned Subordinate Judge, Namakkal, the suit properties were brought for sale by one Ramasamy Gounder and others in court auction. One Eswara Moorthy emerged as a successful bidder. The auction was confirmed in his favour and thereafter, a sale deed was also executed in favour of Eswara Moorthy. In the execution proceedings, the property was also delivered to Eswara Moorthy on 21.04.2004 by the process of court. Thereafter, the plaintiffs purchased the suit properties on 11.10.2010. From that day onwards, the plaintiffs have been in possession and enjoyment of the same. The defendants have got no right whatsoever over the suit property, it is contended. Since the defendants attempted to disturb the possession of the plaintiffs, the suit came to be filed.

4. The defendants contended that the suit property was originally owned by one Mr.Kolukkattai Ayyasamy. He executed a Settlement Deed in favour of the 1st defendant thereby settling the suit property in his favour. But as per the terms of the settlement, the 1st defendant had no right of alienation. According to the terms, after the demise of the 1st defendant, the suit property should be inherited by his male heirs. The 2nd defendant is one of the sons of the 1st defendant and the 1st defendant had yet another son by name M.Selvaraj. Selvaraj is no more. His son is Eswara Moorthy. Thus, according to the defendants, the sale made in favour of Eswara Moorthy in the court auction is not valid and the possession of the suit property continues to be with the defendants.

5. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case, on the side of the plaintiffs, one witness was examined as P.W.1 and as many as 13 documents have been exhibited. On the side of the defendants, the 2nd defendant was examined as D.W.1 and yet another witness was examined as D.W.2 and as many as 2 documents have been exhibited. Having considered all the above, the trial

court decreed the suit which was confirmed by the lower appellate court. That is how the appellant is before this Court with this Second Appeal.

6. In this Second Appeal, the learned Counsel for the appellant would submit that the courts below have erred in appreciating Ex.B.1, the Settlement Deed dated 04.11.1970 executed in favour of the 1st defendant. The learned Counsel would submit that when the 1st defendant himself had no title to convey the suit property, the court auction sale which ended in favour of the court auction purchaser Mr.Eswara Moorthy shall not convey any title. The learned Counsel for the appellant would also submit that Ex.B.2, the patta issued by the Government also would prove the same. He would further submit that the courts below have erred in appreciating the evidence by which the defendants have proved that they are in possession and enjoyment of the suit property.

7. I have considered the above submissions.

8. At the outset, I should say that there is no question of law much less a substantial question of law involved in this Second Appeal even to admit the same. I also do not find any perversity in the findings of the courts below. It is true that as per Ex.B.1, the suit property was settled in favour of the 1st defendant. The crucial question is as to whether the 1st defendant had title for the suit property so that the said title could have been conveyed in the court auction sale in favour of Eswara Moorthy. From the records, it is seen that during the execution proceedings pending before the learned Subordinate Judge, Namakkal in O.S.No.419 of 1994, the 2nd defendant filed a Claim Petition before the Execution Court claiming absolute title and also claiming that the court auction sale would not convey title to the auction purchaser since the 1st defendant was having no title for the property in terms of the settlement deed. But the fact remains that the said claim petition filed by the 2nd defendant was dismissed by the Execution Court and the same has become final. I do not think that after the dismissal of the said Claim Petition, the 2nd defendant could reopen the very same issue in the present suit. Since the Claim Petition has been dismissed thereby rejecting the claim of the 2nd defendant that he has got title for the suit property, it is not open for the appellant/2nd defendant now to raise the same plea that the court auction sale is not valid and that he has got title for the suit property.

9. So far as the recovery of possession is concerned, the possession was delivered by the court in the execution proceedings and the same has also become final. In view of all

these facts and on appreciating the evidence both oral and documentary, the courts below have decreed the suit rightly as prayed for. In this findings, I do not find any infirmity warranting interference. Thus, I do not find any substantial question of law involved in this Second Appeal.

10. 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.

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Assistant Registrar (Cs-II)

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Sub-Assistant Registrar

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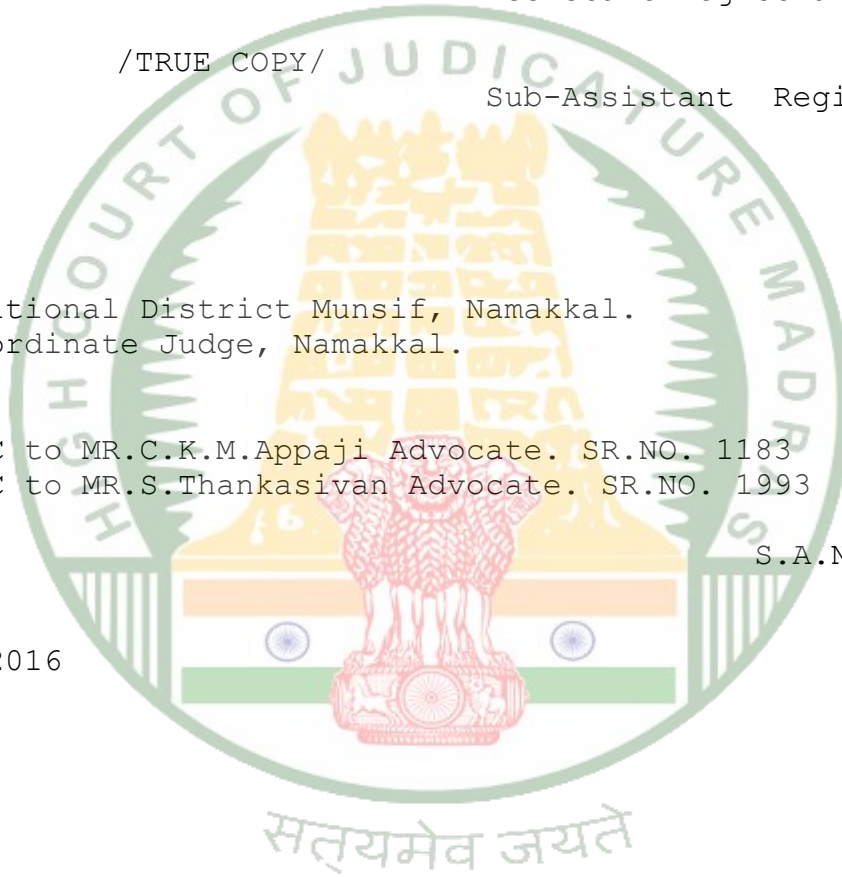
To

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

+1 CC to MR.C.K.M.Appaji Advocate. SR.NO. 1183
+1 CC to MR.S.Thankasivan Advocate. SR.NO. 1993

S.A.No.2 OF 2016

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JD 29/01/2016



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