

In the High Court of Judicature at Madras

Dated: 24.10.2016

Coram

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.409 of 2016

and

C.M.P.No.7145 of 2016

Shajadee Bi Appellant/Plaintiff

Vs.

V.K.Shanmugham Respondent/Defendant

Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 15.10.2015 passed in A.S.No.2 of 2015 on the file of III Additional District Judge, Vellore at Tirupattur, confirming the decree and judgment dated 29.01.2013 made in O.S.No.250 of 2009 on the file of Subordinate Judge, Vaniyambadi, Vellore District.

For Appellant : Mr.S.Subbiah

For Respondent : Mr.D.Balachandran

J U D G M E N T

The appellant is the plaintiff in a suit for declaration and permanent injunction claiming that she is the absolute owner of the suit property and in possession and enjoyment of the same over which the defendant is not having any right or title. On the other hand, the suit is resisted by the defendant on the ground that the plaintiff having sold the property to the defendant by way of registered Sale Deed dated 13.09.2006 for valid consideration, is not entitled to maintain the suit. Both the Courts below, on appreciation of the rival pleadings of the parties and the evidence let in by them, rejected the claim of the appellant. Hence, the present Second Appeal is filed before this Court challenging such concurrent finding.

2. Mr.S.Subbiah, learned counsel appearing for the appellant submitted that when the appellant has filed the suit for declaration of title to the suit property, it is not necessary for her to challenge the sale deed executed in favour of the defendant. Therefore, he contended that the dismissal of the suit by both the Courts below is not proper.

3. I am unable to agree with the above submissions made by the learned counsel for the appellant. No doubt, the appellant filed the suit for declaration of her title to the suit property and for permanent injunction without stating anything about the sale deed executed in favour of the defendant in her plaint. However, the defendant in the written statement specifically contended that the plaintiff has sold the suit property on 13.09.2006 to the defendant for valid consideration. When such being the categorical contention of the defendant, what prevented the plaintiff from amending the plaint and challenging such sale is not known. Learned counsel for the appellant further submitted that such sale deed was obtained by misrepresentation and therefore, the plaintiff is not aware of the transaction. I do not think that these contentions can be raised before this Court as the first time without there being any proper pleadings or prayer against such sale.

4. Admittedly, the suit prayer is the one simply for seeking declaration of title without seeking to set aside the sale deed executed in favour of the defendant. In my considered view, such relief cannot be maintained and therefore, both the Courts below have rightly rejected the claim of the plaintiff. I do not find any substantial question of law arises for consideration in this case to entertain the Second Appeal. Accordingly, the Second Appeal fails and the same is dismissed. It is open to the plaintiff/appellant to work out her remedy in the manner known to law challenging the sale deed by way of separate proceedings. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The III Additional District Judge,
Vellore at Tirupattur,

2. The Subordinate Judge, Vaniyambadi,
Vellore District.

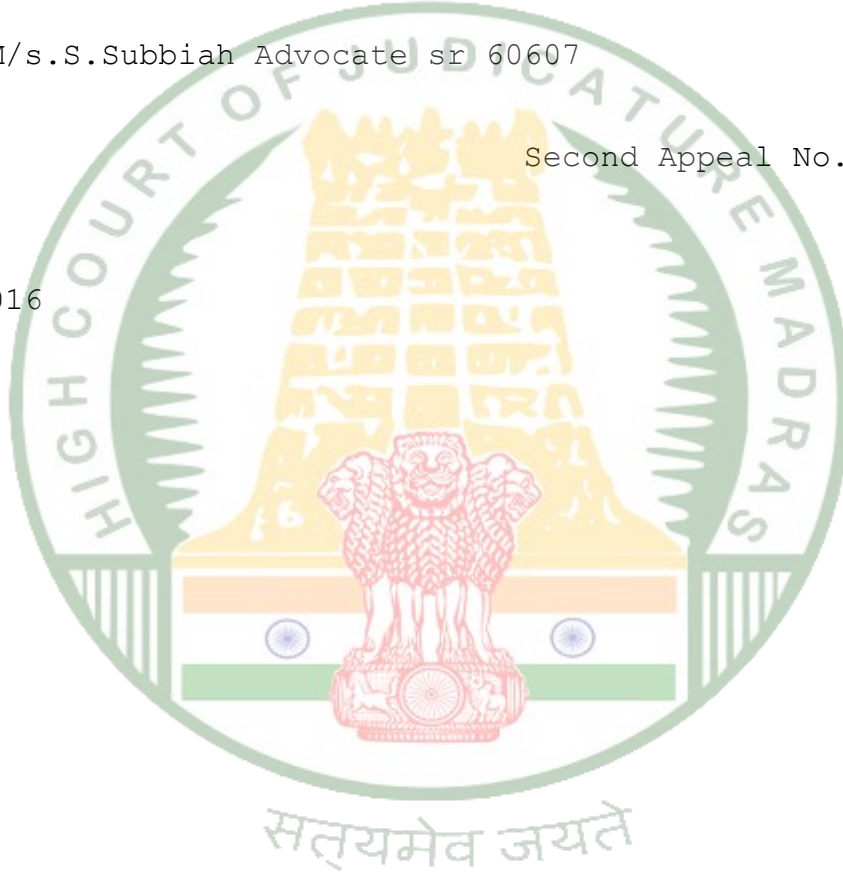
copy to

The Section Officer
VR Section
High Court Madras

+1 cc to M/s.S.Subbiah Advocate sr 60607

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