

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal Nos.870, 886, 887 and of 2016

S.A.No.870 of 2016

1. Umapathi

2. S.Saroja

3. S.Vijayakumar

4. S.Karthikeyan

5. S.Suriya Prakash

All are represented by their Power
of Attorney agent

U.Gowrisankar

..Appellants/Plaintiff

-Vs-

1. V.R.Boopathy

2.R.Sundaramoorthy

..Respondents/Defendants

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 08.01.2015 made in A.S.No.444 of 2013 on the file of VII Additional Court (FAC) City Civil Court, Chennai confirming the decree and judgment dated 30.08.2013 made in O.S.No.5759 of 2009 on the file of V Assistant City Civil Court, Chennai.

For Appellants

: Mr.A.Prabhakaran

For Respondents

: Mr.C.V.Subramanian

S.A.No.886 of 2016

1. Umapathi

2. S.Saroja

3. S.Vijayakumar

4. S.Karthikeyan

5. S.Suriya Prakash

All are represented by their Power
of Attorney agent

U.Gowrisankar

..Appellants/Plaintiffs

-Vs-

V.R.Boopathy

..Respondent/Defendants

Appeal filed under Section 100 of C.P.C. against the

judgment and decree dated 08.01.2015 made in A.S.No.424 of 2013 on the file of VII Additional Court (FAC) City Civil Court, Chennai confirming the decree and judgment dated 30.08.2013 made in O.S.No.5757 of 2009 on the file of V Assistant City Civil Court, Chennai.

For Appellants : Mr.A.Prabhakaran

For Respondent : Mr.C.V.Subramanian

S.A.No.887 of 2016

1. Umapathi
2. S.Saroja
3. S.Vijayakumar
4. S.Karthikeyan
5. S.Suriya jPrakash

All are represented by their Power
of Attorney agent
U.Gowrisankar

..Appellants/Plaintiff

-Vs-

1. V.R.Boopathy

Mrs.Saradambal(deceased)

2. R.Sundaramoorthy
3. M.Jamuna
4. E.Vijayalakshmi

Respondents/Defendants

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 08.01.2015 made in A.S.No.425 of 2013 on the file of VII Additional Court (FAC) City Civil Court, Chennai confirming the decree and judgment dated 30.08.2013 made in O.S.No.5758 of 2009 on the file of V Assistant City Civil Court, Chennai.

For Appellants : Mr.A.Prabhakaran

For Respondents : Mr.C.V.Subramanian

C O M M O N J U D G M E N T

The appellants are the plaintiffs. They filed three suits challenging the sale deeds shown in the respective suits executed by the 1st defendant in favour of the other defendants as illegal and not binding on them and for other consequential relief.

2. The case of the plaintiffs is as follows:

The suit properties are owned by one Kannammal who is the mother of the 1st plaintiff and grand mother of the plaintiffs 3 to 5. The 2nd plaintiff is the wife of one Shanmugham. The said Kannammal had two sons namely, the 1st plaintiff and the said Shanmugham, since deceased whose legal representatives are the plaintiffs 2 to 5. The said Kannammal executed a settlement deed in 2002 in respect of the suit property in favour of the plaintiffs and therefore, they are entitled to the same. However, when they applied for encumbrance certificate, they came to know that the suit properties were sold by the 1st defendant in favour of the other defendants in the year 1991 itself under various sale deeds, the subject matter sales. Hence, the plaintiffs have come forward with the above said three suits for the relief as stated supra.

3. The case of the defendants is as follows:

The said Kannammal executed a sale agreement in favour of the first defendant's wife and also executed a general power of attorney in favour of the first defendant in respect of suit property after receiving the entire sale consideration. Based on the general power of attorney, the first defendant executed the respective sale deeds in favour of the other defendants in respect of the respective suit property as early as in the year 1991. Therefore, the defendants who are the purchasers have become the absolute owners of the properties and consequently, the plaintiffs cannot claim title to the same based on the settlement deed, subsequently executed in the year 2002 by the erstwhile owner, namely, Kannammal.

4. The plaintiff examined one Gowri Shankar as P.W.1 who is none else than their Power of Attorney. They marked Exs.A1 to A15. The defendants on their side examined one Sundaramurthy as D.W.1 who is one of the defendants. They marked Exs.B1 to B6 in support of their claim. The trial Court, upon considering the rival pleadings of the parties and the evidence let in by them, found that the plaintiffs are not entitled to the relief in view of the fact that the original owner has already executed the Power of Attorney and also a sale agreement after the receipt of the entire sale consideration. Accordingly, the trial Court rejected the case of the plaintiffs and dismissed all the three suits. The three appeals preferred by the plaintiffs before the lower appellate Court also came to be dismissed by confirming the judgment and decree of the trial Court. Challenging such concurrent findings, the present Second Appeals are filed before this Court. All these appeals are posted before this Court at the admission stage.

5. Heard the learned counsel for the appellants and the learned counsel for the respondents and perused the materials

placed before this Court.

6. Admittedly, the suit properties originally belonged to one Kannammal who is the mother of the first plaintiff, mother in law of the 2nd plaintiff and grand mother of the plaintiffs 3 to 5. Though the plaintiffs claim that they are entitled to the suit property based on the settlement deed executed by the said Kannammal in the year 2002, they were not in a position to disprove the contention of the defendants in respect of their claim based on a power of attorney executed by the said Kannammal in favour of the 1st defendant as early as on 27.01.1989 in respect of the suit properties and also the execution of a sale agreement after receiving the entire sale consideration, which are marked as Exs.B1, B2 and B3. In this case, the plaintiffs have come forward to file the present suits after 18 years challenging such sale deeds executed by the 1st defendant in favour of the other defendants in the year 1991. The Courts below have pointed out that the father of the defendants 2 to 5, namely, Shanmugham was one of the signatory to the agreement of sale and the receipt of entire sale consideration marked as Exs.B2 and B3 and therefore, the plaintiffs cannot plead ignorance of such transaction made between the said Kannammal and the 1st defendant. Admittedly, the Power of Attorney executed by the said Kannammal was not cancelled at any point of time and therefore, the said Kannammal, being the principal is bound by the action of the Power of Attorney. In this case, apart from executing such Power of Attorney, there was a sale agreement followed by issuing a receipt for entire sale consideration marked as Ex.B2 & B3. The defendants proved the payment by marking original receipt, while the plaintiffs have not even come forward to get into the box to disprove such contention. On the other hand, only their power agent was examined as P.W.1, who, in my view, cannot speak about the transaction that had taken place during the year 1989. Therefore, both the Courts below, based on the appreciation of facts and circumstances and the evidence let in by the parties have rightly found that the plaintiffs are not entitled to the suit property based on the subsequent settlement deed executed in the year 2002 by the said Kannammal, when the fact remains that on the date of execution of such settlement deed, the properties were already sold through her Power of Attorney as early as in the year 1991 in favour of the concerned defendants. Therefore, it goes without saying that on the date of execution of such settlement deed, the said Kannammal was not having any title to the suit properties to convey the same to the plaintiffs.

7. Thus, I find that the appreciation of facts and circumstances and the evidence let in by the parties by the Courts below is perfectly in order and does not require any

interference as I also do not find any substantial question of law to entertain these Second Appeals. Accordingly, all the three Second Appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

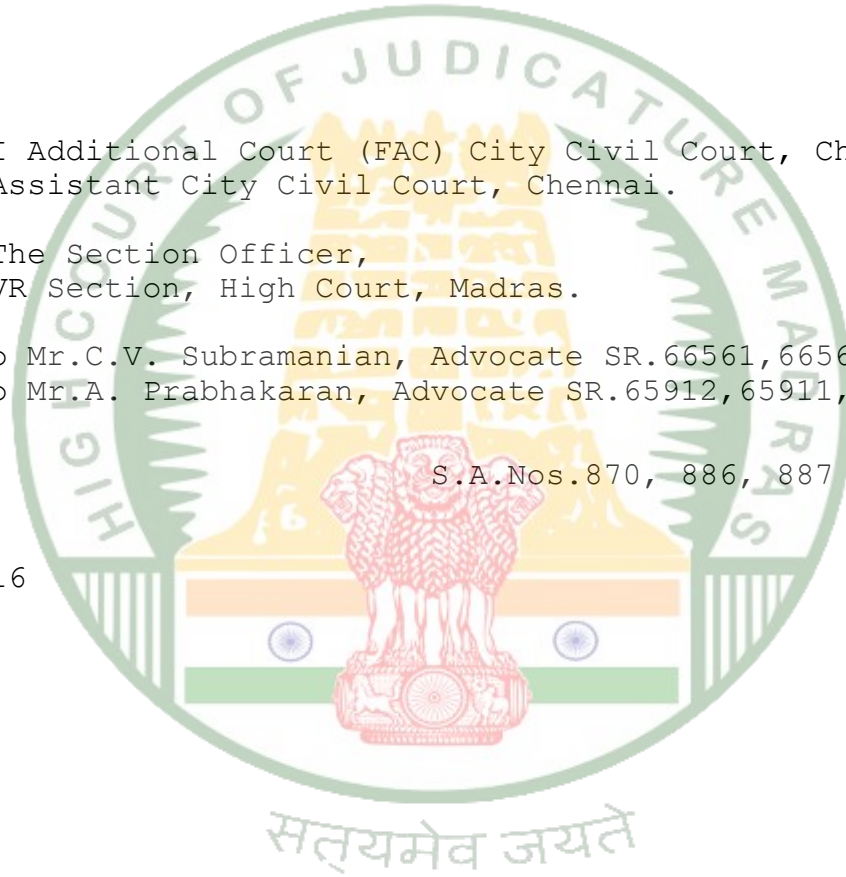
1. The VII Additional Court (FAC) City Civil Court, Chennai
2. The V Assistant City Civil Court, Chennai.

Copy to: The Section Officer,
VR Section, High Court, Madras.

- + 3 ccs to Mr.C.V. Subramanian, Advocate SR.66561,66560, 66562
- + 3 ccs to Mr.A. Prabhakaran, Advocate SR.65912,65911, 65910

S.A.Nos.870, 886, 887 and of 2016

SAI(CO)
EU 22.12.16



WEB COPY