



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Second Appeal (MD) No.14 of 2014

C.Suyambulingam ... Appellant/Appellant/Plaintiff

-Vs-.

1.Marukardal

2.Maria Innasi Ammal

3.Mariya Michael

... Respondents/Respondents/
Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree dated 24.06.2011 made in A.S.No.149 of 2004 on the file of District Court, Kanyakumari, at Nagercoil, confirming the judgment and decree dated 09.02.2004 made in O.S.No.116 of 2001 on the file of Sub Court, Padmanabhapuram and to allow the suit with costs.

For Appellant : Mr.V.Meenakshi Sundaram
for Mr.R.Murugan

For Respondents : No appearance

JUDGMENT

The plaintiff in the suit in O.S.No.116 of 2001 on the file of the Sub Court, Padmanabhapuram, is the appellant in the above Second Appeal.

2.The plaintiff / appellant filed the suit to declare his title and possession over the plaint schedule property. The suit is also to declare that the preliminary decree in O.S.No.1095 of 1995 on the file of the District Munsif Court, Eraniel, is not binding on the plaintiff.

3.Admittedly, the suit property originally belonged to the father of defendants. The plaintiff's father Late Mr.S.Chithirai purchased the suit property from the third defendant, as per the registered sale deed dated 05.12.1995. It is not in dispute that the suit in O.S.No.1095 of 1995 on the file of the District Munsif Court was filed by the defendants 1 and 2 as against the third defendant for partition of 2/3rd share in the



suit property and that the said suit was filed on 05.09.1995 that is prior to the sale deed under which the plaintiff claims title.

4. Having regard to the admitted facts that the plaintiff's father is only a purchaser pendente lite, the plaintiff cannot succeed in the suit to declare his title ignoring the preliminary decree that was passed in O.S.No.1095 of 1995. It is not in dispute that the suit in O.S.No.1095 of 1995 on the file of the District Munsif Court, Eraniel, was decreed as prayed for declaring the 2/3rd share of the defendants 1 and 2. The plaintiff's father has purchased the property from the third defendant who is a party to the earlier suit and suffered a decree. The decree in the suit in O.S.No.1095 of 1995 is binding on the third defendant even though it is stated to be an ex parte decree.

5. The plaintiff is only claiming right under the third defendant by purchasing the property during the pendency of the suit for partition. Hence, he cannot challenge the preliminary decree in O.S.No.1095 of 1995 unless the plaintiff has come forward with the case of fraud or other circumstances which would invalidate the decree. In such circumstances, the findings of the Courts below to dismiss the suit in O.S.No.1095 of 1995 and the appeal in A.S.No.149 of 2004 on the file of the District Court, Kanyakumari, are perfectly valid and I am not inclined to interfere with the findings of the Courts below. There is no question of law that arises for consideration in this Second Appeal, having regard to the admitted facts. Hence, this Second Appeal is liable to be dismissed. However, the plaintiff who claimed to have purchased the property from the third defendant is entitled to claim right over the share of the third defendant / third respondent herein. Since the suit for partition is already decreed and the right of the plaintiff to step into the shoes of third defendant cannot be denied. In that view of the matter, with a liberty being preserved to the appellant to work out his remedy in the final decree proceedings arising out of the suit in O.S.No.1095 of 1995 on the file of the District Munsif Court, Eraniel, the Second Appeal is dismissed. However, there is no order as to costs.

Sd/-

Assistant Registrar(CS II)

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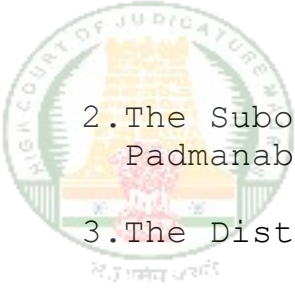
Sub Assistant Registrar

To

1. The District Judge,

<https://hcservices.ecourts.gov.in/hcservices/>

Kanniyakumari at Nagercoil.



2.The Subordinate Judge,
Padmanabhapuram

3.The District Munsif, Eraniel

+1cc to M/s.R.Murugan, Advocate Sr.No.65160/16

+1cc to M/s.J.John Jayakumar, Advocate SR.No.65376/16

SRM

SH:SKS-RR:29.11.2016:3P/6C

Judgment made in
Second Appeal (MD) No.14 of 2014
02.11.2016