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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA
Second Appeal (MD)No.361 of 2016
and
C.M.P (MD)No.3911 of 2016

Malaiyandi

... Appellant/
2nd Appellant/2nd Defendant

Vs.

1.Palanisamy
2.Balasubramanian
3.Gomathi
4.Ananthavalli
5.Velmurugan

... Respondents 1 to 5/
Respondents/Plaintiffs

6.Muthusamy
7.Govindammal

... Respondents 6 and 7/
Respondents 6 and 7/
Defendants 3 and 5

8.Vadivelu
9.Ganapathy

... Respondents 8 and 9/
Respondents 8 and 9/
Defendants 1 and 4

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 29.08.2013 passed in A.S.No.12 of 2012 on the file of the learned Subordinate Judge, Paramakudi, in partly reversing the judgment and decree dated 11.10.2011 passed in O.S.No.86 of 2002, on the file of the learned District Munsif, Paramakudi.

For Appellant	: Mr.S.Siva Thilakar
For Respondents	: Mr.PT.S.Narendravasan for R.1 to R.5

JUDGMENT

The second defendant, who lost the legal battle before both the Courts below, has come forward with this Second Appeal.

2. The respondents 1 to 5/plaintiffs filed the suit for declaration of title and injunction stating that the suit



properties are originally belonging to one Vellaiyan, son of Sathan, from whom, one Meenakshiammal, wife of Mayalagu and daughter of Karuppan, purchased the same under the registered sale deed dated 27.09.1954. One Ponnandi, father of the first plaintiff purchased the same from the said Meenakshiammal through the registered sale deed dated 30.09.1961. The father of the first plaintiff died in the year 1997, leaving behind the plaintiffs as his legal heirs. Patta was granted for the suit properties in Patta No.543 and after the death of the father of the first plaintiff, there was a mutation of revenue records and the plaintiffs are in possession and enjoyment of the same. However, when the plaintiffs tried to cut the karuvela trees situated in the suit property, the defendants gave a police complaint, consequent to which, it was stated that the first defendant has got an oral sale agreement with the father of the first plaintiff, but no such sale agreement was executed. Hence, they were constrained to file the suit. Further, it is stated that the fifth defendant has purchased 2¾ cents on 16.09.1982 from the first plaintiff and his father. The plaintiffs are not in possession of the property sold to the fifth defendant and the rest of the properties were shown as the suit schedule of properties. Hence, they have prayed for declaration of title and permanent injunction.

3. Resisting the same, the second defendant filed a detailed written statement, stating that the father of first plaintiff entered into an oral sale agreement with the second defendant and one Chinnathambi, son of Udaiyan and he also executed a power of attorney on 19.09.1989. Thereafter, the second defendant and the said Chinnathambi repaired the same and converted the same into plots. The first plaintiff and his father sold Plot No.19 in favour of the fifth defendant and Plot Nos.3 and 4 in favour of one Sonaimuthu on 22.09.1989. It is further stated that the second defendant paid a sum of Rs.70,000/- out of the total sale consideration of Rs.1,25,000/- on 23.08.1996. Further, on 29.08.1996, a sum of Rs.30,000/- was received by the first plaintiff and his father and they also made an endorsement in the backside of the original sale agreement. On 22.09.1996, the second defendant paid another sum of Rs.10,000/- to meet out the medical expenses of the father of the first plaintiff and the first plaintiff also made an endorsement therein. Hence, the second defendant is liable to pay the balance amount of Rs.15,000/- and that amount has been paid on 19.05.2002, however, no endorsement has been made. Since the sale deed has not been executed by the plaintiffs, they filed the suit. Hence, the second defendant prayed for the dismissal of the suit for non-joinder of necessary parties and for misjoinder of unnecessary parties.

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

4. The trial Court, after framing necessary issues and considering the oral and documentary evidence, came to the



conclusion that the title to the suit properties is accepted by the contesting defendants and even though the second defendant has pleaded that there is an oral sale agreement, that has not been proved by the second defendant. The plaintiffs are in possession of the suit properties and they are the owners and hence, decreed the suit, except the portion purchased by the fifth defendant, against which, the second defendant preferred the appeal in A.S.No.12 of 2012, on the file of the Sub Court, Paramakudi. The first appellate Court confirmed the judgment of the trial Court in granting the decree of declaration and injunction only in respect of the remaining portion of the suit properties excluding the portions already sold to the fifth defendant under Ex.A.9, dated 16.09.1987 and the properties sold to Sonaimuthu and Chinnathambi, under Ex.B.2, dated 22.09.1989. Challenging the same, the present second appeal has been preferred by the second defendant.

5. The learned Counsel for the appellant/second defendant would submit that there was an oral sale agreement and the entire sale consideration was paid and the possession is only with the appellant and the suit properties have been handed over on the basis of the oral sale agreement to form a lay out and to obtain permission, but a portion of the suit properties has been sold to the fifth defendant under Ex.A.9, dated 16.09.1987 and also to Sonaimuthu and Chinnathambi, under Ex.B.2, dated 22.09.1989 and therefore, the possession is only with the appellant. Apart from that, the part performance as per Section 53-A of the Transfer of Property Act, 1882, was not considered by the trial Court while granting injunction. Hence, he prayed for setting aside the judgments of both the Courts below as there is a substantial question of law involved in this second appeal.

6. Considering the arguments of the learned Counsel for the appellant and the typed set of papers, it is seen that the appellant/second defendant has not filed any document to show that he has formed a lay out and obtained approval. Ex.B.3 has been discussed by both the Courts below. Even today, no suit has been filed by the second defendant seeking specific performance based on the oral sale agreement. Furthermore, it is pertinent to note that Ex.A.9 and Ex.B.2 have been executed by the first plaintiff and his father and not by the second defendant.

7. In such circumstances, I am of the view that the argument advanced by the learned Counsel for the appellant that in pursuance of the oral sale agreement, possession has been handed over to the second defendant, is unacceptable and thus, no question of law, much less a substantial question of law, arises for consideration in this second appeal and hence, the second appeal is to be dismissed at the stage of admission.



8. In the result, this Second Appeal is dismissed at the stage of admission itself. Consequently, the connected civil miscellaneous petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

To

1.The Subordinate Court, Paramakudi.

2.The District Munsif Court, Paramakudi.

+1cc to Mr.S.Siva Thilakar, Advocate Sr.No.40858

+1cc to Mr.PT.S.Narandravasan, Advocate Sr.No.40131

rsb

AM/PV/SAR-III/12.09.2016/4p-5c

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