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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2016

CORAM:

THE HONOURABLE Ms.JUSTICE R.MALA

S.A. (MD)No.400 of 2016

and

C.M.P. (MD)No.4386 of 2016

Jainambu Beebi ... Appellant/Appellant/2nd Defendant

Vs.

1.Muthupillai ... Respondent No.1/Respondent/Plaintiff
2.Aminal Beebi ... Respondent/Appellant/1st Defendant

Prayer: The Second Appeal is filed under Section 100 C.P.C., against the decree and judgment made in A.S.No.95 of 2011 dated 18.01.2013 passed by the learned Subordinate Judge, Paramakudi by confirming the decree and judgment made in O.S.No.54 of 2008 on the file of the learned District Munsif, Mudukulathoor, dated 01.11.2011.

For Appellant : Mr.S.Palani Velayutham
For Respondents : Mr.Lajapathi Roy

JUDGMENT

The Second Appeal is filed under Section 100 of C.P.C., against the decree and judgment dated 18.01.2013 in A.S.No.95 of 2011 passed by the learned Subordinate Judge, Paramakudi, by confirming the decree and judgment dated 01.11.2011 in O.S.No.54 of 2008 passed by the learned District Munsif, Mudukulathoor.

2.The 2nd defendant, who lost the legal battle before both the Courts below, has come forward with this Second Appeal. The 1st respondent, who is the plaintiff, filed a suit for declaration of title and recovery of possession and also mandatory injunction, after removal of encroachment and construction made in the suit property, stating that the suit property is belonging to the plaintiff.

3.It is contended by the plaintiff that, when she was away from her native place, the 1st defendant has encroached upon the suit property and constructed a thatched house and the 2nd defendant has put up a tiled house. Hence, immediately, the plaintiff issued a notice, directing the defendants to vacate from the suit property. But they have not vacated the premises.



Hence, she has constrained to file a suit in O.S.No.54 of 2008 before the learned District Munsif, Mudukulathur, Ramanathapuram District, for declaration and recovery of possession and also mandatory injunction.

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4.The 2nd defendant alone contested the suit, stating that she entered into an oral sale with the plaintiff in respect of 7½ cents and accordingly, the plaintiff handed over the possession and left the place. The 2nd defendant is in possession and enjoyment of the suit property for more than 25 years. Hence, she prayed for the dismissal of the suit.

5.The Trial Court after considering the averments both in the plaint and written statement has framed necessary issues and declared that the plaintiff is the owner of the suit property holding that oral sale has not been proved by the defendants. Hence, decree has been granted in favour of the plaintiff.

6.Against which, the 1st defendant preferred an appeal in A.S.No.95 of 2011 before the learned Subordinate Judge, Paramakudi, Ramanathapuram District. The First Appellate Court, by decree and judgment dated 18.01.2013 in A.S.No.95 of 2011, confirmed the judgment of the Trial Court holding that under Section 17 of the Registration Act, sale for more than Rs.100/- should be registered, otherwise it is not valid. Even though an Advocate was also examined, the Appellate Court held that oral sale pleaded by the 1st defendant was not proved and it is not valid under law. Besides, the Appellate Court held that the 1st respondent / plaintiff has proved her title and hence, she is entitled for declaration of title and mandatory injunction and also for recovery of possession and decreed the appeal. Against which, the present Second Appeal is filed by the 1st defendant.

7.Even though notice has been ordered, the learned counsel for the respondents is present, the Second Appeal is yet to be admitted. Hence, the argument of the appellant alone has been heard and perused the entire documents.

8.I do not find any substantial question of law arise in this Second Appeal. Hence, the Second Appeal is hereby dismissed. The appellant and the 2nd respondent herein are directed to vacate the premises within a period of three months from the date of receipt of a copy of this judgment.

9.No costs. Consequently, connected C.M.P.is closed.
Sd/-

Assistant Registrar

/True Copy/



To

- 1.The Subordinate Judge, Paramakudi.
- 2.The District Munsif, Mudukulathoor.

+1cc to Mr.S.PALANIVELAYUTHAM, Advocate Sr.No.31632

+1cc to Mr.T.LAJAPATHI ROY, Advocate Sr.No.31542

NBJ

AA/ARK-PV/11.07.2016/3p-5c

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