



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2016

CORAM:

THE HONOURABLE Ms.JUSTICE R.MALA

Second Appeal (MD) No.508 of 2016

Hebsi Bai

... Appellant

versus

Chellan (died)

1.Johnson
2.Muruganandan
3.Jeyaseelan
4.Kanagabai
5.Sudhakar Prabhu
6.Rajesh Ananth
7.Hemalatha

... Respondents

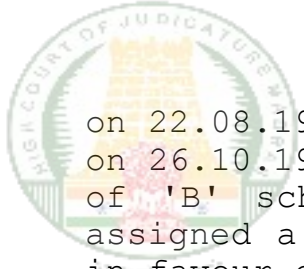
Prayer: Second Appeal is filed under Section 100 of CPC aggrieved over the judgment and decree passed by the Camp Judge, Kuzhithurai-2nd Additional Subordinate Judge, Nagercoil in A.S.No.79 of 2010 dated 01.04.2015 confirming the judgment and decree passed by the Principal District Munsif, Kuzhithurai in O.S.No.285 of 2006 dated 23.06.2010.

For Appellants : Mr.N.Dilip Kumar

JUDGMENT

The appellant, who lost in both the Courts below, has come forward with this second appeal against the dismissal of the suit filed for declaration of title and also recovery of possession in respect of 'C' schedule property by the mortgage deed dated 22.08.1963 getting barred by limitation, ignoring the execution proceedings in E.P.No.68 of 2003 in O.S.No.142/94 and consequently for injunction and alternatively, if it is seen that the auction purchaser is entitled to be in possession under the delivery dated 01.08.2003, seeking recovery of possession from the defendants.

2.The appellant, as plaintiff, filed the suit stating that the suit property is originally belonging to one Muthunayakam, Son of Kochan Nadar. He executed a mortgage in respect of a specific plot of 55 cents i.e. 'A' schedule property in favour of one Chinna Nadar



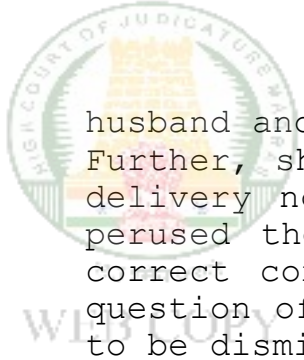
on 22.08.1963. Chinna Nadar executed an assignment of the mortgage on 26.10.1992 in favour of one Siluvaimuthu Son of Meyyal in respect of 'B' schedule property. On 29.10.1996, the said Siluvaimuthu assigned a specific plot of 10 cents in the 'B' schedule property in favour of the plaintiff, which is shown as 'C' schedule property. From that date onwards, the plaintiff is in possession and enjoyment of the said property and she made construction for Rs.2,50,000/- (Rupees two lakhs and fifty thousand only) and the mortgage in respect of 'C' schedule property is yet to be redeemed. Now, the defendant has come to know that suit in O.S.No.142 of 1994 has been filed before the Sub Court, Kuzhithurai. The decree holder viz., Johnson, who is the second defendant, has taken up the property on Court auction in E.P.No.16 of 2000 and he is the successfully bidder and he filed E.P.No.68 of 2003 and entered into the premises and hence, the plaintiff has filed the suit.

3.The defendants filed a written statement stating that the plaintiff's husband has indebted with the second defendant viz., Johnson, who filed a suit in O.S.No.142 of 1994 and obtained a decree and he filed execution petition and the property has been sold in court auction and the suit property was purchased by the decree holder himself on 17.04.2001 and that has been confirmed on 19.06.2001. He filed E.P. For delivery and at that time, the plaintiff filed E.A.No.179 of 2003 and another application for staying the delivery warrant and both the petitioners were dismissed and the delivery has been effected and the possession has been taken and the same was recorded on 02.08.2003. She has also filed review application, which was also dismissed, against which, no appeal or revision has been filed. Now, she has come forward with this suit and the defendants raised a plea of Order 2 Rule 2 C.P.C and prayed for the dismissal of the suit.

4.The trial Court, after considering the averments in both the plaint and the written statement, framed necessary issues and also considering the oral and documentary evidence, dismissed the suit stating that the plaintiff's husband has purchased the property and he is the owner and he has not redeemed the property, where both are residing and only after the properties were attached in O.S.No.142 of 1994 on 31.03.1995, he executed mortgage deed in favour of the plaintiff under Ex.A3, which is not sustainable and the plaintiff was not taken possession in pursuance of the mortgage. Against the said judgment and decree, the plaintiff preferred an appeal, where the judgment and the decree of the trial Court was confirmed. Against which, the present second appeal has been filed.

5.Heard the learned counsel for the appellant.

6.The learned counsel for the appellant would submit that since the appellant is the assignee for mortgage and since, the same has not been redeemed, she is the owner of the property. The above said argument does not hold good for the reason that in her evidence, she has stated that 'C' schedule property has been purchased by her



husband and he made constructions and she is aware of the said fact. Further, she has deposed that she along with her husband signed the delivery note. In such circumstances, both the Courts below have perused the entire oral and documentary evidence and come to the correct conclusion. Hence, I am of the view that no substantial question of law arises in this second appeal and the same is liable to be dismissed in the admission stage itself.

7. Accordingly, this second appeal is dismissed at the admission stage itself. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Camp Judge,
Kuzhithurai-2nd Additional Subordinate Judge,
Nagercoil.
 2. The Principal District Munsif,
Kuzhithurai.
- + 1 CC TO MR.N.DILIP KUMAR, ADVOCATE IN SR No. 31716

ARUL

TE/ARK-PV/SAR-III : 18/07/2016 : 3P/4C

Second Appeal (MD) No.508 of 2016
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