

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.480 of 1996

Albert,

..AppellantPlaintiff/

Vs.

1. V.S.Periyasamy
 2. Arulmeri (Died)
 3. Appadurai
 4. Vincent
 5. C.J. Chiristopher
- Respondents/Defendants ..

Prayer:

Appeal filed under Section 96 and under Order 41 Rule 1 of C.P.C. Praying to set aside the Judgment and Decree rendered by the learned Sub-Judge, Ariyalur in O.S.No.125/90 dated 24.02.1993.

For Petitioner : Ms.Srividya
for Ms.V.S. Jagadeesan
For Respondents : No appearance

JUDGMENT

1. This appeal has been filed against the judgment and decree in O.S.No.125 of 1990 on the file of Sub Court Ariyalur. It was originally filed as A.S.No. 90 of 1993 before the District Court, Thiruchirappalli and the same was transferred to this Court by an order dated 10.11.1994, made in Transfer C.M.P 9383 of 1994, to be heard along with A.S.No.318 of 1994 and the matter was listed on 26.07.2017 and I had directed the Registry to find out the fate of A.S.No.318 of 1994.

2. Ms.Srividya, Learned counsel for the appellant, would represent that the appeal in A.S.No.318 of 1994 has been dismissed as abated, as the appellant in the said appeal had died. The appellant in A.S.No.318 of 1994, Appadurai is shown as the third respondent in this Appeal and it is now stated that the said Appadurai had died.

3. The other suit namely O.S. No.93 of 1991 against which A.S.No.318 of 1994 was filed by the father of the appellant, Appadurai seeking specific performance of an agreement of sale contending that he, the appellant herein, one Arulmary and Gnanasoundhari had purchased the property, which is the subject matter of the suit on 20.09.1955 and as such each of them are entitled to 1/4th share. While so, the said Arulmary claiming herself to be an absolute owner had purportedly sold the property to one V.S.Periyasamy.

4. Claiming that the sale is not binding on him, the appellant has come forward with the suit in O.S.No.125 of 1990, seeking permanent injunction. His father Appadurai had filed O.S.No.93 of 1991 seeking specific performance of an agreement of sale alleged to have been entered into by the said Arulmary in respect of her 1/4th Share. Both the suits were tried together and in the suit for specific performance, an issue was framed with reference to the title of the said Arulmary. The trial Court had concluded that the said Arulmary was the absolute owner of the entire suit property and the claim that the plaintiff and three others are also entitled to the 1/4th share for the property was rejected by the trial Court.

5. The appeal filed by the Appadurai challenging the said findings has been dismissed as abated and the said finding has become final. Therefore, the plaintiff/appellant cannot seek a relief for injunction against the true owner. Hence this Appeal is also dismissed confirming the judgment and decree of the trial Court. However, in the circumstances there shall be no order as to costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

sli/abr

To

1. The Sub-Judge,
Sub Court, Ariyalur.

WEB COPY

2. The record keeper,
V.R.Section,
High Court, Madras.

+1 CC to Mr.V.S. Jagadeesan, Advocate sr 56732.

A.S.No.480 of 1996

KJI (CO)
sp(10/10/2017)



WEB COPY