

HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.10.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.506 of 2017

and C.M.P.No.12200 of 2017

1. Sivasami

2. Lalitha

... Appellants/Plaintiffs

Vs.

1. Janarthanan

... 1st respondent/

2nd defendant

2. Baskaran

3. Kannan

...2 & 3 respondents/1st & 3rd

defendants

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and decree dated 11.02.2011 made in A.S.No.85 of 2010 on the file of the Principal Subordinate Judge, Mayiladuthurai, reversing the Judgment and Decree of the learned Additional District Munsif, Mayiladuthurai in O.S.No.6 of 2009 dated 14.12.2009.

For Petitioners : Mr.S.Sounthar

For Respondents : Mr.R.Chandrasekaran

J U D G M E N T

This Second Appeal is filed against the Judgment and decree dated 11.02.2011 made in A.S.No.85 of 2010, reversing the Judgment and Decree of the learned Additional District Munsif, Mayiladuthurai in O.S.No.6 of 2009 dated 14.12.2009.

2. The plaintiffs are the appellants in the suit. The suit in O.S.No.6 of 2009 was filed for permanent injunction. The plaintiffs are the husband and wife and the suit property belonged to the father of the defendants 1 and 2. After his death, a suit was filed for partition and in the final decree proceedings, the suit property was allotted to the second defendant.

3. It is stated that on 09.02.1999, the second defendant agreed to sell the property to the first defendant and left the possession with the first defendant. The first defendant has sold the property on 28.02.2008 to the plaintiffs. The suit has been filed by the plaintiffs contending that the defendants are trying to disturb their possession.

4. The trial Court had decreed the suit and on appeal, the lower appellate Court had dismissed the same. Aggrieved over the same, the present appeal has been filed by the plaintiffs/respondents.

5. Admittedly, the suit properties were allotted to the share of the second defendant in the earlier suit for partition. The first defendant or the plaintiffs never have any right over the same. Whiles, it is alleged that the second defendant had agreed to sell the property to the first defendant, based on which, the first defendant has sold the property to the plaintiffs. When the first defendant himself could not have any right to sell the property, the purchase made by the plaintiffs under Ex.A1 is not valid. The plaintiffs also have claimed possession as lessor of the suit property. However, not even the pleadings in a plaint reveal the same. Once it is found that Ex.A1 is invalid as the vendor did not have a marketable title right which flows from the same to the plaintiffs cannot be sustained.

6. Hence, the lower Appellate Court had rightly dismissed the appeal and there is no infirmity in the said Judgment. As there is no question of law arising for consideration in the Second Appeal, this Court is not inclined to interfere with the Judgments passed by the first appellate Court.

7. In the result, this second appeal is dismissed, confirming the Judgment of the Lower Appellate Court in A.S.No. 85 of 2010 dated 11.02.2011. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rsi/arr

To

1. The Principle Sub Judge,
Mayiladuthurai.

2. The Additional District Munsif,
Mayiladuthurai.

+1cc to Mr.S.Sounthar, Advocate Sr.No.72697

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RSI (CO)

sm:22.12.2017