

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:15.12.2017
CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No.846 of 2017
and
C.M.P.No.21232 of 2017

C. Jeyakumari
Represented by her General
Power of Attorney Holder
Mr.N.Purushothaman Appellant/7th Defendant

versus

1. Kasiammal
2. Ganapathi
3. Kathirvelu
4. Krishnan ... Respondents 1 to 4/1 to 4 Plaintiffs
5. Chokkammal
6. Saroja
7. Santhi
8. Amutha
9. Vijayan

R. Chandrasekaran (Died) Respondents 5 to 9/
Defendants 1 to 5

This second appeal is filed under Section 100 of C.P.C. against the Judgment and Decree dated 20.07.2017 made in A.S.No.18 of 2011 on the file of the IV Additional District Court, Ponneri confirming the judgment and decree dated 14.12.2009 made in O.S.No.8 of 1999 on the file of the Sub Court, Ponneri.

For Appellant : Mr.N.Manokaran
For Respondents 1 to 4 : Mr.R.Krishnaswamy

J U D G M E N T

The seventh defendant in O.S. No. 8 of 1999 on the file of Sub Court, Ponneri is the appellant in this appeal. The suit was filed by the respondents 1 to 4 herein for partition and separate possession and the same was decreed and a preliminary decree was passed by the trial Court on 14.12.2009 declaring 1/30th shares for the first plaintiff in Item Nos.1 and 2 and 7/30th share each for the plaintiffs 2 to 4 in Item Nos.1 and 2 and 1/6th portion for the plaintiffs in Item No.3 of the suit properties. The 7th defendant who is the appellant herein has claimed that she has purchased the second item of the suit property by a registered sale deed dated 27.02.1999 from the power of attorney of defendants 2 to 5,

who is the 6th defendant. The Trial Court has held that the sale is not valid and is not binding on the plaintiffs. Hence, the seventh defendant had preferred an appeal with respect to the second item in the suit property.

2. The only contention urged in this appeal by the appellant/seventh defendant is that she purchased the second item of the suit property by a registered sale deed dated 27.02.1995 from the defendants 2 to 5 for a valuable consideration and possession was also delivered to her prior to the institution of the suit and therefore, she is a bonafide purchaser of the 2nd item of the suit property.

3. The first Appellate Court had categorically found that the seventh defendant has not purchased the second item of the suit property from the rightful owners and therefore, the seventh defendant/appellant will not be entitled any claim as per impugned sale deed dated 27.02.1995. The first Appellate Court also rendered a finding that the seventh defendant has not even marked the alleged sale deed dated 27.02.1995 as a document but only the Chitta for the said property was filed. Thus, preliminary decree was passed by both the Courts below by holding that the sale deed in favour of the seventh defendant/appellant is invalid.

4. Heard the learned counsel for the seventh defendant/appellant and the learned counsel for the plaintiffs/respondents 1 to 4 herein.

5. The learned counsel appearing for the appellant only seeks to work out his remedy in the final decree proceedings based on the sale deed executed in favour of the seventh defendant/appellant. In view of the said submission, without going into the question of validity of the sale deed dated 27.02.1995 said to have been executed in favour of the seventh defendant/appellant, the appellant is only given liberty to work out his remedy in the final decree proceedings. In the event the vendors of the seventh defendant/appellant are found to be having marketable right in respect of the second item of the suit property, it is open to the seventh defendant/appellant to assert his right in the final decree proceedings.

6. Accordingly, the second appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

rsi

To

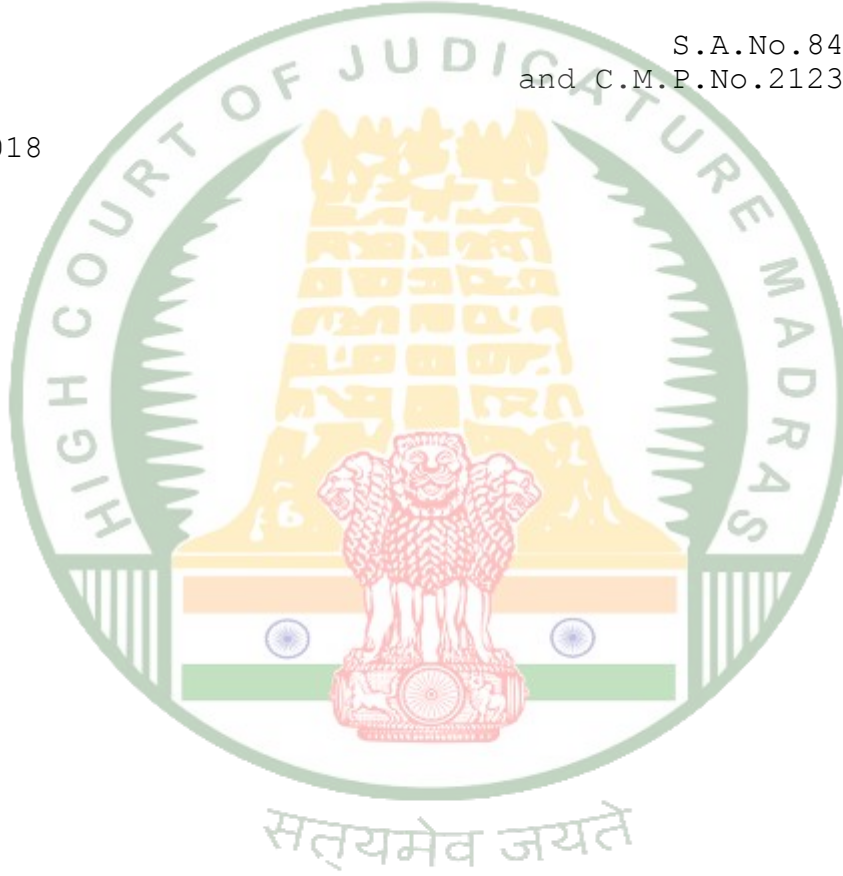
1. The IV Additional District Judge,
Ponneri.

2. The Sub Judge,
Ponneri.

+lcc to Mr.V.Ajoy Khose, Advocate Sr.No.89759/17

S.A.No.846 of 2017
and C.M.P.No.21232 of 2017

NRJK(CO)
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