

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Second Appeal Nos.368 and 369 of 2015
and
M.P.Nos.1 of 2015

1.R.Munusamy
2.R.M.Shanmugasundaram ..Appellants 1&2 in S.A.No.368/15/
Plaintiff/Appellants in S.A.No.369/15

3.R.Gomathi
4. R.Renuka ... Appellants 3 & 4 in S.A.No.368/15/
Plaintiff

vs.

N.Dilli ...Respondent in both the
appeals/Defendant

Second Appeal No.368/15 filed under Section 100 of C.P.C. against the judgment and decree dated 17.09.2012 passed in A.S.No.12 of 2012 on the file of the Sub-Court, Tiruttani, confirming the Judgment and decree dated 29.10.2011 passed by the District Munsif, Tiruttani, in O.S.No.165 of 2008.

Second Appeal No.368/15 filed under Section 100 of C.P.C. against the judgment and decree dated 17.09.2012 passed in A.S.No.13 of 2012 on the file of the Sub-Court, Tiruttani, confirming the Judgment and decree dated 29.10.2011 passed by the District Munsif, Tiruttani, in O.S.No.72 of 2010.

For Appellants : Mr.V.Raghavachari

For Respondent : Mr.T.Murugantham

C O M M O N J U D G M E N T

Two suits have been filed inter se parties. While O.S.No.165 of 2008 has been filed by the appellants before the District Munsif Court, Tiruttani, seeking a decree for permanent injunction, restraining the defendant from dispossessing the plaintiffs, except by due process of law and indulging in

alienation, O.S.No.72 of 2010 has been filed by the respondent seeking a decree for possession and for recovery of rent. The trial Court, by a common Judgment dated 29.10.2011, decreed the suit filed by the respondent and dismissed the suit filed by the appellants. Aggrieved over the said Judgment and decree dated 29.10.2011, the appellants preferred appeals in A.S.Nos.12 and 13 of 2012 before the Sub Judge, Tiruttani, and by Judgment and decree dated 17.09.2014, the lower Appellate Authority, had confirmed the Judgment of the trial Court. Challenging the same, the appellants/plaintiffs have filed the present Second appeals.

2. On 09.06.2015, this Court, while admitting the Second Appeal S.A.No.368 of 2015, has framed the following questions of law:-

"a. Whether the lower Court erred in dismissing the suit without considering Ex.A7 to A33 which are relevant documentary evidence to show that the appellant is in peaceful possession and enjoyment of the property?

b. Whether the document under Ex.B.1 could be construed as sale deed, when it has not been admitted by the parties to the transactions?".

3. As far as the Second Appeal No.369 of 2015 is concerned, this Court, by order dated 09.06.2015, at the time of admission, has framed the following substantial questions of law"-

"a. Whether the suit for delivery of possession is maintainable in the absence of title in the plaintiff?

b. Whether the suit for reasoning of possession is competent in a civil court?

c. Whether the document under Ex.A1 could be construed as sale deed, when it has not been admitted by the parties to the transaction?".

4. The suit property originally belonged to the 1st appellant/1st plaintiff and under Ex.A.1, the 1st appellant executed a sale deed dated 17.11.2003 in favour of the defendant. It is the case of the appellants/plaintiffs that the sale deed under Ex.A1 has been obtained by fraud on the premise that it was only a power deed. The Courts below placing reliance upon the evidence of P.Ws.1 to 3 coupled with the execution of Exs.A.1 to A.8, was pleased to decree the suit filed by the respondent, while dismissing the suit filed by the appellants/plaintiffs.

5. The learned counsel appearing for the appellants/plaintiffs submits that it is the act of fraud committed by the respondent. The suit filed by the respondent is not maintainable without a prayer for declaration. As the appellants are in possession and enjoyment of the suit property and in the absence of any material to hold that they are holding the suit property as tenants, the concurrent finding rendered by the Courts below resulting in the decree being granted in favour of the defendant would require interference.

6. The learned counsel appearing for the respondent/defendant submits that knowing fully well the execution of Ex.A.1, the appellants have neither challenged it by seeking a declaration nor approached the statutory authority under the Registration Act. As the Courts below have placed reliance upon the evidence of P.W.3, insofar as tenancy is concerned coupled with the due execution of Ex.A.1, no interference is required.

7. Heard the learned counsel on either side and perused the materials available on record.

8. Admittedly, Ex.A1 is a registered document and therefore, it carries its presumption qua due execution with it. The appellants have not chosen to challenge Ex.A1 in the manner known to law, but, on the contrary, seek a permanent injunction not to interfere with their possession, except by due process of law. When that being so, it is for the appellants to establish that Ex.A.1 has been brought forth on extraneous consideration or fraud. Further, D.W.2, who is the author of the legal notice, has not come before this Court and therefore, the trial Court has rightly drawn the adverse inference that Ex.A1 has been duly executed by the 1st appellant. There is absolutely no material to hold that he was made to believe that it was only a power deed. A perusal of the evidence of 1st appellant/D.W.1 would go to show that he has signed Ex.A.1. If signatures have been obtained in blank paper, the appellants could have taken appropriate action, both statutorily and under the criminal law. There is no explanation for not seeking relief for declaration. P.W.2 has also deposed that the 1st appellant has signed the sale deed, being the scribe of Ex.A.1 Sale deed.

9. Coming to the case of the respondent, P.W.3 has spoken about the factum of tenancy. When once title has passed on, then it is for the appellants to show the nature of possession. There is also no material to hold that the suit property is a joint family property, as against the self acquired property of the 1st appellant. It is also not in dispute that the suit property at the time of execution of Ex.A.1 stands in the name of the 1st appellant alone. In such view of the matter, this Court does not find any substantial question of law involved warranting interference to the Judgment and decree rendered by

the Courts below in exercising power under Section 100 of the Code of Civil Procedure.

10. In the result, both Second Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS-VI)

//True Copy//

Sub-Assistant Registrar

To

1. The Subordinate Judge, Tiruttani
2. The District Munsif, Tiruttani.

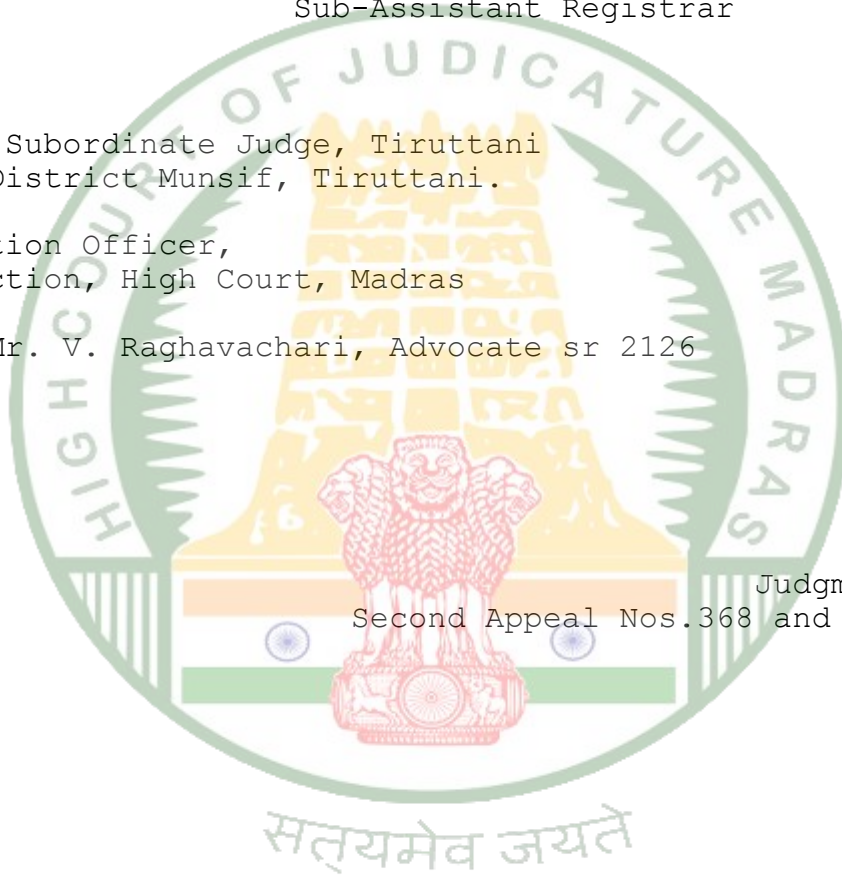
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The Section Officer,
V.R. Section, High Court, Madras

+1 CC to Mr. V. Raghavachari, Advocate sr 2126

Judgment made in
Second Appeal Nos.368 and 369 of 2015

KSJ (CO)
sp/3/2



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