

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.516 of 2015

N.Ramachandran

.. Appellant/Plaintiff

K.Kannayiram

Vs

.. Respondent/Defendant

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 30.04.2014 made in A.S.No.9 of 2013 on the file of the Subordinate Court, Madurantakam, confirming the judgment and decree passed in O.S.No.40 of 2010 dated 29.08.2012 by the District Munsif Court, Madurantakam.

For Appellant .. Mr.P.B.Ramanujam

For Respondent .. Mr.K.Govi Ganesan

JUDGMENT

The unsuccessful plaintiff before the Courts below is the appellant herein. The suit has been laid by the plaintiff for the relief of declaration and for permanent injunction restraining the defendant from interfering with his possession and enjoyment of the property situated in Survey No.82/3A. In the written statement filed by the defendant, it has been contended that the above said property has been purchased by the defendant and his brother from the mother of the plaintiff under the registered sale deed dated 05.09.1984. However, the survey number was wrongly mentioned as 82/3B though the extent and boundaries appear to be correct.

2.The trial Court dismissed the suit on the premise that though there is a mistake in Ex.B1, the suit property is the same property, as mentioned in the said document. The lower appellate Court also confirmed the judgment and decree passed by the trial Court. Challenging the same, the present second appeal has been filed.

3.At the time of admission, the following substantial questions of law were framed:

(1)Whether the Courts below were right in holding

that a transfer of immovable property by a limited interest holder, such right acquired under a settlement deed, in the absence of the vested remainder holder is valid and could convey good title?

(2) Whether the Courts below were right in interpreting Section 14 of the Hindu Succession Act to hold that a Hindu female acquiring a limited right under a registered settlement would blossom into an absolute right?

(3) Whether the Courts below were right in placing the burden on the appellant/plaintiff to prove the sale deed, Ex.B1 produced by the defendant?

4. The one and only submission made by the learned counsel appearing for the appellant is that in view of the clear stand taken by the defendant in the written statement that survey number is wrongly mentioned, the suit ought to have been decreed as prayed for.

5. This Court is unable to accept the said contention. The Courts below have rightly found that what has been given in favour of the mother of the appellant has been sold in favour of the defendant. This factual finding is not found to be untrue. Admittedly, the suit has been laid by the appellant being the plaintiff. Therefore, it is for the appellant to establish his case that the suit property is still available after the sale in favour of the defendant by his mother. Incidentally, it is the appellant, who attested Ex.B1. The Courts below have also found that the property given to the mother of the appellant is the same that was sold by her. There is another property retained by her after the sale in favour of the defendant. The boundaries and the extent also tally. Thus, merely because there is a discrepancy in the survey number, the appellant is not entitled to the relief sought for. After all, the respondent herein is the defendant in the suit.

6. In such view of the matter, this Court does not find any substantial question of law involved in the second appeal, warranting interference. Accordingly, the second appeal is dismissed. No costs.

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Assistant Registrar (CS IV)

/true copy/

Sub Assistant Registrar

mmi

To

1.The Subordinate Judge,
Madurantakam.

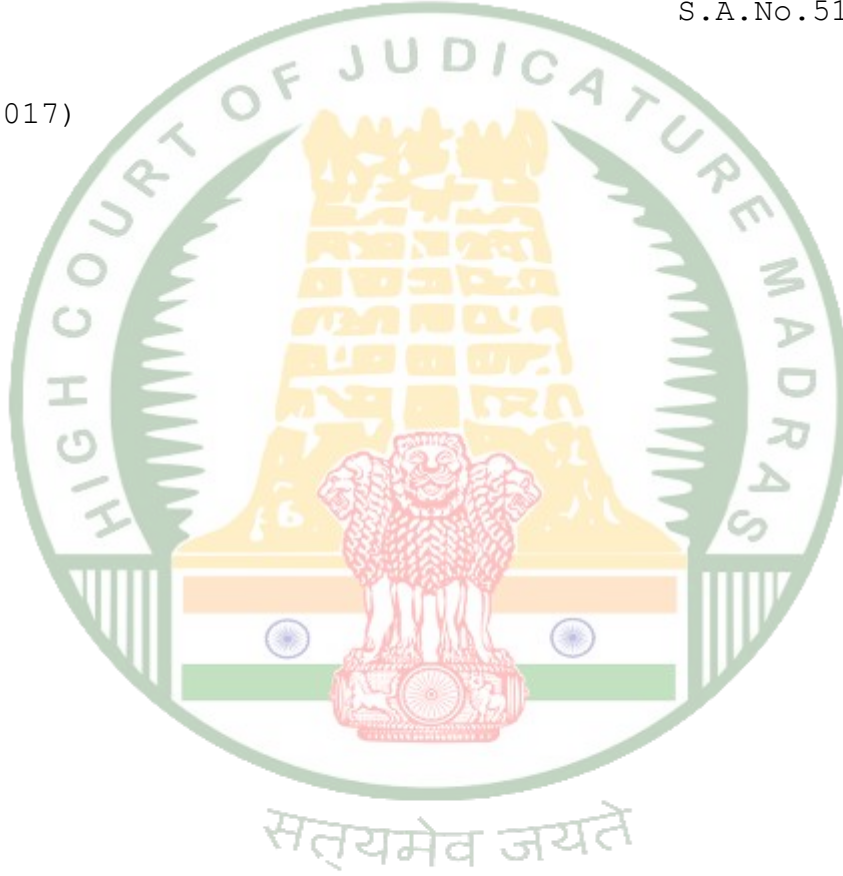
2.The District Munsif,
Madurantakam.

+1cc to Mr.Govi Ganisan, Advocate Sr.No.4645.

+1cc to Mr.B.Ramanujam, Advocate SR.No.4605.

S.A.No.516 of 2015

MV(CO)
GN(15/02/2017)



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