

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Second Appeal No.1547 of 2011

M.Jayaraj

... Appellant/Defendant

Vs

1. M.Thangaraj
2. T.Muthusamy
3. T.Selladurai
4. T.Dhanaraj

... Respondents/Plaintiffs

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 05.04.2011 passed in A.S.No.31 of 2010 by the I Additional District Judge, Salem, confirming the judgment and decree of the Principal Sub Judge, Salem, dated 01.02.2008 passed in O.S.No.45 of 2006.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.Kalyanaraman

J U D G M E N T

The unsuccessful defendant before both the Courts below is the appellant herein and the successful plaintiffs are the respondents herein. Aggrieved by the judgment and decree dated 05.04.2011 passed in A.S.No.31 of 2010 by the I Additional District Judge, Salem, confirming the judgment and decree of the Principal Sub Judge, Salem, dated 01.02.2008 passed in O.S.No.45 of 2006, the defendant has come up with the present Second Appeal.

2. It is the case of the plaintiffs before the Trial Court that they purchased the suit property for Rs.1,05,200/- from the defendant under a Sale Deed dated 08.10.2001 and they were put in possession and enjoyment of the suit property. Since the defendant interfered with their peaceful possession and enjoyment of the suit property, the plaintiff filed a suit in O.S.No.496 of 2003 on the file of the I Additional District Munsif Court, Salem. During the pendency of the said suit, the defendant along with his henchmen forcibly entered into the suit property on 05.01.2005. Hence, the plaintiffs lodged a complaint before Yercaud Police. Since no action was taken on their complaint and that they were unable to evict the defendant

from the suit property, the plaintiffs withdrew the said suit in O.S.No.496 of 2003 on 12.12.2005. Hence, the plaintiffs filed another suit in O.S.No.45 of 2006 against the defendant seeking possession of the suit property.

3. Denying the plaint averments, the defendant filed a Written Statement before the Trial Court, stating that he raised loan for a sum of Rs.1,40,000/- from the plaintiffs in 1998 and executed loan documents and handed over the title deeds and sale deeds of the suit property to the plaintiffs. Though, a part of the loan was discharged by the defendant, the plaintiffs insisted the defendant to executed a Sale Deed and accordingly, the defendant executed a sale deed in respect of the vacant land of the suit property on 08.10.2001 in favour of the plaintiffs, excluding the house and well.

4. It is the case of the defendant that the Sale Deed is only a nominal one and that he is in continuous possession of the suit property. In order to save the suit property from the hands of the plaintiff, the defendant filed a suit in O.S.No.868 of 2005 on the file of the Additional District Munsif Court No.1, Salem. Though the defendant approached the plaintiffs to cancel the Sale Deed and return the title deeds and the plaintiffs also promised to do so, they postponed the issue and filed the suit in O.S.No.45 of 2006 without any legal basis.

5. The Trial Court, on a consideration of the entire oral and documentary evidence, rejected the claim of the defendant and granted the relief sought by the plaintiffs by directing the defendant to hand over possession of the suit property to the plaintiffs within 30 days from the date of the judgment. Aggrieved over the same, the defendant went on appeal before the I Additional District Judge, Salem in A.S.No.31 of 2010 and the First Appellate Court, by a judgment and decree dated 05.04.2011, dismissed the said appeal, thereby confirming the finding of the Trial Court. Challenging the same, the defendant is before this Court by way of the present Second Appeal.

6. Learned counsel for the appellant/defendant contended that the Courts below failed to note that the subsequent suit filed by the respondents was barred under Order 2 Rule 2 C.P.C., especially when the respondents themselves admitted that they have withdrawn the earlier suit filed by them in O.S.No.496 of 2003 on the file of the District Munsif Court, Salem on 12.12.2005.

7. On the other hand, learned counsel appearing for the respondents/plaintiffs submitted that the appellant/defendant never borrowed money from the respondents/plaintiffs and that the defendant conveyed the suit property in favour of the plaintiffs by receiving a valuable sale consideration vide Ex.A1

and also handed over the original title deeds of the suit property, marked as Ex.A3. He further submitted that since the appellant/defendant forcibly entered into the suit property, the respondents/plaintiffs withdrew the suit in O.S.No.496 of 2003. According to him, the exparte judgment and decree in O.S.No.868 of 2005 filed by the appellant/defendant is not binding on the respondents/plaintiffs and that the principle of resjudicata is not applicable to the case on hand. Hence, he prayed for dismissal of the Second Appeal.

8. Heard the learned counsel on either side, gave careful consideration to the submissions made by them and perused the material documents available on record.

9. The only substantial question of law that arises for consideration in this case is :

"Whether the First Appellate Court is right in holding that the plaintiffs are entitled to the relief of delivery of possession based on Ex.A1 - Sale Deed, dated 08.10.2001 executed by the defendant?"

10. The only ground taken before this Court in this appeal is that the First Appellate Court ought not to have granted the relief of delivery of possession based on Ex.A1 and hence, it needs to be interfered with. It is seen that based on Ex.A1, a finding has been rendered with regard to the possession that has been handed over and according to the appellant/defendant, there is no well or building in the suit property, which has been specifically mentioned in the Sale Deed.

11. Admittedly, boundaries are marked in Ex.A1. When the plaintiffs have approached the Civil forum, there is no description or denial as to the contentions raised by them with regard to the property described in Ex.A1. Both the Courts below have granted the relief sought by the plaintiffs on the strength of Ex.A1 - Sale Deed, by holding that there is oral and documentary evidence and that the plaintiffs have established the same by producing requisite documents. Therefore, when the plaintiffs have proved ownership of the suit property by producing valid documents, this Court finds no reason to interfere with the finding of both the Courts below. Accordingly, the finding of the First Appellate Court upholding the finding of the Trial Court, is confirmed. Thus, the substantial question of law is answered in favour of the respondents/plaintiffs.

In fine, the Second Appeal is dismissed. No costs.
Consequently, connected M.P.No.1 of 2011 is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To:

1. The I Additional District Judge, Salem.
2. The Principal Sub Judge, Salem.

+1cc to Mr.R.Nalliyapaan, Advocate in sr.no.20435
+1cc to Mr.S.Kalyanaraman, Advocate in sr.no.20512

S.A.No.1547 of 2011

KGK (CO)
NR 22/06/2017



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