

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2016  
PRONOUNCED ON : 19.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.479 of 2011  
&  
MP.No.1 of 2011

Kaliamurthy .... Appellant/Plaintiff  
Vs.

1.Purushothaman  
2.Jayakodi .... Respondents/Defendants

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 19.01.2011 passed in A.S.No.40 of 2010 on the file of the Subordinate Judge, Panruti confirming the judgment and decree dated 13.08.2010 passed in O.S.No.137 of 1999 on the file of the District Munsif Court, Panruti.

For Appellant : Mr.R.Gururaj  
For Respondents : Mr.A.Nilaphar for  
M/s.R.Meenal

J U D G M E N T

Challenge in this second appeal is made by the plaintiff against the Judgment and decree dated 19.01.2011 passed in A.S.No.40 of 2010 on the file of the Subordinate Judge, Panruti confirming the judgment and decree dated 13.08.2010 passed in O.S.No.137 of 1999 on the file of the District Munsif Court, Panruti.

2.Suit has been laid by the plaintiff for declaration, possession and mesne profits.

3.It is submitted that the suit property originally belonged to Anjalai Ammal. The plaintiff claims title to the suit property based upon the Will dated 07.03.1982, said to have been executed by Anjalai Ammal in his favour and in favour of his brother Vaidyanathan giving life interest to their father Chinnathambi. Further, according to the plaintiff, Anjalai Ammal had executed the sale deeds in respect of the suit property in favour of Vaidyanathan and the first defendant Purushothaman even during her life time and according to the plaintiff, the sale deed executed in favour

of the first defendant dated 13.08.1992 is a sham and nominal document and therefore according to the plaintiff as far as the suit property is concerned, he has title to the same and entitle to recover the possession of the same from the defendants. The plaintiff has also raised the plea of adverse possession. As rightly found by the Courts below, the Will dated 07.03.1982, said to have been executed by Anjalai Ammal has not been acted upon and this could be seen from the fact that even during her life time, Anjalai Ammal had alienated  $\frac{1}{2}$  extent in the suit survey number to the plaintiff's brother Vaidyanathan and the remaining  $\frac{1}{2}$  extent in the suit property in favour of the first defendant under the Sale Deed dated 13.08.1992 marked as Ex.A2. In this connection, it has to be noted that the first defendant is the son of the plaintiff and the second defendant is the wife of the plaintiff.

4.Now the evidence let in would go to disclose that following the estrangement between the plaintiff and the defendants they are living separately and it could also be seen that the plaintiff had contracted a second marriage with one Peedamathi illegally and neglected the defendants. In this connection, it could also be seen there was exchange of notices between the rival parties. In the notice dated 17.07.1996, sent by the second defendant, marked as Ex.B8, it could be seen that she has alleged that the plaintiff had left the marital home even during the year 1991.

5.Therefore, it could be seen as rightly argued by the defendants' counsel, the plea of the plaintiff that the Sale Deed dated 13.08.1992 in respect of the suit property in favour of the first defendant was brought about only for name sake and at the instance of the plaintiff and no title really passed through the same to the first defendant in respect of the suit property cannot be accepted in any manner. On the other hand, it could be seen that the property had been conveyed to the first defendant by Anjalai Ammal, she being the owner of the suit property for a valid consideration and therefore the title in respect of the suit property had passed on to the first defendant. Thereafter, it could also be seen that the defendants are enjoying the suit property through the kist receipts marked by them as Ex.B5 and B6. Therefore, the plea of the plaintiff that even after Ex.B2, he had been enjoying the suit property by leasing out the same cannot be accepted. In this connection, the Lease Deed dated 15.06.1992 marked as Ex.A5 was not accepted by the Courts below on the footing that it is not properly stamped and registered as required by law and also not established to be a true document. Further, the Courts below have also not placed reliance upon the evidence of PWs.2 & 3 for accepting the case of the plaintiff as they are not reliable and convincing. No exception could be taken to the same.

6.That the original owner of the suit property is Anjalai Ammal is not in dispute. It could therefore be seen

when the Will stated to have been executed by Anjalai Ammal has not been given effect to and when it is found that Anjalai Ammal had conveyed the suit property to the first defendant under Ex.A2 and it is the first defendant, who is enjoying the suit property thereafter, when it has not been established by the plaintiff that he is in the possession and enjoyment of the suit property in any capacity thereafter and when the lease deed projected by him is found to be unreliable, when it is found that the plaintiff has also left his marital home and contracted a second marriage, it could be seen that the case of the plaintiff that at his instance, the Sale Deed Ex.B2, dated 13.08.1992 has been brought about in the name of the first defendant without any consideration as such cannot be accepted. Therefore, it could be seen that the Courts below have rightly rejected the plaintiff's case and found that he has no title, possession and enjoyment of the suit property. The plea of adverse possession raised by the plaintiff also did not find favour of the Courts below as they have held that the plaintiff has miserably failed to establish that he has perfect title to the suit property by way of adverse possession.

7.In such view of the matter nothing is warranted to interfere with the findings and the conclusions of the Courts below for rejecting the plaintiff's case.

8.In conclusion, no substantial question of law is found to be involved in this second appeal. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

dn Sub Assistant Registrar  
To सत्यमेव जयते

1.The Subordinate Judge,  
Panruti.

2.The District Munsif Court,  
Panruti.

Copy To : The Section Officer,  
V.R.Section,  
High Court, Madras 104.

+1cc to M/s.R.Meenal, Advocate, S.R.No.3883  
+1cc to Mr.R.Gururaj, Advocate, S.R.No.3808

S.A.No.479 of 2011

KSJ (CO)  
CA(07/02/2017)