

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Second Appeal Nos.421 and 422 of 2016
and
C.M.P.No.7386 of 2016

Abdul Rahim ..Appellant in both appeals/Plaintiff

vs.

1. Nowman Khan

2. Nadeem Khan ...Respondents in S.A.No.421/16/ Defendants
2 and 3

Shaheerunnisa .. Respondent in S.A.No.422/16/ 8th
Defendant

Second Appeal No.421/16 filed under Section 100 of C.P.C. against the judgment and decree dated 30.08.2013 passed in A.S.No.8 of 2013 on the file of the Sub-Court, Vaniyambadi, reversing the Judgment and decree dated 17.01.2013 passed by the Principal District Munsif, Ambur, in O.S.No.2 of 2002.

Second Appeal No.422/15 filed under Section 100 of C.P.C. against the judgment and decree dated 30.08.2013 passed in A.S.No.9 of 2013 on the file of the Sub-Court, Vaniyambadi, reversing the Judgment and decree dated 17.01.2013 passed by the Principal District Munsif, Ambur, in O.S.No.2 of 2002.

For Appellant : Mr.J.Savaravanavel

For Respondents : Mr.N.Ishtiaq Ahmed

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

The plaintiff, who filed the suit in O.S.No.2 of 2002 on the file of District Munsif, Ambur, for permanent injunction, based upon a title, as per the registered document dated 22.05.1990, is the appellant herein, seeking a decree based upon the following questions of law:-

"1. Whether in a suit for permanent injunction relief cannot be granted merely on the denial of the title through the written statement?

2. Whether a mere denial of title without supporting evidence by the defendant will amount to casting of a cloud on the title of the suit property?

2. The plaintiff seeks title through the maternal grand mother. The maternal grand mother of the plaintiff stated to have purchased the suit property by three separate sale deeds as early as in the year 1937. According to the plaintiff, she executed gift deed for the suit property in favour of his mother on 04.01.1964. Thereafter, his mother, executed a registered gift deed on 22.05.1990 in his favour, since there was no objection raised by the 8th defendant, being the wife of the plaintiff's elder brother. It paved the way for a suit at her instance in O.S.No.283 of 1996, which was dismissed. Thereafter, the plaintiff filed the present suit in O.S.No.2 of 2002. The trial Court decreed the suit, but the lower Appellate Court reversed it on the premise that though the original sale deeds in favour of his grand mother make a mention of an extent of 2400 sq.ft., the subsequent gift deed in favour of plaintiff's mother and thereafter to him, speaks about an extent of 1176 sq.ft. alone. Thus, the lower Appellate Court has held that for the remaining extent, there is a cloud. Under those circumstances, the plaintiff will have to file a suit for declaration seeking title.

3. The learned counsel for the appellant submits that the matter has been settled inter se parties. Though documents in favour of the plaintiff speaks about lesser extent, it is a mistake and therefore, the suit ought to have been decreed as prayed for, since the appellant is in possession.

4. The learned counsel for the respondents submits that the appeal itself is not maintainable, since the suit property has been brought forth for sale, as the appellant being the guarantor, did not repay the amount to the Bank. Further, according to him, the proceedings under the SARFAESI Act has become final, when the third party having purchased the suit property.

5. The learned counsel for the appellant submits that the sale involves only an extent of 1176 sq.ft. and therefore, the possession of the remaining sq.ft., is still with the plaintiff.

6. This Court does not find any error in the Judgment and decree rendered by the lower Appellate Court. Admittedly, the plaintiff has to explain as to how he got title to the remaining extent, after deducting 1176 sq.ft. There is a cloud created to the title of the appellant to the said extent, after deducting 1176 sq.ft. Though the respondents have not marked the documents such as possession notice and sale effected under

SARFAESI Act, the same has not been disputed by the learned counsel for the appellant. In such view of the matter, even for the extent of 1176 sq.ft., this Court is unable to grant the decree for permanent injunction in view of the subsequent development, which is not disputed by the appellant. Hence, this Court does not find any merit in this appeal.

7. Accordingly, the substantial questions of law are answered in favour of the respondents and against the appellant. The Second Appeals are dismissed. No costs. However, while dismissing the appeals, it is left open to the appellant to file a comprehensive suit for declaration and other reliefs. Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Subordinate Judge, Vaniyambadi,

2. The District Munsif, Ambur.

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

+1 cc to Mr.N.Ishtiaq Ahamed, Advocate,sr.4451

+1 cc to Mr.J.Saravanavel, advocate,sr.4527.

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krd 23/2

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