



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.09.2017
CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A. (MD) No.948 of 2014
and
M.P. (MD) No.1 of 2014

WEB COPY

Ambujam Ammal

.. Appellant/Appellant/
1st Defendant

vs.

1. Santha Satheesh

.. 1st Respondent/1st Respondent/
Plaintiff

2. Jegadeesan

.. 2nd Respondent/2nd Respondent/
2nd Defendant

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.06.2014 made in A.S.No.86 of 2006 on the file of the Subordinate Judge, Tuticorin, confirming the judgment and decree dated 09.11.2004 made in O.S.No.332 of 2002 on the file of the District Munsif, Srivaikundam.

For Appellant	:	Mr.I.Suthakaran
For Respondent-1	:	Mr.M.R.S.Prabhu
For Respondent-2	:	No Appearance

JUDGMENT

The first defendant, who had lost before the Courts below, has preferred the above appeal challenging the decree granted in favour of the plaintiff in a suit for declaration, recovery of possession and for mesne profits.

2. The case of the plaintiff is that the suit property was purchased by him on 01.11.1996 from the second defendant. The plaintiff had put up a thatched shed on the suit property, obtained patta and had been enjoying the same. The plaintiff had permitted the first defendant to run a nursery School in the suit property. Accordingly, the first defendant was in permissive occupation. When the plaintiff demanded the first defendant to vacate the premises and handover the possession in the year 2002, the first defendant refused to do so. When enquired, it was found that the second defendant had sold the property to the plaintiff and the plaintiff had sold the same to the first defendant. Hence, the suit is filed for declaration and recovery of possession.



3. The first defendant had filed a written statement resisting the averments made in the plaint. It is the specific case of the first defendant that he had purchased the suit property from the second defendant on 03.05.1999. In the year 1993, the second defendant had allowed the son of the first defendant to be in occupation of the property for rent and accordingly, the first defendant's son was running a School in the suit property. In fact, there was an agreement of sale entered into between these second and first defendants on 05.07.1996. Thereafter, on 03.05.1999, the second defendant had sold the property to the first defendant. Though there was an agreement of sale between the first and second defendants, the plaintiff had purchased the property with an intention to defraud the first defendant. Hence, the first defendant prayed for dismissal of the suit.

4. The second defendant remained *ex-parte* throughout the proceedings.

5. Before the trial Court, on the side of the plaintiff, the plaintiff was examined himself as P.W.1 and as many as 7 documents were exhibited as Ex.A1 to Ex.A.7. On the side of the defendants, the first defendant was examined as D.W.1 and as many as 21 documents were exhibited as Ex.B.1 to Ex.B21.

6. On the above facts, after considering the documents and evidence, the Courts below had concurrently held against the first defendant and decreed the suit. Aggrieved by the same, the above Second Appeal has been filed by the first defendant.

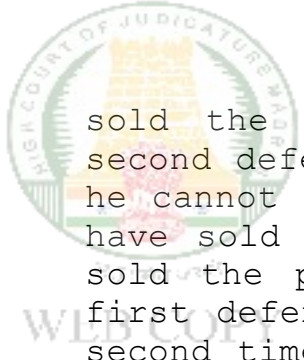
7. When the Second Appeal came up for admission, only notice was ordered.

8. It is admitted by the plaintiff as well as the first defendant that the suit property originally belonged to the second defendant and the same was purchased by the plaintiff under Ex.A-2 on 01.11.1996. After purchase, the plaintiff had also obtained computerised patta and has been paying the kist under Exs.A4, A6 and A7. In the meanwhile, it is stated that the first and second defendants had entered into sale agreements under Exs.B2 and B3 on 05.07.1996 and 22.09.1996 with respect to the suit property and thereafter, the same was purchased by the first defendant from the second defendant on 03.05.1999 under Ex.B-5.

9. As the plaintiff has filed the suit for declaration, the question that has to be decided in this Second Appeal is as to whether the plaintiff has got right or title over the suit property?

<https://hcservices.ecourts.gov.in/hcservices/>

10. The second defendant has sold the property on 01.11.1996 to the plaintiff. Thereafter, the second defendant himself had



sold the same to the first defendant on 03.05.1999. Once the second defendant had sold the property in favour of the plaintiff, he cannot have any right over the same. Therefore, he could not have sold the property to the first defendant and even if he had sold the property, it would not convey any right or title. The first defendant is alleged to have purchased the property for the second time from the same vendor who has already parted with the same in favour of the plaintiff. Therefore, the first defendant, having purchased the property for the second time, cannot have any right over the same, as the second sale is not valid and not binding on the plaintiff.

11. It is the case of the first defendant that there were agreements of sale on 05.07.1996 and on 22.09.1996 much prior to the purchase of the suit property by the plaintiff. Therefore, when the sale agreements were in force, the second defendant has sold the property to the plaintiff. The lower Appellate Court has also discussed on the said aspect that there were two sale agreements under Exs.B2 and B3 executed with respect to the same property with an interval of two months. On this score, the first defendant has not adduced any evidence or given any explanation. However, the reason given is that even before the date of sale by the Stamp Department, Tuticorin, i.e., the stamp paper was distributed, the date of sale agreement was entered. Therefore, the second agreement was executed. The Courts below have concurrently held that the said act of the defendants is only to defeat and defraud the plaintiff's legitimate right over the suit property having purchased under a valid sale deed. When the sale agreements themselves were held to be fraud, the sale under Ex.B5 is not valid and binding on the plaintiff. The appellant / first defendant has also not produced any documents relating to the suit property and the documents produced by him do not relate to the suit property. Hence, the first defendant has got no right or title over the suit property based on Exs.B2 and B3.

12. So far as the question of possession is concerned, the plaintiff had stated that he had permitted the first defendant to run the School in the name and style of 'Pon Natarajan Matriculation School'. However, the first defendant had denied the fact that the suit property has been occupied by him with the permission of the plaintiff. The Courts below have held that the possession of the first defendant and his son in the suit property was only permissive. In the absence of any other convincing evidence contrary to the same, the findings of the Court below are correct.

13. In the light of the above discussion, the concurrent judgment passed by the Courts below does not warrant any interference of this Court and there is no valid question of law arising for consideration in the above Second Appeal.



14. In the result, this Second Appeal is dismissed, confirming the judgment and decree of the Courts below. However, there will be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Tuticorin,

2. The District Munsif,
Srivaikundam

+ 1 CC TO Mr.I.Suthakaran , ADVOCATE IN SR No. 80430

+ 1 CC TO Mr.M.R.S.Prabhu, ADVOCATE IN SR No. 80580

srn

MK/MR KKR/SAR-1/26.10.2017/4P/5C

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M.P. (MD) No.1 of 2014
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