

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No. 1872 of 1987

G.Pachaimuthu

.. Plaintiff/Appellant/Appellant

Vs.

1. Sellammal (died)
2. G.Veerasami
3. Kamalam
4. Kausalya
5. Shrinivasan
6. S.Ratnamala
7. R.Vijayakumari
8. N.Shanti
9. R.Kumar
10. R.Ravi

.. Defendants/Respondents/Respondents

R2 to R10 brought on record as LRS of deceased R1 as per Order of this Court dated 12.10.2009 made in CMP.3146/07.

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 15.09.1987 and made in A.S.No. 103 of 1986 on the file of the District Court, Tiruchirapalli, confirming the Judgment and Decree dated 09.12.1985 and made in O.S.No. 93 of 1984 on the file of the Sub-Court, Karur.

For Appellant

: Mr.T.Dhanasekaran

For Respondent

: Mr.T. Murugamanickam
for M/s. Zeenath Begum

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JUDGMENT

This Second Appeal arises out of O.S.No. 93 of 1994 on the file of the Sub Court, Karur.

2. The said suit had been dismissed by Judgment dated 09.12.1985. Thereafter, the plaintiff filed A.S.No. 103 of 1986, which came up for consideration before the District Court,

Trichy, on 15.09.1987. By Judgment and Decree of the same date, the Appeal was dismissed. Thereafter, the plaintiff had filed the present Second Appeal. The second Appeal had been pending in this Court from the year 1987 for the past more than 31 years. It has not been admitted. Even at the time of admission, this Court found that there were no substantial question of law involved. However, notice was issued to the respondent. The respondent entered appearance.

3. Heard Mr.T.Dhanasekaran, learned counsel for the appellant and also Mr.T. Murugamanickam, learned Senior Counsel for the respondent.

4. It must also be mentioned that a note had been put up before the Hon'ble Chief Justice in view of the fact after the formation of the Madurai Bench of the Madras High Court, whether the Appeal could be heard by the Principal Bench. The Hon'ble Chief Justice by order dated 24.06.2010 directed that this appeal should be heard in the Principal Bench.

5. The plaintiff G.Pachaimuthu had filed the suit for declaration of title and for permanent injunction restraining the defendant from interfering with possession of the suit properties. The plaintiff claimed that the first item of suit property was purchased on 20.03.1967 and the second item of suit property was purchased on 14.09.1972. However, both were purchased benami in the name of the defendant with consideration provided by the plaintiff. It was stated that the defendant did not have capacity to purchase the property.

6. During trial, the sale deeds for the two properties were produced as Exs.B-1 and B-6. It had been specifically found by the trial Court, which findings were also affirmed by the First Appellate Court that the original documents are in the custody of the defendants and that the possession of the properties was also with the defendant. During the course of trial, exhibits were also marked to show that the building plans, namely, Exs. B-7 and B-99 were in the name of the defendants. The claim of the plaintiff that he had provided the consideration for purchase of the properties was specifically found to be not proved.

7. It was also found that the property tax receipts marked as Exs. B-77 and B-97 for the period 1967 till the date of institution of the suit continuously were in the name of the defendant. As a matter of fact, the defendant had also been issued with a notice by the Karur Municipality for unauthorised construction of building.

8. It was concurrently held that these documents very clearly proved that the defendant has been in continuous

possession of the two properties and exercised rights as owner. Ex.B-71 is the estimate prepared for the proposed construction of the house and Ex.B-72 is the notice issued by the Karur Municipality to remove unauthorised construction. During the respective judgments, both the Courts also observed that the plaintiff was an advocate and consequently, he should have taken proper precautions while purchasing property and it was unbelievable that he would purchase the property in the name of the defendant, knowing the consequences thereof. On the other hand, it was also found that the defendant was an illiterate woman and there was every possibility of being exploited by the plaintiff. Both the court below had concurrently held against the plaintiff.

9. The learned counsel for the appellant has not been able to make out any case for admission or that there were points of law involved much less substantial questions of law for admitting the Appeal. Consequently, the Second Appeal is rejected. No costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

To

1. District Judge,
Tiruchirapalli.
2. Sub-Judge, Karur.

Copy To

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

+1cc to M/s.Zeenath Begum, Advocate, S.R.No. 89328

S.A.No. 1872 of 1987

NMI (CO)
GN(21/02/2019)