

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.159 of 2018

Vimalasundari Ammal

... Appellant/plaintiff

Vs.

Sundaram

... Respondent/defendant

Prayer:- The Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 11.11.2009 in A.S.No.15 of 2008 on the file of the Sub Judge, Neyveli confirming the judgment and decree dated 01.02.2008 in O.S.No.81 of 2006 on the file of the District Munsif cum Judicial Magistrate, Neyveli.

For Appellant : Mr.R.Selvakumar

For Respondent : Mr.V.Anand

J U D G M E N T

Aggrieved by the unanimous findings of the Courts below, the plaintiff has filed the above Second Appeal in a suit for declaration and permanent injunction.

2. The suit was filed in the year 2006. It is the case of the plaintiff that the suit properties originally belonged to one Natarajan, from whom, on 17.09.1985, one Janakiraman purchased the same. From the said Janakiraman, on 18.01.1994, one Swaminathan had purchased the properties by way of two sale deeds. From the said Swaminathan and his brother Karthikeyan, on 23.04.1998, the plaintiff had purchased the suit properties. The suit properties are lying in Survey No.70/7 - an extent of 0.18 cents and in Survey No.70/19 - an extent of 0.23 cents. As the plaintiff claimed that excepting himself nobody else had the right or title over the property and that the defendant tried to disturb the possession, the suit was filed.

3. The suit was resisted by the defendant contending that earlier there was a partition suit in O.S.68 of 1974 and a preliminary decree was passed in the same. Pursuant to the same, the defendant had taken possession of the suit properties in E.P.No.28 of 1986 on 24.03.2006, an extent of 0.09 cents in Survey No.70/7 and 0.12 cents in Survey No.70/19. It is specifically contended by the defendant that his brother Natarajan had sold the property pending lis. Therefore, the purchase by the plaintiff is hit by lis pendens.

4. Before the trial Court, on the side of the plaintiff, the plaintiff herself examined as P.W.1 and two more witnesses were examined as P.W.2 and P.W.3 and Exs.A1 to 18 were marked. On the side of the defendant, the defendant himself examined as D.W.1 and Exs.B1 to B3 were marked.

5. On considering the above pleadings, the Courts below had concurrently found that the plaintiff is not entitled to the decree as prayed for.

6. The suit has been filed on 19.06.2006. The possession of the properties were taken by the defendant on 24.03.2006. Therefore, the suit was filed only after the delivery has been taken by the defendant. Though the plaintiff had stated in the plaint that he has been in possession of the suit property, he should have known that the delivery was taken on 24.03.2006 itself. Hence, it has to be presumed that the plaintiff had knowledge about the earlier suit, execution proceedings and delivery taken in the same. It is also categorically found that the purchases by the plaintiff as well his vendors and vendors' vendor were all pending the suit. Therefore, the said sale transactions are hit by doctrine of lis pendens. It is specifically argued by the learned counsel for the appellant/plaintiff that in the Execution Proceedings, only an extent of 0.09 cents in Survey No.70/7 and 0.12 cents in Survey No.70/19 were taken in possession. Therefore, at least, the plaintiff should be given a decree with respect to balance of the extent. It has to be noted that excepting the sale deeds, the plaintiff has not produced any other documents to show that the balance of lands belonged to his vendor and vendor's vendor had marketable title.

7. Having failed to produce any documents even with respect to the balance of the extent, the suit has been rightly dismissed by the Courts below and that the plaintiff is not entitled for the decree. In the absence of any question of law, much less substantial question of law arising for consideration out of the concurrent findings of the Courts below, no interference is warranted in this Second Appeal and the appeal deserved to be dismissed.

8. Accordingly, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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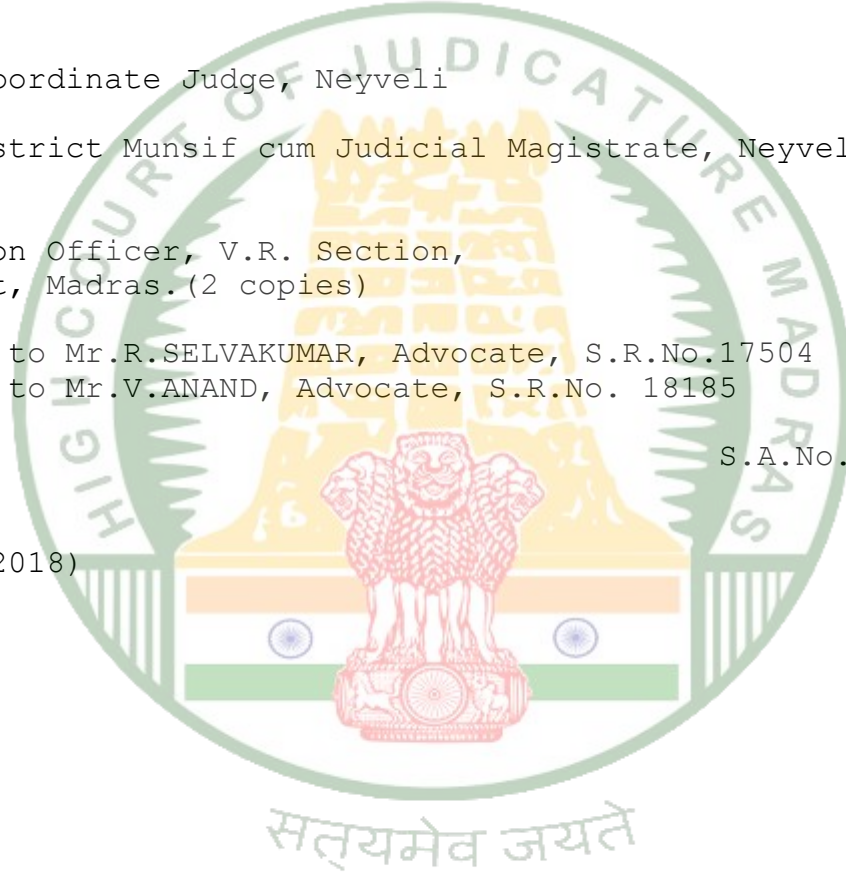
- 1.The Subordinate Judge, Neyveli
2. The District Munsif cum Judicial Magistrate, Neyveli.

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The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.R.SELVAKUMAR, Advocate, S.R.No.17504
+1cc to Mr.V.ANAND, Advocate, S.R.No. 18185

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MG (CO)
TR(09/04/2018)



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