

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.92 of 2018

and

C.M.P.No.2022 of 2018

1. Jayalakshmi Ammal

2. Logambal

... Appellants /Plaintiffs

Vs

1. Sumaiah

2. Muthuja

... Respondents/defendants

PRAYER : The Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.99 of 2004 dated 31.01.2005 on the file of the Court of Subordinate Judge, Ranipet, Vellore District confirming the decree and judgment in O.S.No.127 of 2001 dated 23.03.2004 passed by the Court of District Munsif, Ranipet, Vellore District.

For appellants : Mr.M.P.Jayaprakash

For Respondents : Mr.P.Mani

J U D G M E N T

The appellants, who are the plaintiffs, aggrieved by the concurrent findings of the Courts below, has filed the above Second Appeal.

2. The suit in O.S.No.127 of 2011 was filed, seeking declaration of the execution proceedings in E.P.No.103 of 1991 in O.S.No.193 of 1989 on the file of the Sub Court, Ranipet as illegal and not binding on them and for consequential injunction.

3. It is the case of the plaintiffs that originally, the property belonged to one Ambujammal by virtue of sale deed dated 21.06.1938, having purchased the same, in favour of one Rama Mudali, who is her son. The said Rama Mudali had three children, namely, Chandrasekaran, Rajasekaran and Jayalakshmi. The said Jayalakshmi is the first plaintiff and her daughter is

the second plaintiff, who was married to the said Rajasekaran. It is claimed by the plaintiff that she is also a part of the joint family, as she has a share in the property. The said Rama Mudali died on 18.09.1999. There was a suit filed by the first respondent against the said Rama Mudali in O.S.No.193 of 1989, in which, he suffered a decree, pursuant to which, E.P.No.107 of 1991 was filed and the first defendant had purchased the property in the Court auction on 19.10.1992. The second defendant is the husband of the first defendant. It is now the case of the plaintiffs that there is a discrepancy in the description of the property and since they were not parties to the proceedings, the sale is not binding on them. Hence, the suit was filed for declaration.

4. The suit was resisted by the defendants by filing the written statement contending that the first defendant is the Court auction purchaser, having purchased the property in E.P.No.107 of 1991 to the knowledge of the plaintiffs herein. In fact, O.S.No.293 of 1992 was filed for partition by the said Rama Mudali's son Thyagarajan, in which, all of them were parties. The plaintiffs were also parties to the said suit and the same was dismissed on 25.03.1994. While the said suit was pending, the first defendant had purchased the property through Court auction. The plaintiffs, having knowledge about the same, have come forward with the suit without challenging the execution proceedings. As the first defendant is a Court auction purchaser through the Court, his rights have to be protected.

5. The Courts below have concurrently held that the plaintiffs have no right in the suit property, as they had not challenged the execution proceedings, though they were aware of the same. In a partition suit, they were also parties to the suit at the relevant point and having exhausted all the remedies, the present suit has been filed by the plaintiffs, only to delay the legitimate claim of the first defendant, who is the bonafide purchaser in Court auction.

6. Besides, the Courts below have also categorically held that the suit property is the house on the Erikarai, bearing door No.13. Both the parties have admitted that the said description is correct. There seems to be the first defendant in one of the boundaries. But, it is not proved that the same would take away the identity of the property. A commissioner was also appointed to identify the property before the trial Court, who was also found that what was sold to the defendants was correct and the same was confirmed and delivery was effected to the defendants. Admittedly, the first defendant is in possession of the property. As the plaintiffs have come to the Court, without challenging the execution proceedings and also

not substantiated their contentions, the Courts below have rightly non-suited them. As there is no infirmity in the judgment and decree of the Courts below, this Court finds no reason to interfere with the same.

7. Accordingly, the Second Appeal is dismissed, confirming the judgments and decrees of the Courts below. No costs.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

srn

To

1. The Subordinate Judge, Ranipet, Vellore District

2.The District Munsif, Ranipet, Vellore District.

+lcc to Mr.P.Mani, Advocate SR.No.10694

S.A.No.92 of 2018

CNR(CO)
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