

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 23.11.2018
Delivered on : 29.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.489 of 2018
&
C.M.P.No.13240 of 2018

1.M.Sundaram

2.R.Palanisamy

3.Dream Land Water Theme Park
Near Harijan Colony
Uthamasholapuram Village & Post
Salem Taluk & District ...Appellants/Appellants3,4,&5/
Defendants 7,8,&9

Vs

1.Rajammal

2.A.Sadasivam

3.A.Devanathan

4.A.Prakashpathi

5.A.Athirathan

6.A.Shanmugasundaram

7.Chandravadhani

... LR.s of Sole Planitiff/
Respondents 6 to 12/ Respondents 1 to 7

8.Kaliammal

9.K.Periyamuthu

10.K.Rajendran

11.K.Jayakumar .. Defendants 1 to 4/ Respondents 2 to 5
Respondents 8 to 11

12.M.Palanisamy

13.P.Anandhababu

.. Respondents 12 &13/Appellants
1&2/Defendants 5 & 6.

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the order passed in A.S.No.32 of 2011 dated 26.11.2013 on the file of the II Additional Subordinate Court, Salem confirming the Judgment and Decree passed in O.S.No.1913 of 2004 dated 23.11.2009 on the file of the II Additional District Munsiff Court, Salem.

For Appellants : Mr.D.Shivakumaran

O R D E R

The defendants 7 to 9 are the appellants in the above Second Appeal. The Second Appeal is filed challenging the Judgment and Decree in A.S.No.32 of 2011 passed by the II Additional Subordinate Judge, Salem in confirming the Judgment and Decree of the learned II Additional District Munsif, Salem in O.S.No.1913 of 2004. The said suit was filed by the plaintiff for a declaration that he is entitled to Item No.1 of the property, to direct defendants to deliver possession of Item No.2 and to direct defendants to open the well closed by them after encroaching into land bearing Survey No.65/1C, measuring 5 cents by means of mandatory injunction and which was Item No.2 of the property. Item No.1 of the property relates to 18½ cents in Survey No.65/1B of Uthamasholapuram Village, Salem.

2.It is the case of the plaintiff that he is entitled to an extent of 18½ cents in Survey No.65/1B under UDR patta granted to him on 25.07.1985 that the plaintiff has been in exclusive possession and enjoyment of the extent 18½ cents. The case of the plaintiff is that he had recently come to learn that the defendants 1 to 4 have sold the property to defendants 5 to 8 without having an iota of a right or title to the property and after looking at the encumbrance certificate dated 19.01.2004, he came to learn about the sale deed dated 28.05.2003.

3.From a perusal of the recital in the sale deed the plaintiff came to learn that the defendants 1 to 4 have sold the property on totally false recitals. The plaintiff and the defendants 1 to 4 claim to be heirs of one Sithayee. The plaintiff is the grandson of said Sithayee

through her son Perumal who was born to Sithayee and Munian. According to plaintiff she was living with one Kali @ Kaliappan, through him she had three sons namely Krishnan, Muthusamy @ Chinnamuthu and Munusamy. The 1st defendant is the 1st wife of Krishnan and the 2nd defendant is his son through the 1st defendant. Defendants 3 and 4 are the sons of Krishnan through is 2nd wife Kandhammal.

4.The plaintiff would state that on coming to know about this sale deed, he had issued legal notice to the defendants 1 to 4 calling upon them to cancel the sale deed. There was no response from him to file the suit. The defendants took out defense that there was an oral partition amongst the sons of Sithayee in which Survey No.65/1B was divided between Perumal taking 12 cents and Krishnan 6½ cents.

5.It was the case of the defendants that under sale deed dated 20.01.1986 the legal heirs of Perumal had sold an extent 12½ cents in Survey No.63/3 and 6 cents in Survey No.64/7 to Krishnan and on the same day a similar extent in the two Survey numbers was also conveyed to Muthusamy @ Chinnamuthu. It is however the case of the defendants that in the sale deed the survey number has been wrongly mentioned as 64/7 instead of 65/1B. The defendants have further contended that on coming to know about mistake they had requested the plaintiff to rectify the sale deed which he refused. Therefore, the defendants 1 to 4 had sold the property measuring an extent of 8½ cents in Survey No.65/1B to defendants 5 to 8. The defendants would also claim exclusive right to lands in Survey No.65/1C.

6.The plaintiff filed a reply statement contending that the defendants 1 to 4 ought to have got rectification done or filed a suit. He would further contend that on a perusal of the of the sale deeds executed by him would clearly show that the suit property are totally different.

7.The parties had gone to trial and in the Trial Court the plaintiff had examined himself as P.W.1 and marked EX.A.1 to EX.A.25. On the side of the defendants the 7th defendant entered the witness box as D.W.1 and the 4th defendant as D.W.2. They had marked EX.B.1 and EX.B.2 in support of their case. The Trial Court after an elaborate consideration of the evidence available on record came to the conclusion that the Survey number has been correctly mentioned in the respective sale deeds namely EX.A.2 and EX.A.22 and if really there was a mistake the defendants

ought to have verified have the mistake undone immediately. The fact that for so many years the rectification deed has not been executed only prepossess that the sale was intended only with reference to the Survey number mentioned therein. This Judgement and Decree was taken up by way of an appeal in A.S.No.32 of 2011 on the file of the II Additional Subordinate Judge, Salem by defendants 5 to 9. The Appellate Court has also confirmed the said Judgment and Decree. Challenging this concurrent Judgment and Decree the defendants 7 to 9 are before this Court.

8.Heard, Mr.D.Shivakumaran, learned counsel appearing for the appellants. From a perusal of documents particularly EX.A.2 and EX.A.22 which has been executed as early as in the year 1986 it is clear that the sale deed was only intended with reference to the Survey numbers mentioned therein. This fact is further reiterated by recitals in EX.A.25 which is the sale deed executed by the defendants 1 to 4 and others and the late Krishnan in favour of one Selvaraj. The recitals makes a reference to EX.A.2 and EX.A.22. Therefore it is very clear that there was no mistake in the identity of the property conveyed under EX.A.2 and EX.A.22. Without title to the property the defendants 1 to 4 have sold the suit property to the defendants 5 to 8. As held by the Courts below it does not convey any title to defendants 5 to 8.

9.The Judgment and the Decree of the Courts below are therefore in order and no question of Law much less a Substantial Question of Law has been made out by the appellant.

In the result, the Second Appeal stands dismissed. Consequently, connected Civil Miscellaneous Petition is also closed. However, there shall be no order as to costs.

Sd/-

सत्यमेव जयते Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The II Additional Subordinate Court,Salem.
 - 2.The II Additional District Munsiff Court,Salem.
 - 3.The section officer,VR Section,High court,Madras
- +1cc to Mr.D.Shivakumaran, Advocate SR.No. 81991

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A.SK(11/01/2019)