

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :25.09.2018

PRONOUNCED ON:29.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.335 of 2015

and

M.P.No.1 of 2015

A.Narayanasamy ... Appellant/Plaintiff

Vs.

1.A.Kesavan

2.Rajambal

3.Sundaravinayagam

... Respondents/Defendant

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 27.11.2014 in A.S.No.32 of 2014 on the file of the Sub Judge, Arni, Thiruvannamalai District and reversing the judgment and decree in O.S.No.133 of 2008 dated 30.09.2013 on the file of the District Munsif Court, Arni.

For Appellant : Mr.A.Paneerchelvam

For Respondents : No representation

No appearance

set exparte

vide order dated 25.09.2018

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 27.11.2014 passed in A.S.No.32 of 2014 on the file of the Subordinate Court, Arni, reversing the judgment and decree dated 30.09.2013 passed in O.S.No.133 of 2008 on the file of the District Munsif Court, Arni.

2.The second appeal has been admitted on the following substantial questions of law.

(a) Whether the Sale Deeds registered in favour of plaintiff and defendant in respect of suit property have conferred title of their respective share?

(b) Whether the Sale Deed registered in favour of defendant by his vendor mentioning the portion of the common property inherited along with other two L.R's would amount partition after accepting the sale deed executed by other L.R's in favour of the plaintiff?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The suit has been laid by the appellant/plaintiff simplicitor for the relief of permanent injunction. The plaintiff seeks claim of title to the suit property based on the sale deed dated 21.02.2007 said to have been executed in his favour by the reversioners of Thirunavukarasu and as according to the plaintiff, Thirunavakarasu and his wife had died issueless and therefore, the reversioners had conveyed the suit property in his favour by way of the abovesaid sale deed and since then, he has been in the possession and enjoyment of the suit property by obtaining patta, paying house tax etc., and inasmuch as the defendants without any authority, interfered with his possession and enjoyment of the suit property, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. Per contra, the defendants had resisted the plaintiff's suit contending that the claim of the plaintiff that the suit property as described in the plaint had been allotted to the share of Thirunavakarasu is itself false and therefore, the claim of the plaintiff that he had acquired title to the suit property from the reversioners of Thirunavakarasu by way of the sale deed dated 21.02.2007 is also false and further, according to the defendants, the plaintiff has no title, possession and enjoyment of the suit property at any point of time and hence the plaintiff is not entitled to seek the relief of permanent injunction as prayed for.

6. Considering the rival claims of title to the suit property projected by the parties, particularly the defendants challenging the alleged title of Thirunavakarasu to the suit property as projected in the plaint and also challenging the validity of the sale deed dated 21.02.2007 on the basis of which

the plaintiff claims title to the suit property, in such view of the matter, as rightly determined by the first appellate court, the plaintiff should have endeavored to seek relief of declaration of title to the suit property for sustaining his claim of title to the suit property. On the other hand, despite the challenge put forth by the defendants to the plaintiff's claim of title to the suit property, even thereafter, the plaintiff has not endeavored to amend the plaint to include the declaration of title to the suit property in the plaint. In such view of the matter, it is seen that the suit laid by the plaintiff has to fail for not seeking the relief of declaration as outlined in the Supreme Court decision reported in AIR 2008 SCC 2033 [Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by L.Rs and Others].

7. The case of the plaintiff that the suit property had been originally allotted to Thirunavakarasu, is itself, had been challenged by the defendants. Materials placed on record go to show that Chinnappu Mudaliar had five sons namely Arunachalam, Somasundharam, Rayarathinam, Sundharamoorthy and Thirunavakarasu and now according to the plaintiff, "ABGH" portion shown in the plaint plan had been allotted to the three sons of Chinnappu Mudaliar namely Rayarathinam, Sundharamoorthy and Thirunavakarasu. The further case of the plaintiff is that accordingly "EFGH" portion shown in the plaint plan was allotted to the share of Thirunavakarasu. However, there is no material placed by the plaintiff to evidence that "EFGH" portion shown in the plaint plan was allotted to Thirunavakarasu and the same has been in his possession and enjoyment as put forth by him.

8. Per contra, it is the case of the defendants that "ABGH" portion shown in the plaint plan had been allotted to Rayarathinam, Somasundharam and Sundharamoorthy and thus it is found that the defendants have challenged the case of the plaintiff that Thirunavakarasu had been allotted the share in the portion "ABGH" area shown in the plaint plan. Furthermore, it is not in dispute that the plaintiff had purchased the portion allotted to Rayarathinam by way of the sale deed dated 16.07.1973 marked as Ex.B4. Furthermore, it is also seen and not in issue that Somasundharam had purchased the share of Sundharamoorthy by way of a sale deed dated 27.03.1964 which document has come to be marked as Ex.A1. Accordingly, it is found that on a perusal of Ex.A1, as rightly put forth by the defendants, the property described therein is shown as situated to the east of the property belonging to Somasundharam and therefore, it is found that as rightly put forth by the defendants, the portion shown as "EFGH" appear to have been allotted only to Sundharamoorthy as put forth by the defendants and not to Thirunavakarasu as put forth by the plaintiff. Furthermore, as could be seen, Somasundharam had mortgaged the

property purchased by him by way of Ex.A1 sale deed as well as the other portion allotted to him by way of a mortgage deed dated 27.03.1964 marked as Ex.A6. Now, it is the case of the defendants that Somasundharam had been given half share of the property belonging to him to his wife Boologammal, thereafter, Boologammal had conveyed the said property in favour of her younger daughter Rajammal by way of a registered Will dated 14.02.2002, it is further stated by the defendants that they had purchased the property from Rajammal by way of a sale deed dated 16.03.2007. Thus it is seen that as per the case of the plaintiff, he seeks title to the suit property based on the sale deed dated 21.02.2007 and on the other hand, the defendants seek title to the suit property based on the sale deed dated 16.03.2007.

9. Even for the sake of arguments that the defendants had failed to establish their claim of title to the suit property, that by itself, would not entitle the plaintiff to obtain the reliefs as prayed for without establishing his vendor's title to the suit property as well as his claim of possession and enjoyment of the suit property for sustaining the relief of permanent injunction as above discussed. At the foremost, the plaintiff has failed to establish that Thirunavakarasu had been allotted the suit property as claimed by him. When the same itself is in dispute and on the other hand, when the materials placed on record go to show that as per the case of the defendants, the suit property appears to have been allotted to Sundharamoorthy, which had been subsequently purchased by Somasundharam by way of Ex.A1 sale deed and thereafter, Somasundharam had also been dealing with the property as his own by mortgaging the same etc., and such being the position, it is seen that the plaintiff's claim of title to the suit property based on the sale deed dated 21.02.2007 said to have been executed by the reversioners of Thirunavakarasu, on the footing that Thirunavakarasu and his wife had died issueless, particularly, the plaintiff having failed to establish the title of Thirunavakarasu to the suit property as projected by him, in such view of the matter, the first appellate court is justified in not accepting the plaintiff's claim of title to the suit property.

10. Furthermore, as rightly pointed out by the first appellate court, even assuming for the sake of arguments, that the suit property had been allotted to Thirunavakarasu as claimed in the plaint, when it is seen that the plaintiff has not established that he had purchased the suit property from all the reversioners of Thirunavakarasu, accordingly, it is seen that the plaintiff would not acquire a valid claim of title to the suit property based on the sale deed dated 21.02.2007.

11. In any event, as above pointed out, when there is a serious dispute as regards the claim of title to the suit property as projected by the plaintiff and the defendants have in toto disputed and challenged the title of the plaintiff to the suit property and the plaintiff having failed to amend the plaint seeking the relief of declaration, on that score alone, as above pointed out, the plaintiff's suit is liable to be dismissed.

12. Furthermore, even assuming for the sake of arguments that the plaintiff would be entitled to maintain the suit for the relief of permanent injunction on the strength of his possession and enjoyment of the suit property, however, when there is no material worth acceptance placed by the plaintiff to show that the suit property is in his possession and enjoyment and when the patta document marked as Ex.B7 projected in the matter has not been shown to be validly issued by the competent authority and the Kists receipts marked as Ex.B8 are not shown to be relating to the suit property, accordingly, it is found that as rightly determined by the first appellate court, absolutely there is no proof placed by the plaintiff to conclude that the suit property has been in his possession and enjoyment as put forth by him and in such view of the matter also, it is seen that the plaintiff cannot be granted the relief of permanent injunction as prayed for.

13. In the light of the above discussions, when the plaintiff has failed to establish his alleged vendor's title to the suit property as above discussed and furthermore, when the plaintiff has failed to establish his possession and enjoyment of the suit property, it is seen that the plaintiff cannot maintain the suit for relief of injunction and in such view of the matter, the judgment and decree of the first appellate court in dismissing the plaintiff's suit do not warrant any interference. The substantial questions of law formulated in the second appeal are accordingly answered.

14. In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mfa

To

1. The Sub Judge, Arni, Thiruvannamalai District.

2.The District Munsif, Arni.

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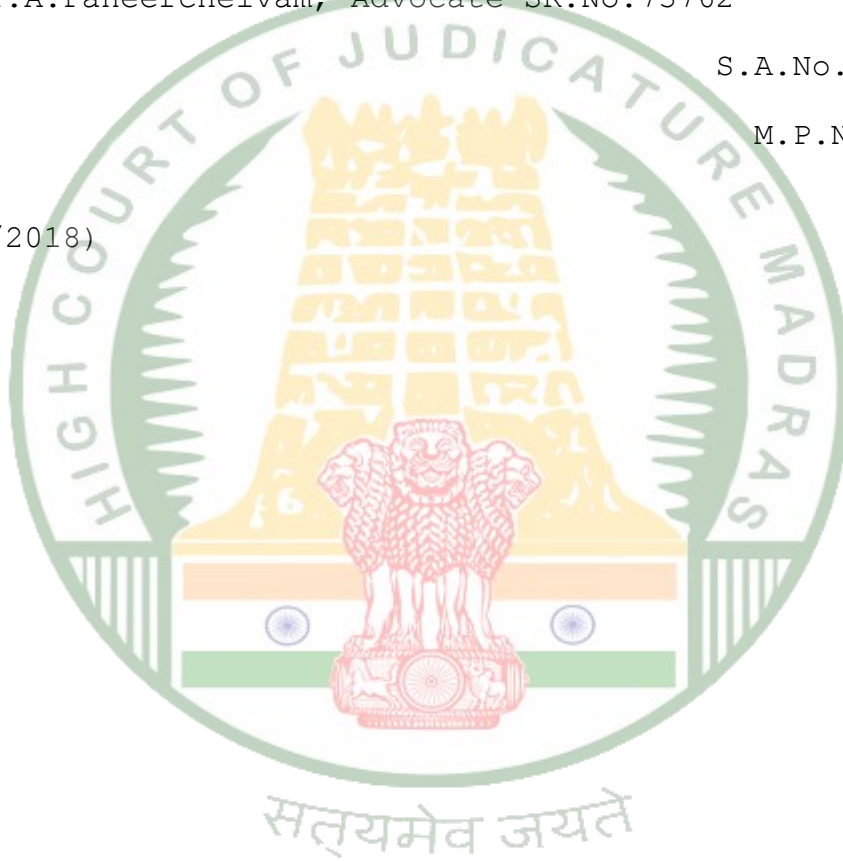
The Section Officer,
VR Section,High Court, Chennai.

+1cc to Mr.A.Paneerchelvam, Advocate SR.No.73762

S.A.No.335 of 2015
and
M.P.No.1 of 2015

KJI (CO)

GMV (29/11/2018)



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