

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.Nos.536 of 2008

1.Balasubramaniam
2.L.Mani

..Appellants/Defendants 2 & 3

Vs.

1.Subbulakshmi
2.Sumathi
3.Senthilkumar
4.Saravanan

..Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 30.10.2007 passed in A.S.No.51 of 2007 on the file of the Additional District Judge, Fast Track Court No.IV, Bhavani, Erode confirming the judgment and decree dated 22.09.2006 made in O.S.No.300 of 2004 on the file of the I Additional District Munsif, Bhavani, Erode.

For Appellants : Mr.Rajendiran
for Mr.V.Narayanaswami

For Respondents: Mr.T.Murugamanikam, Senior Counsel
for M/s.Zeeneth Begum

J U D G M E N T

The defendants 2 and 3 in OS.No.300 of 2004 are the appellants. The suit in OS.No.300 of 2004 was filed by the legal representatives of one Krishna Mudaliar who was admittedly the owner of the suit property.

2. According to the plaintiffs the said Krishna Mudaliar entered into an agreement of sale on 22.01.1977 with one Thavasiammal agreeing to sell the property for a consideration of Rs.30,500/- and she had paid an advance of Rs.10,000/-, a period of three months was fixed for performance of the said agreement.

3. Contending that Krishna Mudaliar failed to execute the sale deed despite the demands Davasiammal filed a suit in OS.No.704 of 1980 seeking specific performance as well as permanent injunction. The trial Court by its judgment and decree dated 13.07.1984 rejected the prayer for specific performance however granted a decree for permanent injunction restraining the defendants from interfering with the possession of the plaintiffs.

4. As against the said judgment and decree two appeals were filed before this Court in AS.Nos.784 of 1984 and 926 of 1987. While the appeal in AS.No.784 of 1984 was filed by Thavasiammal the plaintiff in OS.No.704 of 1980, the appeal in AS.No.926 of 1987 was filed by the legal representatives of Krishna Mudaliar, who had by then died, questioning the decree for injunction.

5. This Court by a common judgment dated 12.03.2001 dismissed the appeal filed by Thavasiammal in AS.No.784 of 1984 and allowed the appeal filed by the legal representatives of Krishna Mudaliar in AS.No.926 of 1987. As a result the suit in OS.No.704 of 1980 stood dismissed in its entirety. It is after the said dismissal, the plaintiffs who are the legal representatives of the Krishna Mudaliar sought for recovery of possession.

6. The suit was resisted by the defendants primarily contending that they had filed Letters Patent Appeals against the judgment of this Court in AS.Nos.784 of 1984 and 926 of 1987, inasmuch as those appeals were pending, the plaintiffs suit is premature. But it appears that the letters patent appeals were dismissed without even being numbered, since there was a failure on the part of the appellants therein to comply with the conditional order of this Court. The attempt made by them to restore the appeals also failed. Therefore, taking into account the above facts the Courts below decreed the present suit as prayed for. Aggrieved the defendants 2 and 3 in OS.No.300 of 2004 have come forward with this second appeal.

7. I have heard Mr.Rajendiran, learned counsel appearing for Mr.V.Narayanaswami, learned counsel for the appellants and Mr.T.Murugamanickam, learned Senior Counsel appearing for M/s.Zeeneth Begam, learned counsel for the respondents. Notice of admission alone was ordered. On notice respondents have entered appearance through counsel.

8. The one and only defence that was taken by the appellants before the trial Court was that the Letters Patent Appeals were pending and hence the suit was premature. The title of Krishna Mudaliar is not in dispute inasmuch as Thavasiammal sought for

specific performance against him in an earlier suit in which she failed. Now that the letters patent appeals have also been dismissed the defendants are rendered defenceless.

9. I therefore see no question of law much less a substantial question of law in order to enable this Court to entertain this appeal under Section 100 of the Code of Civil Procedure. Hence, the appeal is dismissed without being admitted. No costs.

dsa

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Fast Track Court No.IV, Bhavani, Erode.

2. The I Additional District Munsif,
Bhavani, Erode.

Copy to: The Section Officer
VR Section,
High Court, Madras

+1cc to Zeenath Begum, Advocate SR.NO.62736

SSI (CO)
sm:9.10.2018

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