

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.Nos.601 of 2008

and

M.P.No.1 of 2008

- 1.Thaiyalnayaki (Deceased)
- 2.Senthil Murugan
- 3.Sivashankar
- 4.Kalyani

[Appellants 2 to 4 brought on record as LRs of the deceased sole appellant vide order of Court dated 11.08.2018 made in CMP.No.13618 to 13620 of 2018 in S.A.No.601 of 2008]

..Appellants/LRS of Sole Appellant/2nd
Appellant/2nd Defendant

Vs.

- 1.Manimaran
- 2.Nagarajan
- 3.Moganambigai

..Respondents/Respondents 1 and 2/1st
Appellant/Plaintiff/Defendant 1 and 3

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of Principal sub court, Mayiladuthurai, dated 14.11.2007 made in A.S.No.36 of 2007 confirming Judgment and decree of Additional Distirct Munsif court, Mayiladuthurai in OS.No.90 of 2005 dated 05.01.2007.

For Appellants : Mr.S.Sounthar

For Respondentz: Mr.A.MuthuKumar for R1
R2 - No Appearance

J U D G M E N T

The second defendant in O.S.No.90/2005 on the file of the Additional District Munsif Court, Mayiladuthurai has filed the instant Second Appeal. On her death pening appeal her legal representatives have been brought on record as appellants 2 to 4. The suit was filed by the Plaintiff/ 1st Respondent seeking recovery of possession of 3 cents of land in Survey No.104/B-25B of Kazhanivasal Village, Tharangampadi Taluk, Nagapattinam District.

2. According to the plaintiff, the 1st defendant who is the mother of the 2nd defendant had sold an extent of 8 cents of land within specific boundaries in favour of the 3rd defendant viz., Nagarajan, under the sale deed dated 10.08.1993 marked as Ex.A2. The said Nagarajan had inturn sold the property purchase by him in Ex.A2 to the plaintiff under the sale deed dated 17.04.1998 marked as Ex.A1. According to the plaintiff, the defendants 1 & 2 joined together and trespassed into the extent of 3 cents of property on the eastern side in the year 2003 and hence he sought for a decree for recovery of possession.

3. The suit was resisted by the defendants containing that what was sold under Ex.A2 dated 10.08.1993 was excluding the suit property and they continue to be in possession and they have also been granted Patta under Natham Nilavari Thittam.

4. The trial Court decreed the suit and the said decree was confirmed by the lower appellate Court. The Courts below had found that even as per Ex.A2 sale deed, the property sold is said to be situate on the West of Ramaiyan's land, therefore the claim of the defendants 2 & 3 that they had retained certain portion of the land at the time of sale under Ex.A2 on 10.08.1993 is false. The Courts below also found that the defendant in her evidence as DW1 has admitted that her mother had sold the entire extent of land under Ex.A2 dated 10.08.1993 and the same was conveyed to the plaintiff by the 3rd defendant under the same dated 17.04.1998.

5. Mr.S.Sounthar, the learned counsel appearing for the appellants would, however, submit that the fact that the patta has been granted to the 1st defendant in the year 1998 would show that they had been in possession of the property, even assuming that they were in a possession of the property from 1998, the suit has been filed in 2005, within 12 years, for recovery of possession. Therefore, I do not see any question of law much less a substantial question of law, in order to enable this court to entertain this appeal.

6. Hence, this Second Appeal is dismissed without being admitted. There will be no order as to cost. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Principal Sub Court,
Mayiladuthurai.
2. Additional Distirct Munsif Court,
Mayiladuthurai.
3. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate Sr.57315

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ak[col]
srg 19/09/2018

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