

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 29.11.2018
Coram

The Honourable Ms.Justice P.T.ASHA
S.A.No.634 of 2018
and
C.M.P.No.19686 of 2018

Mohan

...Appellant/Plaintiff

Versus

Chinnathambi

...Respondent/Defendant

This Second Appeal is filed under Section 100 of C.P.C praying to set aside the judgment and decree of Principal District Judge, Namakkal dated 19.04.2018 made in A.S.No.26 of 2015 confirming the judgment and decree of Subordinate Judge, Rasipuram, dated 31.07.2015, made in O.S.No.8 of 2013 and consequently, decree the suit by allowing above Second Appeal.

For Appellant : Mr.S.Sounthar

J U D G M E N T

The plaintiff in the suit is the appellant before this Court. The suit O.S.No.8 of 2013 has been filed for a declaration and consequential injunction.

2.1. The case of the plaintiff/appellant is that he became the owner of the property by virtue of a Sale Deed dated 27.05.2011 under which his maternal grandmother Chinnammal had sold the property to him. Prior to that there was a Agreement of Sale dated 15.09.2009 and on the date of the Agreement, possession was also handed over to the plaintiff.

2.2. It is the further case of the plaintiff/appellant that the suit property is being cultivated by him and in these circumstances, the defendant/respondent who is the nephew of his grandmother and who owns the neighboring land wanted to purchase the property from his grand mother. This request was turned down by the plaintiff's grandmother which angered the defendant. Therefore, he tried to forcibly trespass into

the property and evict the plaintiff/appellant from the said property. This attempt was thwarted by the plaintiff/appellant and therefore, left with no other alternative, the plaintiff/appellant was constrained to file the suit for the reliefs stated above.

3.1. The defendant resisted the suit by inter alia contending that the suit is based on absolutely false allegation. The plaintiff's grandmother was widowed 40 years back and therefore, defendant's father with an intent to look after his sister had permitted her to occupy the property which was a Poromboke land. The said land was developed by the defendant's father who had dug a Well and laid a pump set as well in the suit property. The suit property was enjoyed by the plaintiff and his family till 08.01.2013.

3.2. The plaintiff's grandmother had two children viz., Kathirvel and Meena and the plaintiff/appellant was the son of said Meena. Meena had committed suicide and the plaintiff's father had also died due to his excessive drinking. The plaintiff's grandmother was heavily indebted and she was forced to sell the suit property and the defendant/respondent agreed to purchase the same for a total sale consideration of Rs.1,00,000/- and a sum of Rs.10,000/- was given as advance and an Agreement of Sale was created between the plaintiff's grandmother and the defendant/respondent. On the very same day of the Agreement of Sale, the possession was also handed over to the defendant/respondent. However, the plaintiff's grandmother denied the signature in the sale agreement and it appears that immediately upon the defendant sending a notice calling upon the plaintiff's grandmother to execute the sale deed she has created the Agreement of Sale in favour of her grand child and thereafter, a sale deed. The defendant would contend that the sale deed in favour of the plaintiff was a sham and nominal one and therefore, he sought for the dismissal of the suit.

4. The trial Court had dismissed the suit, against which the plaintiff had filed A.S.No.226 of 2015 on the file of the Principal District Court, Namakkal. The learned Principal District Judge had also confirmed the judgment and decree of the trial Court.

5. Heard Mr.S.Sounthar, learned counsel for the appellant.

6. The plaintiff had come forward with a case that he had purchased the property by virtue of a Sale Deed dated

27.05.2011. It is seen that even prior to this sale agreement, the plaintiff's grand mother had executed an Agreement of Sale in favour of the defendant and though the grandmother has denied the signature in the said agreement, her signature has been confirmed by sending the document for forensic examination. The Report has come back stating that the signature found in the Sale Agreement is that of Chinnammal, the plaintiff's grandmother.

7. Once the Agreement of Sale is proved, then the defendant has got a subsisting right in the property and the sale in favour of the appellant/plaintiff is therefore bad. The Lower Appellate Court has rightly confirmed the judgment and decree of the trial Court. I find no infirmity in the judgment and decree passed by the Courts below.

8. In the result, this Second Appeal is dismissed and the judgment and decree passed by the Courts below is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,
Namakkal.

2.The Subordinate Judge,
Rasipuram.

+1cc to Mr.S.Sounthar , Advocate SR.No. 81963

S.A.No.634 of 2018

A.SK(12/03/2019)

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