

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE Mr. JUSTICE G.K. ILANTHIRAIYAN

S. A. No. 1132 of 1998

1. Kaliammal

2. Chinna Veeraboyan ... Appellants/Appellant/Plaintiff

-Vs-

1. Deivanai Ammal (Died)

2. Murugesan

3. Indira

4. Palaniammal ... Respondents/Respondent/Defendant

(R1 (died) RR2 to 4 are recorded as Lrs of the deceased R1 vide order of Court dated 12/11/2019 made in SA.No. 1132/98 as per memo dated 12/11/2019)

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 01.09.1997 made in A. S.No. 123 of 1996 on the file of the Sub-court, Gobichettipalayam, confirming the judgment and decree dated 27.09.1996 in O.S. No. 135 of 1994 on the file of District Munisf Court, Gobichettipalayam.

For Appellants : Mr. P.R. Balasubramanian

For Respondents : R1-Died

Mr. M. Guruprasad
for R2 to R4

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J U D G M E N T

This second appeal is directed as against the judgment and decree dated 01.09.1997 made in A. S. No. 123 of 1996 on the file of the Sub-court, Gobichettipalayam, confirming the judgment and decree dated 27.09.1996 in O.S. No. 135 of 1994 on the file of the District Munisf Court, Gobichettipalayam.

2. For the sake of convenience, the parties are referred to, as per their ranking in the trial Court.

3. The case of the plaintiffs in brief is that, the plaintiffs filed a suit for injunction. The first plaintiff purchased the part of the suit property from one Chinnappan on 14.12.1989 and the second plaintiff purchased another part of the suit property from one Chinnappan on 23.12.1993. The second plaintiff is the lessor for the entire suit schedule property, his lease also registered in this regard, there is no objection by the first defendant. While Ameena entering into the suit property on 14.03.1993, the plaintiffs came to understand that, already the defendants filed a suit in O. S. No. 401 of 1982 and they also sought for possession of the property in E. P. No. 38 of 1994. As per the sale deed executed in favour of the plaintiffs, the defendants have no share in the suit schedule property. In fact on 23.12.1993, the defendants as a Kartha of the family registered the sale deed in favour of the plaintiffs in respect of suit schedule property, now it cannot be questioned by the defendants. Therefore, the plaintiffs sought for permanent injunction against the defendants.

4. Resisting the same, the defendants filed a written statement and stated that, the first defendant is the mother of the second to fourth defendants. The husband of the first defendant died twenty years before. The defendants filed a suit in O. S. No. 401 of 1982 for partition and also for possession of suit schedule property in E. P. No. 38 of 1994. Therefore, the sale deed dated 29.12.1993 is not affecting the rights of the defendants in any manner. Only to deny the shares of the defendants, the plaintiffs filed this false suit against the defendants. The lease also registered behind the back of the defendants and the defendants are absolutely not aware of the lease. The so called vendor Chinnappan is not at all the guardian of the defendants and also not the Kartha of the family. Therefore, his entire sale deed is not at all connected to the defendants. Further the defendants stated that, in the sale deed dated 14.12.1989 and 23.12.1993, the extent of the property was not mentioned, as such, the defendants are entitled for their respective share as per the partition decree passed in O. S. No. 401 of 1982. Hence they prayed for dismissal of the suit.

5. On the side of the plaintiffs, PW1 to PW3 were examined and Exs. A1 to A20 were marked. On the side of the defendants, DW1 and DW2 were examined and Exs. B1 to B10 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit filed by the plaintiffs for injunction. Aggrieved by the same, the plaintiffs

filed an Appeal Suit in A. S. No. 123 of 1996 and the same was also dismissed. Aggrieved by the same, the plaintiffs preferred this Second Appeal.

6. At the time of admission of the Second Appeal, the following substantial question of law was framed :-

" Whether the person in possession both as a lessee and as a purchaser is not entitled to the relief of injunction and whether his possession is not to be protected ?"

7. Heard Mr. P.R. Balasubramanian, learned counsel appearing for the appellants and Mr. M. Guruprasad, learned counsel appearing for the second to fourth respondents.

8. The plaintiffs filed a suit for permanent injunction as against the defendants on the strength of the sale deed executed by one Chinnappan dated 14.12.1989 and 23.12.1993. Already the second plaintiff filed a suit in O. S. No. 83 of 1994 on the file of the District Munsif Court, Gobichettipalayam. Even before that, the defendants filed a suit in O. S. No. 401 of 1982 for partition and the same was decreed in their favour. Thereafter, they also filed E. P. No. 38 of 1994 to take possession of their respective share and on 14.03.1994 the Ameena went to the suit property. Therefore, the case of the plaintiffs is that, they came to know about the partition suit only at the time, when Ameena went to the suit property is unbelievable one. Further after the death of the husband of the first defendant, she eloped with another person. Thereafter one Chinnappan being the brother of the husband of the first defendant took care of the second to fourth defendants. Without the capacity of Manager or Kartha of the family, he leased out the property among with the share of the defendants in favour of the plaintiffs. On perusal of the evidence of DW1, it is absolutely unbelievable that when title over the property belongs to the defendants, the said Chinnappan executed the sale deed in favour of the plaintiffs.

9. When the said Chinnappan has no title or right over the property, the sale executed by him in favour of plaintiffs cannot be taken into consideration and it cannot bind the defendants in any manner. On the strength of the sale deed executed by the said Chinnappan in favour of the plaintiffs, only to prevent the defendants taking their respective shares on the strength of the decree in O. S. No. 401 of 1982 for partition among themselves, the present suit has been filed as against the defendants. Therefore, the Court below rightly considered the evidence on record both orally and documentary and dismissed the suit. Therefore, this Court does not find any point to interfere with the judgment and decree passed by the

Court below.

10. In the light of the above discussions, the substantial question of law formulated in the Second Appeal is answered accordingly in favour of the defendants and against the plaintiffs.

11. Accordingly, this Second Appeal is dismissed with costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

vji

To

1. The Sub-court,
Gobichettipalayam
2. The District Munsif Court,
Gobichettipalayam.
3. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.P.R.Balasubramanian, Advocate, S.R.No. 103854

+1cc to Mr.M.Guruprasad, Advocate, S.R.No. 104608

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NRL (CO)
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