

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.922 of 2002

1.Anwar Basha
2.Mumtaj
3.Noorjahan
4.Nazar

Appellants

...Versus...

1.Thastageer
2.Allah Bakshi
3.Hayad Basha
4.Salim
5.Pyardi Bi
6.Sarambi
7.Fathima Bi
8.Razia
9.Ismail
10.Kamal Basha
11.Acharappakkam Yadavar Sangam
rep.by its Executive Member,
Acharappakkam
Mathurantakam Taluk,
Kancheepuram District.
12. Ramasamy

Respondents

सत्यमेव जयते

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 31.08.2001 passed in A.S.No.6 of 2000 on the file of the Sub-Court, Madurantakam reversing the judgment and decree dated 19.11.1999 passed in O.S.No.91 of 1995 on the file of the District Munsif Court, Madurantakam.

For Appellants
For R1
For R2 to R7,11
For R8 to R10

::Mr.K.Govi Ganesan
::Mr.M.N.S.Mohamed Habeeb Raja
::No appearance
::Notice sent-
Notice Return no such person
::Died

For R12

J U D G M E N T

The defendants 7,8,9 and 10 in O.S.No.91 of 1995 on the file of the District Munsif Court, Mathurantakam are the appellants herein. The said suit had been filed by the plaintiffs seeking a declaration that the plaintiffs and the defendants are jointly entitled to 1/2 share in the suit property. The lower Appellate Court had granted a decree of Permanent Injunction against the appellants.

2. The Second Appeal had been admitted on the following two Substantial Questions of Law:-

i) Whether the first Appellate Court is right in granting a decree for injunction?

ii) Whether the plaintiff is entitled to seek a relief of declaration instead of seeking partition in the suit properties?

3. Along with the appeal, the appellants had filed C.M.P.No.7308 of 2002 for stay of the operation of judgment and decree dated 31.08.2001 in A.S.No.6 of 2000 on the file of the Sub-Court, Mathurantakam. The respondents/plaintiffs filed C.M.P.No.13020 and 13021 of 2002 to vacate the stay.

4. In the affidavit filed in support of the said application in Paragraph 4, it had been stated as follows:-

4. I state further that the second appeal filed by the defendant 7 to 10 alone is incompetent and not maintainable at all. It is a joint decree granted by the appellate Court against the defendants. Defendants 11 to 14 have not challenged the appellate Court decree which has become final and binding on them. Secondly the defendants 7 to 13 are said to have alienated the entire suit property measuring about 13470 sq.ft on 19.12.1999 immediately after dismissal of my above suit to one B.Arangaramanujam under sale deed dt.14.12.99, one V.Nandagopal son of Velu Pillai under sale deed dt.14.12.99, Mallika, wife of V.Nandagopal under sale deed dt.14.12.99 and Mrs.Banumathi, wife of Ramasamy under sale deed dt.14.12.99.

5. The learned counsel for the appellants made the following endorsement in C.M.P.No.7308 of 2002:-

"The petitioner is not pressing this C.M.P.No.7308 of 2002 and hence the same may be dismissed as withdrawn".

6. In view of the said endorsement, C.M.P.No.7308 of 2002 was dismissed as withdrawn on 11.11.2002. On the same day, C.M.P.Nos.13020 and 13021 of 2002 were also closed, since no separate orders were required.

7. The appeal has been kept pending for the past 16 years. It is the contention of the learned counsel for the respondents/plaintiffs that the suit property has been sold and consequently the appeal has become infructuous. The sale has not been denied by the appellants. The stay application had also been dismissed as withdrawn on 11.11.2002 itself. This Second Appeal is therefore dismissed, since nothing survives in this matter. No costs.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

nvi

To

- 1.The Sub-Court, Madurantakam
- 2.The District Munsif Court, Madurantakam.
3. The section officer,
VR Section,
High court Madras

+1cc to Mr.K.Govi Ganesan , Advocate SR.No. 8501

+1cc to Mr.M.N.S.Mohamed Habeeb Raja , Advocate SR.No. 8072

S.A.No.922 of 2002

A.SK(18/03/2019)

WEB COPY