IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.232 of 2018

1.Raman
2.Aaraan
..Plaintiffs/Appellants/Appellants

Vs.

1.Veeran
2.Rangan
3.Sembaan (Alias) Shanmugam
..Defendants/Respondents/Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned Principal Subordinate Judge, Erode, Erode District dated 06.06.2011 in A.S.No.85 of 2010, confirming the judgment and decree of the learned Additional District Munsif, Erode dated 20.07.2010 in O.S.No.700 of 2007 and to decree the said suit as prayed for.

For Appellants : Mr.K.Sivasubramanian
For Respondents : No appearance

J U D G M E N T

The plaintiffs in O.S.No.700 of 2007 whose suit for declaration, partition and other reliefs was concurrently dismissed by both the courts below have come forward with this Second Appeal.

2. The case of the plaintiffs in the suit was that the father of the 1st plaintiff Kuppan and the father of the defendants Naachi who are brothers have purchased 2 acres of land on 06.05.1955 and continued to be in joint possession of the property. According to the plaintiffs, the defendant have started interfering with the plaintiffs' possession of an extent of 60 cents over and above their entitlement. Hence, the plaintiffs have come forward with the present suit. Even in the suit, the plaintiffs have come forward with a plea that the preliminary decree in O.S.No.1176 of 1980 dated 21.02.1983 was not valid inasmuch as no final decree was passed. The plaintiffs also sought for a declaration to that effect.

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3. The suit was resisted by the defendants claiming that though the claim of the plaintiffs that Kuppan and Naachi have purchased 2 acres of land on 06.05.1955 is true, subsequently on 02.05.1970, the father of the 1st plaintiff had sold an extent of 60 cents to the father of the defendants viz., Naachi. The said sale deed dated 02.05.1970 was produced as Ex.B7.

4. The defendants would also contend that the present suit is barred in view of the decree in O.S.No.1176 of 1980 dated 21.02.1983. According to the defendants, it is well open to the plaintiffs to seek a final decree as per the preliminary decreed dated 21.02.1983.

5. The courts below have on consideration of evidence on record concluded that the 1st plaintiff being a party to O.S.No.1176 of 1980 cannot seek a declaration that the preliminary decree is not binding on him. The courts below also found that the sale deed dated 02.05.1970 executed by Kuppan viz., father of the 1st plaintiff in favour of Naachi, father of the defendants is also valid and binding on the plaintiffs. On the above said conclusion, the suit was dismissed and the said dismissal was confirmed on appeal. Aggrieved, the plaintiffs have come forward with this Second Appeal.

6. I have heard Mr.K.Sivasubramanian, learned counsel appearing for the appellants.

7. Mr.K.Sivasubramanian, the learned counsel appearing for the appellants would however contend that despite sale deed having been executed in 1970, the revenue records continued in the name of Naachi and Kuppan and hence it should be presumed that the sale deed was not acted upon. He would also submit that the preliminary decree in O.S.No.1176 of 1980 cannot be said to be binding on the present plaintiffs.

8. I am unable to accept both the said contentions of the counsel for the appellants. Admittedly the brothers viz., Kuppan and Naachi have purchased 2 acres of land on 06.05.1955 and they were in joint possession of the same. In the year 1970, the father of the plaintiffs had sold the 60 cents out of the said 2 acres in favour of his brother Naachi viz., other joint owner.

9. Thereafter, Kuppan even during his life time filed a suit in O.S.No.1176 of 1980 which had ended in a preliminary decree dated 21.02.1983, wherein the sale deed dated 02.05.1970 was accepted and Kuppan was allotted only 40 cents. No doubt, it is admitted case of the parties that the final decree has not been passed yet. However, it is the preliminary decree which is final and conclusive as regards the entitlement and same is binding on

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the parties. It cannot be said that the preliminary decree is invalid because it was not followed by a final decree.

10. The Courts below have analysed the evidence and come to a conclusion that the present suit seeking partition and declaration that the decree dated 21.02.1983 in O.S.No.1176 of 1980 is not binding is not maintainable. It is also seen that the 1st plaintiff was party to the suit in O.S.No.1176 of 1980, therefore he cannot be heard to contend that the preliminary decree is not binding on him on the ground that it is not followed by a final decree. I therefore don't find any question of law much less a substantial question of law in order to enable this court to entertain this Second Appeal.

11. Hence, this Second Appeal is dismissed without being admitted. There will be no order as to costs.

s/d-
Assistant Registrar(CS V)

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Sub-Assistant Registrar

dsa
To

1. The learned Principal Subordinate Judge,
   Erode.

2. The learned Additional District Munsif,
   Erode.

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