

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

S.A. 453 of 2018

Sundararajan (died)

1. S.Vijaya
2. S.Saravanan
3. N.Mahesh
4. S.Ramachandran
5. M.Komathi
6. K.Varalakshmi ... Appellants/Appellants/LRS of
Plainiff

Vs

Ethiraj Mudaliar (died)
Saroja (died)

1. E.Mani
2. E.Kothandan
3. E.Ramamoorthy
4. E.Babu
5. E.Jagadeesan
6. E.Rani
7. E.Lakshmi
8.E.Ramani ... Respondents/Respondents/LRs of Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 24.10.2017 made in A.S.No.86 of 2014 on the file of the Court of the Subordinate Judge, Arakkonam, confirming the Judgment and Decree dated 27.02.2012 made in O.S.No.70 of 2001 on the file of the Court of the District Munsif, Sholinghur.

For Appellants : Mr.S.V.Jayaraman,
Senior Counsel for
Mr.K.V.Shanmughanathan

For Respondents : M/s.M.Stalin for R1 to R8

JUDGEMENT

The plaintiff is the appellant in the Second Appeal. The suit has been filed for declaration declaring the title of the 1st plaintiff and also for the consequential injunction.

- 2.The case of the plaintiff's is that, the suit property was originally belongs to plaintiff's father one Govinda Mudali, and one Rathina Mudali has filed a suit against the plaintiff's father for recovery of money. In order to discharge the debt, the plaintiff's father has sold an extent of 0.42 cents and the remaining extent of 0.42 cents was in possession and enjoyment of the plaintiff's father. The plaintiff's father and his sons are in joint possession of the suit property. Now, the defendant is interfering with the possession of the suit property. Hence, the plaintiff has filed the suit.
- 3.The defendants have contested the suit denying the averments made in the plaint and stated that the suit property belongs to one Thayarammal, wife of Govinda Mudali, plaintiff's mother, and she was in possession and enjoyment of the suit property. The said Thayarammal has mortgaged the property in favour of one Deivanai ammal and also executed a sale agreement in her favour. Thereafter, the defendants have filed a suit against Thayarammal in O.S.No.406/1974, before the Trial Court, and the Trial Court has decreed the suit. Subsequently, the sale deed was executed in favour of the defendants. Thereafter, the defendants were in possession and enjoyment of the suit property.
- 4.The Trial Court after considering the pleadings as well as the evidences both oral and documentary dismissed the suit, holding that the plaintiffs have failed to prove that the suit property originally belongs to Govinda Mudali and they have inherited the suit property. However, the defendants have proved their title by establishing that the property was inherited by way of execution of the decree granted against the plaintiffs. Feeling aggrieved with the same, they have preferred an appeal in A.S.No.86 of 2014, on the file of Subordinate Judge, Arakkonam, and the lower Appellate Court has also concurred with the findings of the Trial Court, and on considering the materials available on record, has come to a conclusion that the defendants have established their title over the property, and whereas the plaintiffs have failed to

prove the same, and dismissed the appeal. Aggrieved over the same, the present Second Appeal has been filed.

5. I have heard Mr.S.V.Jayaraman, learned Senior Counsel appearing for the appellants and Mr.M.Stalin, learned counsel appearing for respondents and considered their submissions and perused the entire materials available on record.
6. Earlier, this Court without admitting the appeal, ordered notice to the respondent. Today, when the matter taken up for hearing, the learned Senior Counsel appearing for the appellants submitted that both the courts below have concurrently dismissed the suit, after considering the evidence both oral and documentary in proper perspective, given a wrong finding, that the suit filed by the plaintiff without impleading the other brothers as parties is not maintainable and dismissed for non-joinder of necessary parties. Per contra, the learned counsel appearing for the defendants submitted that the defendants have established their title over the suit property by virtue of the sale deed executed pursuant to a decree passed against the defendants' father and there is no irregularity and illegality in the judgment and decree passed by both the courts below.
7. Both the courts below after considering entire evidence both oral and documentary, on facts, concurrently came to a conclusion that the defendants have established their right over the suit property, whereas the plaintiffs have failed to do so. I have carefully considered the entire materials available on record, and I do not find any irregularity and perversity in the judgment and decree passed by both the courts below, and no substantial question of law arises for consideration in the Second Appeal. In the result, the present Second Appeal stands dismissed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge,
Arakkonam.

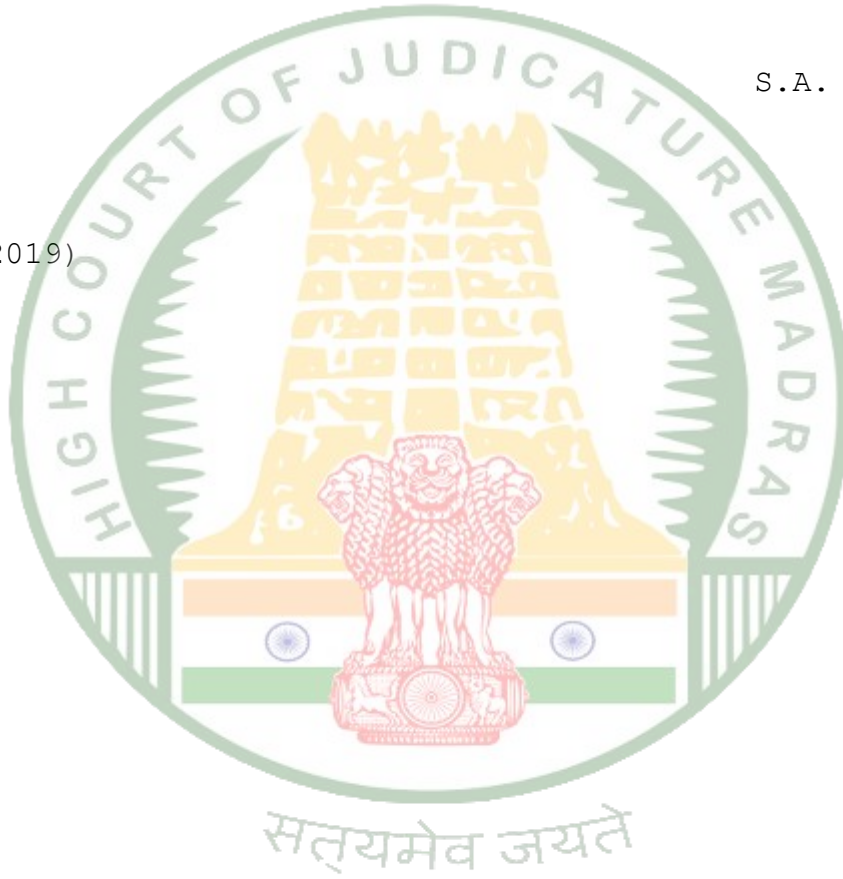
2.The District Munsif
Sholinghur.

+1 CC to Mr.K.V.Shanmughanathan, Advocate sr 24382.

+1 CC to Mr.M.Stalin, Advocate sr 23970

S.A. 453 of 2018

TM(CO)
SP(11/06/2019)



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