

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2019

PRONOUNCED ON : 24.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.621 of 2019
and
C.M.P.No.10747 of 2019

Banukumar ... Appellant

Vs.

Thiruvannamalai Kundrakudi Adheenam,
Rep.by Adheenakartha Sri La Sri Poonambala
Desiga Paramacharya Swamigal Kundrakudi,
Office at Hotel Karpagam, No.19, South Mada Street,
Mylapore, Chennai -41.
... Respondent/Plaintiff

Prayer:-

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 19.02.2019 in A.S.No.64 of 2017 on the file of the Subordinate Judge, Tambaram confirming the judgment and decree dated 04.08.2017 in O.S.No.645 of 2005, on the file of the Principal District Munsif, Alandur.

For Appellant : Mr.D.Ravichander

सत्यमेव जयते
J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 19.02.2019 passed in A.S.No.64 of 2017 on the file of the Subordinate Court, Tambaram, confirming the judgment and decree dated 04.08.2017 passed in O.S.No.645 of 2005, on the file of the Principal District Munsif Court, Alandur.

2. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

3. The suit has been laid by the plaintiff against the defendant seeking for a direction to direct the defendant to

remove the superstructure on the suit property and handover the vacant possession of the suit property to the plaintiff's Mutt.

4. According to the plaintiff the suit property along with the other properties comprised in survey Nos.234/3 and 234/4 measuring an extent of 4.05 acres situated in the suit village belongs to the plaintiff's Mutt and one Shanmuga Sundharam Pillai purporting to be the agent of the plaintiff's Mutt had sold some plots without the authority of the plaintiff and the defendant had purchased one plot namely the suit property, however after the present Adheenam had taken over the management of the plaintiff's Mutt, found that the properties belonging to the plaintiff's Mutt had been sold by the agents without the authority of the plaintiff's Mutt and therefore, inasmuch as, the sale made in favour of the defendant is against the interest of the Mutt, according to the plaintiff, it has been necessitated to institute the suit for appropriate reliefs.

5. The main contention putforth by the defendant is that he is a bonafide purchaser for value and following the purchase, he had also put up the construction at huge costs and enjoying the suit property and the plaintiff's Mutt had suppressed the obtainment of the prior sanction of the Commissioner, HR&CE qua the sale of the suit property and the defendant is not aware of the same and under the bonafide presumption that the vendor had the right to sell the suit property, the defendant had purchased the same and the defendant is not a party to the proceedings levied in the High Court as regards the suit property and hence the plaintiff is not entitled to seek and obtain the reliefs prayed for.

6. Insofar as the suit property and other properties belonging to the plaintiff's Mutt, it is found that the persons who had claimed title to the suit property aggrieved over the fixation of the sale price by the Commissioner, had moved the Writ Petitions in the High Court and though they were successful in the Writ Petitions, in the Writ Appeals preferred by the Commissioner, HR&CE in W.A.Nos.1198 and 1199 of 1983, the copy of which document had been marked as Ex.A2, this Court had held that for the sale of the properties belonging to the plaintiff's Mutt including the suit property sanction under section 34 of the HR&CE Act having not been obtained and accordingly held that the sanction is essential for the consideration of the necessity and benefit to the institution and as the same was found to be completely absent in the alienation effected in respect of the properties belonging to the plaintiff's Mutt including the suit property, accordingly this Court in the abovesaid Writ Appeals passed appropriate orders directing the Commissioner of HR&CE to reconsider the entire matter in the light of section 34 of the HR&CE Act and following the same, it is found that the

Commissioner of HR&CE had passed the order dated 26.04.1989 marked as Ex.A4 whereunder, it was held that the sale of the properties belonging to the Mutt is not beneficial to the Mutt and there is no necessity for the Mutt to sell the properties and accordingly determined to lease out the properties belonging to the Mutt through public auction.

7.The order passed in the Writ Appeals had not been put to challenge and the same has become final. Similarly, the order passed by the Commissioner, HR&CE pursuant to the directions of the Division Bench in the abovesaid Writ Appeals has not been put under challenge. In the light of the above position, it is found that the properties belonging to the plaintiff's Mutt including the suit property should only be leased out by way of public auction and the alienations made with reference to the same are null and void.

8. In the light of the above position, when the sale in respect of the suit property in favour of the defendant has no valid sanctity, particularly lacking the sanction of the Commissioner, HR&CE as mandated under law and resultantly the sale in favour of the defendant qua the suit property being null and void, in such view of the matter, when the plaintiff is the owner of the suit property and when the defendant claims to be in the possession of the suit property based on a null and void sale transaction, in such view of the matter, it is found that as rightly determined by the Courts below, the defendant is liable to hand over the possession of the suit property after removing the construction put up by him in the suit property to the plaintiff as prayed for.

9.The defendant's counsel contended that the defendant is a bonafide purchaser without knowledge of the proceedings of the High Court. However considering the materials placed on record it is found that the defendant's vendor namely Mary Isabel is a party to the proceedings before the High Court and when the defendant is found to have purchased the suit property during the pendency of the Writ Appeal proceedings and in such view of the matter, the order passed in the Writ Appeals would definitely bind the defendant's vendor as well as the defendant and as abovenoted the Commissioner, HR&CE had finally determined that the sale in favour of the defendant in respect of the suit property is not for the benefit of the plaintiff's Mutt and that there was no necessity for the sale of the same and particularly when the sale in favour of the defendant lacks the legal sanction of the Commissioner HR&CE as above noted, the sale transaction in favour of the defendant should only be declared as null and void and accordingly the Courts below are found to have rightly come to the conclusion that the defendant is bound to hand over the vacant possession of the suit property

to the plaintiff's Mutt after removing the superstructure put up thereon and accordingly rightly determined that the plaintiff is entitled to seek and obtain the reliefs as prayed for.

10. In the light of the abovesaid factors when it is found that the Courts below had rightly assessed and analysed the materials placed on record both factualwise and legalwise and determined that the plaintiff is entitled to obtain the reliefs prayed for, resultantly I do not find any valid reason to interfere with the concurrent judgment and decree of the Courts below and in such view of the matter, inasmuch as no substantial question of law is found to be involved in this second appeal, accordingly the second appeal is found to be devoid of merits and is consequently dismissed. Connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge,
Tambaram.
2. The Principal District Munsif,
Alandur.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.51512

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and
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GJII(CO)
CS/05/07/2019

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