

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 28.06.2019
PRONOUNCED ON : 25.07.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.56 of 2016
and
CMP No.1413 of 2016

1. Shobby Chand Surana
2.M/s.Susan Property Services Pvt. Ltd.
Rep. by its Managing Director
Namitha Surana
113, N.S.C. Bose Road
Sowcarpet, Chennai 600 079

...Appellants/Defendants

Vs.

1. Mohammad N. Rasheed
2. Mohammad N. Nabi

...Respondents/Plaintiffs

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 10.07.2015 made in A.S.No.29 of 2012 on the file of the Sub court, Tiruttani, confirming the judgment and decree dated 31.07.2012 made in O.S.No.146 of 2006 on the file of the District Munsif Court, Tiruttani.

For Appellants : Mr.N. Manokaran
For Respondents : Mr. P. Sidharthan

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 10.07.2015 passed in A.S.No.29 of 2012 on the file of the Subordinate court, Tiruttani, confirming the judgment and decree dated 31.07.2012 passed in O.S.No.146 of 2006 on the file of the District Munsif Court, Tiruttani.

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

3. Suit for permanent injunction and mandatory injunction.

4. Briefly stated, according to the plaintiffs, the survey No.4 consisting of 28.02 acres belonged to their mother Kader Bi and that she had sold 5 acres in the same to one Appasamy and executed four settlement deeds dated 20.03.1984 and 27.03.1984 settling 7 acres each in favour of the plaintiffs and handed over the possession of the same to the plaintiffs and furthermore, their mother Kader Bi also executed a power of attorney deed for the remaining 9.02 acres in favour of the first plaintiff and the first plaintiff's brother Mohammed Hameed filed O.S.No.45 of 1987 for declaration of title and permanent injunction in respect of the abovesaid property contending that the same had been purchased by him benami in the name of his mother Kadar Bi and the abovesaid suit has been dismissed and the first appeal preferred had been allowed and as against the same, the second appeal in SA No.1548 of 2001 is pending and the Hight has stayed the judgment and decree of the first appellate court and despite the abovesaid position, the defendants had trespassed and put up the construction in a portion of the suit property despite the objection put forth by the plaintiffs and hence, according to the plaintiffs, the need for the suit.

5. The defendants resisted the plaintiffs' suit contending that Survey No.4 had been purchased by Mohammed Hameed vide registered sale deed dated 10.09.1964 in the name of his mother Kadar Bi benami and on the strength of his title, he had converted the land in the abovesaid survey number into plots and sold them to the defendants as detailed in the written statement and accordingly, the defendants had put up the construction in that plots purchased by them and the defendants have also purchased further plots from the legal heirs of Mohammed Hameed and thus according to the defendants, they are the absolute owners of the property purchased by them and the suit levied by the plaintiffs, without seeking the relief of declaration of title, is not maintainable and therefore, according to the defendants, the plaintiffs have no title to the suit property and not entitled to seek and obtain the reliefs prayed for and the suit is liable to be dismissed.

6. In support of the plaintiffs' case P.Ws.1 and 2 were examined and Exs.A1 to A34 were marked. On the side of the defendants D.Ws.1 to 3 were examined and Exs.B1 to B50 were marked.

7. On consideration of the materials placed on record by the respective parties and submissions made, the courts below were pleased to grant the relief in favour of the plaintiffs as prayed for. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

"i) Whether the courts below erred in ignoring the admitted fact that the vendor of the appellants by name Mohd. Hameed being the son of the original owner Khadar Bi is entitled to get a share as her legal heir notwithstanding the judgment dated 27.08.2008 made in S.A.Nos. 1089 and 1548 of 2001 (E.A14 and Ex.A15) if so, the said share of Mohd. Hameed can be given to the defendants on equity?

ii) Whether the plaintiffs can be non-suited for want of the prayer for declaration of title over the suit property settled under Ex.A2 to Ex.A4 (20.03.1980 and 27.03.1984) particularly when they were cancelled under Ex.B1 to Ex.B4 on 07.04.1992 and thereby the plaintiffs have lost their title?

iii) Whether the suit is bad for non joinder of necessary and proper parties who purchased the property for the value and in physical possession of the property?

9. From the materials placed on record, it is found that the total extent of 28.02 acres in survey No.4 involved in the suit stood in the name of Khader Bi, the mother of the plaintiffs and Mohammed Hameed and it is further seen that Khader Bi had sold 5 acres of land out of the abovesaid total extent to one Appasamy by way of the registered sale deed dated 16.05.1966. The plaintiffs claimed that they had been settled 7 acres each by Khader Bi vide four settlement deeds dated 20.03.1984 and 27.03.1984. It is found that the defendants had been mainly resisting the plaintiffs' suit on the footing that though the total extent of 28.02 acres in survey No.4 involved in the present suit stood in the name of Khader Bi, according to them, it is only her son Mohammed Hameed who had purchased the same and according to them, the same had been purchased by Mohammed Hameed benami in the name of his mother Khader Bi. Projecting such a case, it is found that the suit in O.S.No.45 of 1987 had come to be laid by Mohammed Hameed against his mother Khader Bi and the plaintiffs and it is seen that the abovesaid suit had come to be dismissed by the trial court on 25.06.1993. However, it is noted that Mohammed Hameed succeeded in the first appellate court in A.S.No.86 of 1993 and the judgment of the first appellate court had been rendered on 22.02.2001. Impugning the judgment and decree of the first appellate court abovestated, it is admitted that the second appeal in S.A.No.1548 of 2001 has been filed. It is found that subsequent to the institution of the present suit, the abovesaid

second appeal has been allowed by the High Court and thereby the High Court had set aside the judgment and decree of the first appellate court dated 22.02.2001 in A.S.No.86 of 1993 and resultantly, confirmed the dismissal of O.S.No. 45 of 1987 as determined by the trial court. Therefore, it is found that the High Court had upheld that it is only Khader Bi who had pucca title to the total extent of 28.02 acres in survey No.4 and rejected the case of Mohammed Hameed that he had purchased the said property benami in the name of his mother Khader Bi. Ex.A1 is the certified copy of the sale deed dated 10.09.1964 in respect of the abovesaid property in the name of Khader Bi. When the absolute title of Khader Bi in respect of the abovesaid property had been upheld by the High Court and when it is further seen that the special leave petition preferred by the defendants impugning the judgment of the High Court had also come to be dismissed on 14.09.2009, which could be gathered from Ex.A16, it is seen that, as rightly determined the courts below, the declaration of title of Khader Bi in respect of the abovesaid property, as held by the trial court, holds good and in such view of the matter, the defendants, as such, who claimed to have purchased the various plots in the abovesaid survey No.4 from Mohammed Hameed and his legal heirs, cannot be allowed to further rake up the issue of title reiterating that it is only Mohammed Hameed, who has title to the suit property and that the same has been purchased by him benami in the name of his mother Khader Bi. Therefore, the courts below had rightly refused to entertain the contention put forth by the defendants that Mohammed Hameed had purchased the property comprised in survey No.4 benami in the name of his mother Khader Bi and rejected the same and in my considered opinion, no interference is called for with reference to the same.

10. Now, according to the plaintiffs, Khader Bi had alienated an extent of 5 acres in survey No.4 to one Appasamy by way of the sale deed dated 16.05.1966. According to the plaintiffs, they had been settled each 7 acres of the land in the abovesaid survey number by their mother Khader Bi vide four settlement deeds, which had been exhibited in the matter and according to the plaintiffs, they had been accepted by them and acted upon. According to the defendants, the abovesaid settlement deeds had been cancelled by Khader Bi, which fact has been stoutly repudiated by the plaintiffs. Though the defendants would claim that Khader Bi had cancelled the abovesaid settlement deeds executed in favour of the plaintiffs, they had failed to produce the original cancellation deeds and despite the challenge put forth to the abovesaid defence version, the defendants have not endeavoured to project the original cancellation deeds said to have been executed by Khader Bi and as rightly determined by the courts below, when Khader Bi had not retained any right of revocation of the settlement deeds

executed in favour of her sons, the plaintiffs, and furthermore, when the settlement deeds executed in favour of the plaintiffs had been accepted and acted upon and thereafter, Khader Bi herself would not have any legal entitlement to cancel the same and Khader Bi also having not levied any suit within the time allowed by law seeking the cancellation of the settlement deeds executed in favour of the plaintiffs for good reasons and hence in such view of the matter, the courts below are found to be wholly justified in refusing the case projected by the defendants that the settlement deeds executed by Khader Bi in favour of the plaintiffs in respect of certain extent of land in survey No.4 had been cancelled by Khader Bi, particularly, by not projecting the alleged original cancellation deeds as well as adducing reliable and convincing material pointing to the same and also having failed to establish that the alleged cancellation deeds have the backing of law.

11. In the light of the abovesaid position, when it is seen that the defendants had acquired the so called plots in survey No.4 from Mohammed Hameed's legal heirs, that too, pending lis, in such view of the matter, it is found that the alleged acquisition of the property on the part of the defendants being pendente lite and as above noted, when the defendants are found to have acquired the plots in survey No.4 from the persons having no legal title to the same as such, in such view of the matter, the case projected by the defendants that the plaintiffs are not entitled to seek and obtain the reliefs as prayed for cannot be countenanced and it had been rightly rejected by the courts below.

12. Khader Bi, after alienating 5 acres of land to Appasamy and settling 14 acres of land in favour of the plaintiffs, is found to be owning 9.02 acres in survey No.4 and it is seen that she had also executed power of attorney deed in favour of the first plaintiff with reference to the abovesaid extent of 9.02 cents. However, as rightly found by the courts below, on the death of the principal i.e. Khader Bi, the power of attorney executed by her ceased to have any effect and therefore, it is found that in respect of the abovesaid extent of 9.02 cents, the legal heirs of Khader Bi would be entitled to obtain their respective shares and admittedly as no partition has taken place, it is seen that the parties have to work out their remedy with reference to the same in the manner known to law. Inasmuch as no partition has been effected in respect of the remaining extent available in survey No.4, it is seen that no legal heir of Khader Bi would be entitled to claim any absolute interest over any particular extent and the defendants being found to be the purchasers of the plots in the abovesaid survey number pendente lite and that too from the persons having no title as such in respect of the property acquired by them, in this suit,

the defendants would not be entitled to contend that the property acquired by them should be directed to be allotted to the share of Mohammed Hameed and his legal heirs on equity. When such a plea has not been put forth by the defendants in the written statement and when with reference to the said issue, the same could not be determined in the present suit, in such view of the matter, the courts below are found to be justified in rejecting the abovesaid reliefs sought for by the defendants and in my considered opinion, there is no valid reason to interfere with the same.

13. Though the defendants would put forth that the suit laid by the plaintiffs without seeking the relief of declaration of title is not maintainable, when as abovenoted, the title of Khader Bi in respect of the suit property had been declared in O.S.No. 45 of 1987 and confirmed by this court, as rightly found and held by the courts below, there is no necessity for the plaintiffs to seek the relief of declaration of title as such, considering the facts and circumstances of the case.

14. When the defendants are found to be the purchasers pendente lite and when they are not entitled to put the construction in the property without any entitlement and also not entitled to disturb the plaintiffs' possession and enjoyment of the suit property in any manner and when the so called plea of equity projected by the defendants cannot be determined in this lis and when the suit has been levied by the plaintiffs against the proper persons, namely, the defendants who had been endeavouring to put up the construction in the suit property and thereby interfering with the possession and enjoyment of the plaintiffs without any authority, in all, it is seen that the plaintiffs' suit is not bad for non joinder of necessary and proper parties as sought to be projected by the defendants and the plaintiffs, considering the facts and circumstances of the case, not required to seek the relief of declaration of title to the suit property and in such view of the matter, in my considered opinion, no substantial question of law is found to be involved in the second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the defendants and in favour of the plaintiffs .

15. The counsel for the defendants, in support of his contentions, placed reliance upon the decision reported in (2016) 10 Supreme Court Cases 767 (Satya Pal Anand vs. State of Madhya Pradesh and others). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

16. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bga

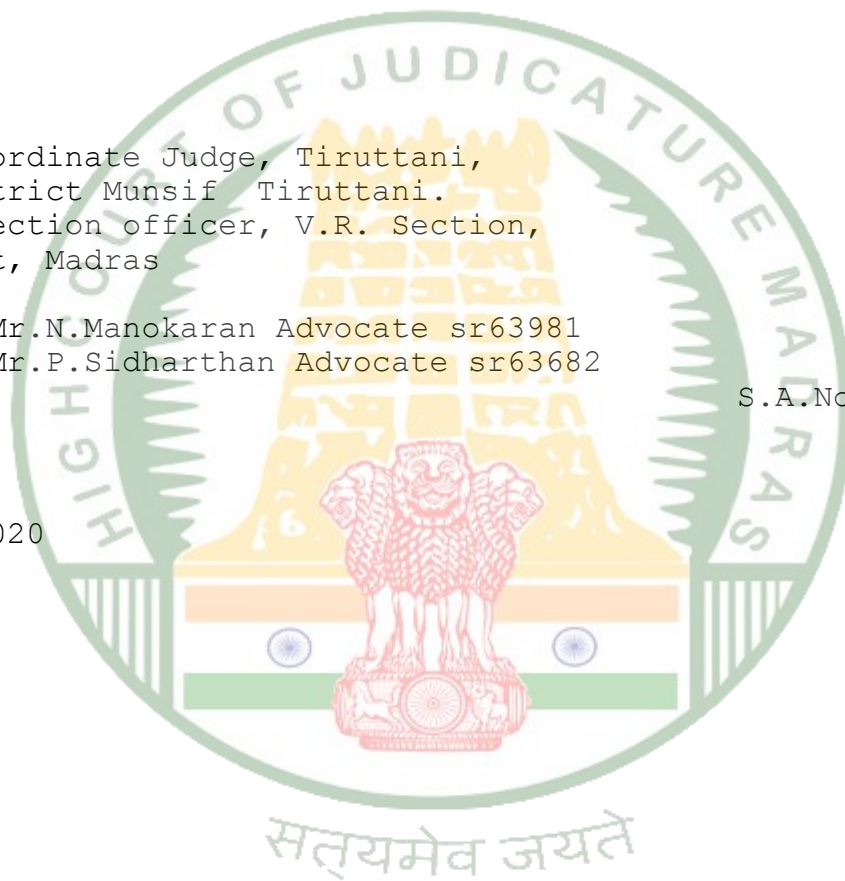
Copy to

- 1.The Subordinate Judge, Tiruttani,
- 2.The District Munsif Tiruttani.
3. The Section officer, V.R. Section,
High Court, Madras

+1 cc to Mr.N.Manokaran Advocate sr63981
+1 cc to Mr.P.Sidharthan Advocate sr63682

S.A.No.56 of 2016

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