

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.906 of 2019
and C.M.P.No.19307 of 2019

Balamuthu (Died)

- 1.Thamayanthi
- 2.Neduchezeian
- 3.Arivalagan
- 4.Kolanjinathan
- 5.Kanmani
- 6.Devi

...Appellants/Appellants/Plaintiffs

Vs.

- 1.Moorthy
- 2.Duraimurugan
- 3.Shanthi

..Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the decree and judgment dated 31.01.2019 passed in A.S.No.35 of 2016 on the file of the subordinate Judge, Chidambaram, confirming the decree and judgment dated 20.04.2015 passed in O.S.No.95 of 2006 on the file of the District Munsif-cum-Judicial Magistrar, Kattumannarkoil and decreeing the above said suit in O.S.No.95 of 2006 by allowing the Second Appeal.

For Appellants : Mr.A.Murugan

JUDGMENT

The plaintiff whose suit for injunction in O.S.No.95 of 2006 was dismissed by the trial court and the same was confirmed by the appellate court has come forward with this Second Appeal.

2. The case of the plaintiff is that in the year 1997, the 1st defendant had borrowed a sum of Rs.25,000/- and had executed an unregistered usufructary mortgage. Pursuant to the same, the plaintiff was put in possession of the property. Subsequently, also there were certain borrowings which were again secured by unregistered usufructary mortgages. It is the further claim of the plaintiff that the 1st defendant agreed to sell the property to the plaintiff and the possession of the plaintiff continued in the capacity as an agreement vendee thereafter. pending the suit, the 1st plaintiff died and the

plaintiffs 2 to 7 were brought on record as his legal representatives.

3. The suit was resisted by the defendants contending that the 1st defendant is not the owner of the property and the property belongs to the defendants 2 and 3. It is also contended that the 1st defendant had no right to execute the so called mortgages. It is the further contention of the defendants that the mortgages being unregistered cannot create any right in favour of the plaintiffs over the property subject matter of the mortgage. It is also claimed that as per Section 53(A) of the Transfer of Property Act the claim of plaintiffs that they are in possession as an agreement vendee pursuant to the oral agreement cannot also be countenanced.

4. Both the courts below on a consideration of the evidence on record held that plaintiffs' possession being illegal cannot be protected by a decree for injunction. It was also pointed out that the plaintiffs have not produced even the so called unregistered usufructary mortgage. Aggrieved the plaintiffs have come forward with this appeal.

5. I have heard Mr.A.Murugan, learned counsel appearing for the appellants.

6. The learned counsel for the appellants would submit that once the possession of the plaintiffs is admitted then they would be entitled to injunction restraining the defendants from interfering with their possession atleast except under due process of law. I am unable to agree with the said submission of the counsel. The plaintiffs have come to court with a specific case that they were put in possession pursuant to the usufructary mortgages and their possession continued as agreement vendee as per oral sale agreement.

7. It is the settled law that there cannot be an unregistered usufructary mortgage and no right which flows from such an unregistered instrument can be recognized by the courts below. Even under Section 53(A) of the Transfer of Property Act, the plaintiffs who claim to be in possession as agreement vendees cannot plead protection under the said Section unless there is a written agreement. I therefore find that the very basis of the claim of the plaintiffs is illegal and such an illegal possession cannot be protected by a decree for injunction. I therefore do not find any question of law much less a substantial question of law in order to entertain this Second Appeal.

8. Hence, this Second Appeal is dismissed without being admitted. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

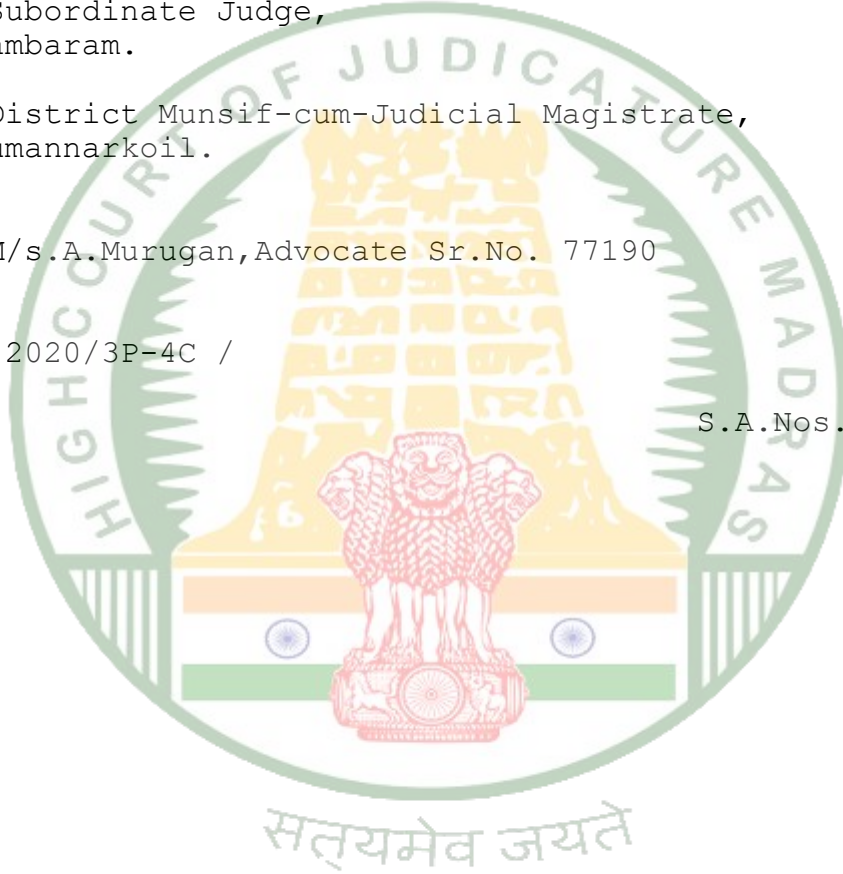
To

1. The Subordinate Judge,
Chidambaram.
2. The District Munsif-cum-Judicial Magistrate,
Kattumannarkoil.

+1 cc to M/s.A.Murugan,Advocate Sr.No. 77190

AKM/02.03.2020/3P-4C /

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