



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

CMP (MD) No.1942 of 2018

and

SA (MD) No. SR5102 of 2018

and

CMP (MD) No.692 of 2018

and

SA (MD) No. SR1168 of 2018

and

CMP (MD) No.1859 of 2018

and

SA (MD) No.SR2055 of 2018

C.M.P (MD) No.1942 of 2018:

1.K.Parthiban

2.M.Thavalakshmi

... Petitioners/Appellants

Vs.

1.Mathiyaraja (died)

2.T.Rajamohan

3.Petchiammal

4.Renuka

5.Ramesh

6.Sakthi Mathi

... Respondents/Respondents

Prayer in C.M.P: This petition is filed under Section 151 of C.P.C to file to grant leave to file the Second Appeal as against the judgment and decree dated 21.07.2014 made in A.S.No.40 of 2011 on the file of the Subordinate Judge, Theni confirming the judgment and decree 30.08.2011 made in O.S.No.191 of 2007 on the file of the District Munsif Court, Theni.

Prayer in Second appeal: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 21.07.2014 made in A.S.No.40 of 2011 on the file of the Subordinate Judge, Theni confirming the judgment and decree 30.08.2011 made in O.S.No.191 of 2007 on the file of the District Munsif Court, Theni.

C.M.P (MD) No.692 of 2018:

G.Manimaran

... Petitioner/Appellant

Vs.

1.Mathiyaraja (died)

2.T.Rajamohan

3.Petchiammal



4.Renuka
5.Ramesh
6.Sakthi Mathi

... Respondents/Respondents

Prayer in C.M.P: This petition is filed under Section 151 of C.P.C to file to grant leave to file the Second Appeal as against the judgment and decree dated 21.07.2014 made in A.S.No..40 of 2011 on the file of the Subordinate Judge, Theni confirming the judgment and decree 30.08.2011 made in O.S.No.191 of 2007 on the file of the District Munsif Court, Theni.

Prayer in Second appeal: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 21.07.2014 made in A.S.No.40 of 2011 on the file of the Subordinate Judge, Theni confirming the judgment and decree 30.08.2011 made in O.S.No.191 of 2007 on the file of the District Munsif Court, Theni.

C.M.P(MD)No.1859 of 2018:

1.S.Muniammal
2.P.Sathya
3.P.Sivanandi

... Petitioners/Appellants
Vs.

1.Mathiyaraja (died)
2.T.Rajamohan
3.Petchiammal
4.Renuka
5.Ramesh
6.Sakthi Mathi

... Respondents/Respondents

Prayer in C.M.P: This petition is filed under Section 151 of C.P.C to file to grant leave to file the Second Appeal as against the judgment and decree dated 21.07.2014 made in A.S.No.1 of 2012 on the file of the Subordinate Judge, Theni confirming the judgment and decree 30.08.2011 made in O.S.No.23 of 2009 on the file of the District Munsif Court, Theni.

Prayer in Second appeal: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 21.07.2014 made in A.S.No.1 of 2012 on the file of the Subordinate Judge, Theni confirming the judgment and decree 30.08.2011 made in O.S.No.23 of 2009 on the file of the District Munsif Court, Theni.

For Appellants : Mr.M.A.M.Raja in all CMP's
For R2 : Mr.A.Arumugam
for Ajmal Associates in all CMP's
* * * * *



C O M M O N J U D G M E N T

The above applications have been filed by the *pendente lite* purchasers seeking leave to file the Second Appeals.

2. The brief facts which are necessary for disposing of the above applications are as follows:

The deceased plaintiff had filed a suit in O.S.No.23 of 2009 against the respondents 1 and 2 herein for the following reliefs:

i) By declaring that the plaintiff is the absolute owner of the suit property and in consequence to restrain the defendants their men and agents from in any way interfering with plaintiff's peaceful possession and enjoyment of the suit property by a permanent injunction;

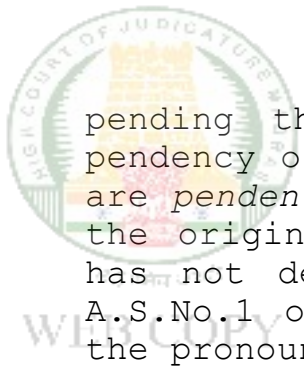
ii) By canceling the sale deed dated 25.04.2006 which stands in the name of the defendants, registered as document No.3672/2006 before Sub-Registrar Office, Theni.

The deceased first petitioner/first appellant in C.M.P. (MD)No. 692 of 2018 had filed a suit in O.S.No.23 of 2009 against the respondents 1 and 2 herein for the following reliefs:

i) restraining the defendant and his men and agents from in anyway interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3.The deceased first appellant had in the above suit narrated how the property devolved on him in the plaint in detail and would submit that the defendants are tracing their title through the female heirs of the Kanagaraj Gounder and the plaintiff is tracing his title from the male heirs. It was his case that the female heirs had no right to the suit property despite which they had alienated the property to the predecessors in title of the respondents 1 and 2. Therefore, he come forward with the suit to declare his title and also to cancel the sale deed that was executed in favour of the defendants. The suit was dismissed and the appeal filed against the said judgment and decree in O.S.No.23 of 2009 before the Subordinate Judge, Theni in A.S.No. 1 of 2002 also ended in dismissal. It appears that after dismissal of the first appeal on 21.07.2014 the first respondent had died on 15.07.2016 ie. nearly two years after the judgment and decree in A.S.No.1 of 2012. However, he had not chosen to file a Second Appeal.

4. The present applications are filed by the petitioners, who are the purchasers from the deceased plaintiff. The said purchases have been made on 21.04.2011, 05.03.2014 and 18.06.2014



pending the proceedings in O.S.No.23 of 2009 as well as the pendency of the appeal in A.S.No. 1 of 2012. The petitioners, who are *pendente lite* purchasers cannot seek to step into the shoes of the original plaintiff particularly when the original plaintiff has not deemed it fit to prosecute the judgment and decree in A.S.No.1 of 2002 till his death, which was nearly 2 years after the pronouncement of the judgment in A.S.No.1 of 2012.

5. Considering the above facts, leave is denied. Consequently, the Second Appeals are dismissed at the SR stage itself.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar (CS)

CM

To

1.The Subordinate Judge, Theni

2.The District Munsif Court, Theni

+3 cc to Mr.M.A.M.Raja , Advocate SR.No.92998 to 93000

+3 cc to M/s.Ajmal Associates , Advocate SR.No.93531,92534,92535

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KM/ (07.11.2019) 4P 10C