

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.02.2020
Pronounced on : 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.127 of 2020
and CMP.No.2717 of 2020

1. Kathijabi
2. Mumtaj
3. Fathima .. Appellants /Appellants/Plaintiffs

Versus

1. Mahaboob Bee
2. S.Sultan
3. S.Dastagir
4. Padmavathi
5. Vasantha
6. Dastagir Sahib Jamia Mosque,
Rep. by its Secretary,
Management Committee
7. Wakf Board, Tamil Nadu,
Rep. by its Chief Executive Officer.
Chennai. .. Respondents/Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.08.2019 passed in A.S.No.181 of 2015 by the III Additional Judge, City Civil Court, Chennai confirming the decree and judgment passed by the I Assistant Judge City Civil Court, Chennai dated 28.04.2015 in O.S.No.12411 of 2010.

For Appellants : Mr.S.A.Akbar

JUDGMENT

This appeal is directed against the judgment and decree of the III Additional Judge, City Civil Court, Chennai passed in A.S.No.181 of 2015 confirming the judgment and decree of the

I Assistant Judge City Civil Court, Chennai made in O.S.No.12411 of 2010. The unsuccessful plaintiffs in O.S.No.12411 of 2010 are the appellants herein. The prayer in the suit is to divide the suit property by metes and bounds and allot 7/56th share to each plaintiff.

2. The case of the plaintiffs is that the land of the suit property belongs to the defendant 6. The father of the plaintiffs Syed Ibrahim became tenant in respect of the land of the sixth defendant and he had put up superstructure therein on his own funds. The plaintiffs' father was living in the suit schedule property with his family till he died on 18.06.1993. The plaintiffs, defendants 1 to 3 being the sons and daughters are entitled to succeed the estate. As such, the plaintiffs are entitled to 7/56th share in the suit property. It is alleged that the plaintiffs were demanding partition and allotment of their share, but the defendants 1 to 3 were postponing the partition on some lame excuse. Hence, they have come forward to file the suit.

3. It is further stated that on enquiry, the plaintiffs learnt that the suit property has been sold by the defendants 1 to 3 to the defendants 4 and 5 without consent and permission of the defendants 6 and 7. Hence, the sale deed is not legally valid and binding on the plaintiffs.

4. The defendants 1 to 3 and 7 remained ex-parte and the suit against the sixth defendant was dismissed. In the written statement filed by the defendants 4 and 5 the allegations and averments contained in the plaint are denied as false and incorrect. It is contended that the defendants 1 to 3 approached the defendants 4 and 5 and represented that the suit property belongs to Jamia Mosque, which is controlled by the Wakf Board and the superstructure was put up by them. They offered to sell the superstructure to the defendants 4 and 5 for a consideration of Rs.50,000/-. Accepting the offer, the defendants 4 and 5 paid the entire sale consideration and after receiving the amount, the defendants 1 to 3 executed a sale deed on 02.12.1998. The defendants 1 to 3 gave an undertaking that they would vacate the premises within a period of 3 months. But later instituted a suit in O.S.No.101 of 2007 for permanent injunction, so the defendants 4 and 5 filed a suit in O.S.No.3963 of 2008 against the defendants 1 to 3 to hand over the possession to them. Both the suits were tried jointly and the suit filed by the defendants 1 to 3 was dismissed and the suit filed by the defendants 4 and 5 was decreed. The defendants 1 to 3 preferred an appeal suit in A.S.No.486 of 2010 and A.S.No.487 of 2010, but in vain. It is further contended that the present suit is a collusive suit and there is no cause of action to file the same and the suit is also barred by limitation.

5. Based on the above pleadings, necessary issues were framed by the Trial Court and the parties have adduced oral and documentary evidence. Upon consideration of the evidence, the Trial Court dismissed the suit. The finding of the Trial Court was confirmed by the Appellate Court. Challenging the same, the present appeal has been filed.

6. Mr.S.A.Akbar, learned counsel for the appellants would argue that the Courts below without considering any material evidence and submissions of the documents dismissed the suit erroneously based on the concocted document, Ex.B1. The appellants/ plaintiffs are the legitimate legal heirs of late Syed Ibrahim, hence they are entitled to inherit the due shares in the suit property. It is further contended that the sale of the wakf property is prohibited under Section 51 (1) of the Wakf Act. But the Courts below failed to consider the fundamental provisions pointed out by the appellants that without the consent of the defendants 6 and 7 / Wakf Board, the property cannot be sold.

7. In the matter on hand, the suit has been filed by the appellants for partition on the premises that the land belongs to the sixth defendant mosque, which is under the control of the seventh defendant Wakf Board. The father of the plaintiffs had taken the land for lease and put up construction over the land and after his death on 18.06.1993, the plaintiffs and defendants 1 to 3 are entitled for equal share in the superstructure. The claim was resisted by the defendants 4 and 5 contending that the suit property belonged to the defendants 1 to 3 and it was purchased by them through a registered sale deed dated 02.12.1998. After the defendants 1 to 3 lost their case in O.S.No.101 of 2007, the present suit is filed at their instigation, though the plaintiffs have consented to sell the property under Ex.B1.

8. It is the case of the plaintiffs that after the death of their father, they demanded partition of their share, but the defendants 1 to 3 were evading. Eventually, they found out that the defendants 1 to 3 have sold the properties to 4 and 5. The sale deed dated 02.12.1998 was marked as Ex.B3. The defendants 4 and 5 contended that the plaintiffs were aware of the sale in their favour in the year 1998 itself and the plaintiffs with a view to extract money from them have instituted the present suit.

9. It is seen from the records that the defendants 1 to 3 instituted the suit in O.S.No.101 of 2007 for permanent injunction and the suit in O.S.No.3963 of 2008 was filed by the defendants 4 and 5 for recovery of possession from the defendants 1 to 3. The Trial Court by a common judgment dismissed the suit in O.S.No.101 of 2007 and decreed the suit in

O.S.No.3963 of 2008. The judgment was marked as Ex.B2. Perusal of Ex.B4 and Ex.B5 would show that the Trial Court judgment was confirmed by the Appellate Court. The defendants 4 and 5 have relied on Ex.B1 issued by the plaintiffs to establish that they received their due share in the sale consideration and consented for sale of the property. Both the Courts consistently held that the plaintiffs have lost their right since they received their share in the sale proceeds under Ex.B1.

10. It is relevant to note that the defendants 4 and 5 have purchased only superstructure and the fight between the parties is only in respect of the superstructure and not the land, which belongs to the sixth defendant.

11. It is not out of place to mention here that admittedly Syed Ibrahim, the father of the plaintiffs died on 18.06.1993. The suit property was sold to the defendants 4 and 5 by the defendants 1 to 3 by a registered sale deed dated 02.12.1998. Thereafter, litigations between them started in 2007. The suit instituted by the defendants 4 and 5 was decreed and the suit of the defendants 1 to 3 was dismissed by a common judgment on 01.09.2009. The pre-suit notice Ex.A3 came to be issued on 01.12.2009 and the suit for partition was filed on 05.02.2010. It is not the case of the appellants that the relationship between them and their brother are strained. Taking note of these facts, the Appellate Court categorically held that the appellants / plaintiffs cannot be said to have no knowledge about the sale or subsequent judicial proceedings, which ended in favour of the respondents / defendants 4 & 5. Considering the fact that the suit came to be instituted after lapse of 17 years of the death of the plaintiffs' father and their brothers lost their case, I concur with the view taken by the Appellate Court.

12. The Hon'ble Apex Court in Ramjas Foundation v. Union of India reported in (2010) 14 SCC 38 M.Perumal and others Vs. Vijayakumari and others reported in 2017 (1) CTC 517 held that a person who does not come to the Court with clean hands is not entitled to be heard on merits of his grievance and this principle is applicable to all Courts and Judicial Forums and the relevant paragraphs are extracted hereunder:

(i) Ramjas Foundation v. Union of India

"14. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial

forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case."

(ii) M.Perumal and others Vs. Vijayakumari and others

"26. It is very unfortunate and shock and surprise that once the plaintiffs have approached the Court by suppressing the fact about the sale of the portions of the land and sought for the prayer for declaration, declaring the title of the plaintiffs for the entire properties of the 25 cents, which is absolutely amounts to fraud played by the plaintiffs particularly, the first respondent/first plaintiff on the Court. Therefore, it is made clear that there was no cause of action for filing the suit."

This Court is of the considered opinion that the principle laid down in the above decisions would squarely apply to the case on hand.

13. In view of my discussion and findings supra, I do not find any substance in the contention of the learned counsel for the appellants and any valid ground warranting interference of this Court.

14. In fine, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The III Additional Judge,
City Civil Court, Chennai.
2. The I Assistant Judge City Civil Court,
Chennai.

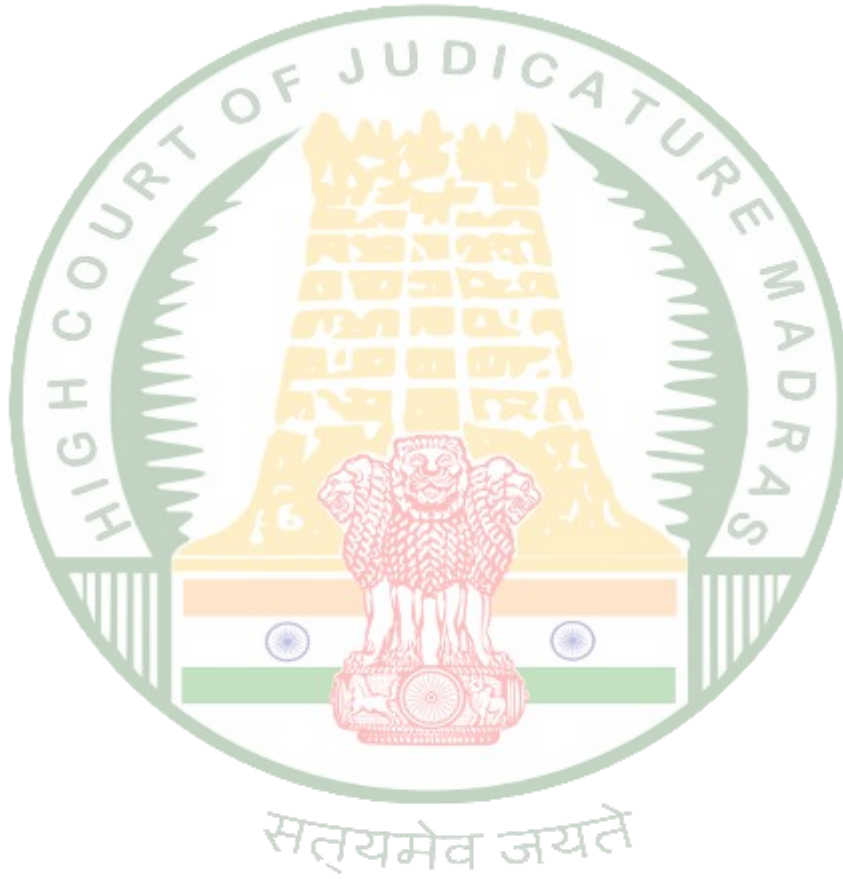
Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.A.Akbar, Advocate, S.R.No. 19502

S.A.No.127 of 2020

EV(CO)
GN(30/09/2020)



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