

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.86 of 2020
and CMP.No.1809 of 2020

S.Gopal

.. Appellant/Appellant

Versus

1. G.R.Bellie
2. G.R.Chandran
3. G.R.Sundaran
4. G.R.Sivakumar
5. G.R.Janagi
6. G.R.Sundari

.. Respondents/Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code against the decree and judgment of the Sub Court, Conoor, The Nilgiris dated 29.11.2019 passed in A.S.No.30 of 2017 confirming the decree and judgment of the learned District Munsif, Kotagiri dated 16.11.2016 passed in E.A.No.6 of 2013, in E.P.No.3 of 2013 in O.S.No.23 of 1999.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.P.Saravana Sowmiyan

JUDGMENT

The obstructor in E.P.No.3 of 2013 on the file of the District Munsif, Kotagiri, The Nilgiris District is the appellant herein.

2. The brief facts of the case would run thus:

i) One G.L.Raman instituted a suit in O.S.No.23 of 1999 before the District Munsif Court, Kotagiri for recovery of possession against one Philomina. Though the suit was originally dismissed by the District Munsif Court, Kotagiri, however, on appeal, the Sub Court, Nilgiri in A.S.No.68 of 2004 decreed the suit. The same was confirmed by this Court in S.A.No.750 of 2005. After demise of the original plaintiff G.L.Raman, his legal heirs filed Execution Petition in E.P.No.3 of 2013. The appellant herein filed an application E.A.No.6 of 2013 under Order 21 Rule 97 of CPC to record him as obstructor.

ii) The case of the appellant is that the original plaintiff in O.S.No.23 of 1999 had entered into an oral agreement with him agreeing to sell the suit property for a sale consideration of Rs.4,95,000/-. In pursuance of the agreement, he was put in possession of the property. Accordingly, he has been in possession of the property and the oral agreement was reduced into writing on 21.12.2005.

iii) It is his further case that he paid Rs.4,00,000/- towards advance amount and he was ready to pay the balance amount of Rs.90,000/- after the disposal of the Second Appeal 750 of 2005. In the meanwhile, the said G.L.Raman passed away and his legal heirs are proceeding to execute the decree passed in O.S.No.23 of 1999. According to the appellant, he is in settled possession of the suit property and hence, the decree holder has no right to seek the delivery of possession of the suit property.

3. The said application was resisted by the decree holder contending that G.L.Raman had never promised to sell the property to the appellant herein and he was not in possession in pursuance of the agreement and hence, prayed for dismissal of the application.

4. To fortify the case of the appellant, he examined himself as PW1 and marked Exs.P1 to P19. On the side of the decree holder, RW1 & RW2 were examined and Exs.R1 and R2 were marked. After considering the evidence adduced by the parties, the Executing Court dismissed the application by its order dated 16.11.2016. The order was confirmed on the appeal preferred by the appellant. Hence, the present Second Appeal.

5. Mr.R.Sivakumar, learned counsel for the appellant would urge that admittedly the appellant is in possession of the suit property. It is the submission of the learned counsel that though the appellant was not a party to O.S.No.23 of 1999, DW1 son of the defendant in the suit categorically admitted that the appellant is in possession of the property since 1985. Hence, the decree obtained without impleading the appellant is a nullity. It is further contended that the appellant is not claiming any right through the judgment debtor in O.S.No.23 of 1999 and the sale agreement dated 21.12.2005 has been proved, but the Courts below without proper appreciation of facts, rejected the case of the appellant.

6. Per contra, Mr.P.Saravana Sowmiyan, learned counsel for the respondents made submissions in support of the judgment and decree of the Courts below.

7. In the case on hand, it is not disputed that G.L.Raman, the father of the respondents filed a suit in O.S.No.23 of 1999 against one Philomina. The suit was decreed by the lower appellate Court in A.S.No.68 of 2004 and the same was confirmed by this Court in S.A.No.750 of 2005. Pursuant to the decree passed in O.S.No.23 of 1999, the legal heirs of the plaintiff filed Execution Petition and the appellant herein filed an application under Order 21 Rule 97 of CPC contending that he came into possession of the suit property in the year 1985 on the basis of the oral agreement and he paid Rs.4,00,000/- towards advance amount and he was ready to pay the balance amount of Rs.90,000/- after disposal of the S.A.No.750 of 2005.

8. The oral and written agreements projected by the appellant was denied by the respondents herein. When the execution of the oral and the written agreements were disputed by the respondents, the onus is on the appellant to prove the same. It is to be seen that the appellant has come to the Court in 1999 contending that the father of the respondents have agreed to sell the property in the year 1985. According to the respondents, the appellant was inducted by the judgment debtor to delay the execution of the decree passed in O.S.No.23 of 1999. On perusal of the records would reveal that except the appellant, no other witness was examined to prove the alleged oral and written agreements.

9. Both the Courts below after elaborately considering the evidence available on records came to the conclusion that the appellant has not proved the case. In the light of the above facts, I find no substantial question of law in this appeal warranting interference with the concurrent findings of the Courts below.

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

-s/d-

Assistant Registrar(CS-I)

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pvs

To

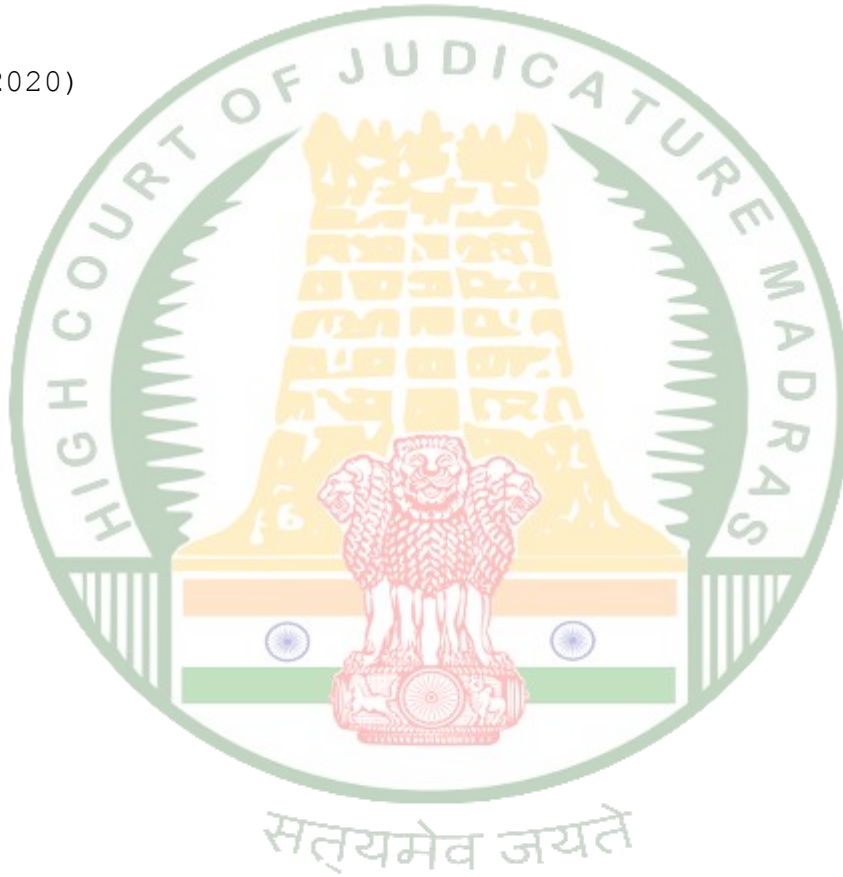
1. The Subordinate Judge, Conoor, The Nilgiris
2. The learned District Munsif, Kotagiri

+1 CC to Mr.R.Sivakumar, Advocate sr 7928

+1 CC to Mr.P.Saravana Sowmiyan, Advocate sr 8309.

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SSI (CO)
SP(09/09/2020)



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