

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.08.2020

PRONOUNCED ON : 04.09.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 940 of 2011

&

M.P.No.1 of 2011

1. Suseela
2. Elayaraja
3.Minor Govindaraj ...Appellants/Plaintiffs
(minor rep by his guardian
mother of suseela)

Vs.

1. Natarajan
2. G. Nagamani ... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree of the learned Principal Subordinate Judge of Krishnagiri, dated 25.02.2011 in A.S.No.28 of 2010 reversing the judgment and decree of the learned District Munsif of Krishnagiri dated 20.08.2008 in O.S.No.217 of 2005.

For Appellants : Mr. Karthikeyan
for M/s. V. Nicholas

For Respondents: Mr.P. Mani

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 25.02.2011 passed in A.S.No.28 of 2010 on the file of the Principal Subordinate Court, Krishnagiri, reversing the judgment and decree dated 20.08.2008 passed in O.S.No.217 of 2005 on the file of the District Munsic Court, Krishnagiri.

2. Shorn of unnecessary details, according to the appellants/plaintiffs, the suit properties belonged to Chinnaraj and it is found that the plaintiffs claim title to the suit properties based on the will executed in their favour by Chinnaraj on 23.04.1997. Following the demise of Chinnaraj on 11.05.1997, according to the plaintiffs, they have become the

owner of the suit properties. It is put forth by them that the second defendant had attached the suit properties and purchased the same in the court auction and following the same he had attempted to trespass into the suit properties and thereby raised a cloud in the title of the plaintiffs and hence according to the plaintiffs they had been necessitated to levy the suit against the defendants/respondents for declaration of the title to the suit properties and for permanent injunction and for declaration to declare the proceedings in EA No.76 of 2013 in EP No.248/1997 in O.S.No.349 of 1994 as null and void.

3. The defendants have resisted the plaintiffs' suit contending that the suit properties had been purchased by the second defendant through court proceedings and the delivery was effected by the Subordinate Court, Krishnagiri, and the same cannot be questioned by the plaintiffs in the District Munsif Court and further it is put forth that the plaintiffs have no cause of action and inasmuch as the suit properties had been lawfully purchased by the respondents/defendants, the suit is liable to be dismissed.

4. In support of the plaintiffs' case, P.Ws.1 to 3 were examined, Exs.P1 to P8 were marked. In support of the defendants' case D.Ws.1 to 3 were examined and Ex.B1 was marked.

5. On an appreciation of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiffs. The defendants challenged the same by preferring an appeal. The appellate court, on an appreciation of the materials available on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and resultantly by allowing the appeal preferred by the defendants, dismissed the suit levied by the plaintiffs. Impugning the same, the present Second Appeal has been preferred by the plaintiffs/appellants.

6. From the materials available on record, it is found that the parties are not at issue that the suit properties originally belonged to Chinnaraj. Chinnaraj is the husband of the first plaintiff and father of the plaintiffs 2 and 3. It is found that the suit had been levied against Chinnaraj in O.S.No.349 of 1994 and the decree had been obtained against him on 06.09.1995. Without settling the decretal amount, it is noted that Chinnaraj had died on 11.05.1997. Only after the decree, it is found that Chinnaraj had executed a will in favour of the plaintiffs i.e. on 23.04.1997. Following the decree obtained in the abovesaid suit i.e. O.S.No.349 of 1994, it is noted that EP proceeding was levied in EP No.248 of 1997 on 08.07.1997 against the legal heirs of the deceased Chinnaraj. It is found that the

legal heirs have been served in the abovesaid proceedings and despite the same, they have not endeavoured to enter appearance and contest the matter. Particularly it is found that the first plaintiff, namely, the wife of the deceased Chinnaraj, had been served in the EP proceedings and despite the same, she had not endeavoured to enter appearance and contest the EP proceedings. Following her refusal to contest the case, her children had been ordered to be represented by the court guardian and accordingly the legal heirs of the deceased Chinnaraj are found to be duly represented in the Execution Proceedings. Thereafter, it is found that the attachment of the suit properties had been ordered in the Execution Proceedings on 15.02.1999 and the contentions raised by the legal heirs that the suit properties are the ancestral properties had been negated. The abovesaid contention, on the face of it, does not merit acceptance, particularly when even according to the plaintiffs they claim title to the suit properties only based on the will said to have been executed in their favour by the deceased Chinnaraj and the said contention put forth in the EP Proceedings that the suit properties are the ancestral properties had been rightly disbelieved by the court concerned. Accordingly, it is found that following the attachment effected in respect of the suit properties, the same had been brought for sale in the court auction and the second defendant had purchased the suit properties and taken delivery of the possession of the suit properties through court process.

7. Considering the materials placed on record, as rightly held by the appellate court, when it is found that the legal heirs of the deceased Chinnaraj had been impleaded in the Execution Proceeding and the court had also appointed the court guardian on behalf of the minors and the first plaintiff in particular having not put forth any challenge to the execution proceeding and in such view of the matter, when the suit properties had been lawfully attached pursuant to the decree obtained against the deceased Chinnaraj and following the same, the suit properties having been brought for sale and the court auction purchaser having taken delivery of the suit properties through the court process, in such view of the matter, the present contention put forth by the plaintiffs/appellants that one of the three legal heirs of the deceased Chinnaraj had not been impleaded in the delivery proceedings has been rightly rejected by the first appellate court particularly when it is noted that all the legal heirs of the deceased Chinnaraj had been impleaded in the main Execution Proceeding. In such view of the matter, when Chinnaraj is found to be indebted and the decree had also been obtained against him lawfully and when he has failed to honour the decree and on the other hand left the debts uncleared, the decree holders had rightly proceeded against the properties belonging to the deceased Chinnaraj and

brought the same through court auction sale. In such view of the matter, the properties having been taken delivery by the respondents/defendants, the contention put forth by the plaintiffs that the delivery effected through court process is only a paper delivery, has been rightly negated by the first appellate court and in such view of the matter, the first appellate court has correctly held that the delivery effected in EA No.76 of 2003 in EP No.248 of 1997 has been legally effected and thereby rightly disbelieved the case projected by the plaintiffs/appellants and therefore, the dismissal of the plaintiffs' case by the first appellate court is based on the proper appreciation of the factual matrix involved in the matter and in such view of the matter, when no substantial question of law is involved for sustaining the Second Appeal levied by the plaintiffs / appellants, it is evident that the Second Appeal is devoid of merits and liable to be dismissed.

8. In the light of the abovesaid discussions, no substantial question of law is found to be involved in the Second Appeal. Resultantly, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there is no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bga
To

1. The Principal Subordinate Judge,
Krishnagiri

2. The District Munsif,
Krishnagiri

3. Section Officer, VR Section,
High Court, Madras.

+1 cc to Mr.V.Nicholes, Advocate Sr.No. 29141

S.A.No.940 Of 2011

SSI (CO)
RMP (06/05/2021)