

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.427 of 2020

1. S.Elangovan
2. S.Manivannan ... Appellants/Defendants

Vs.

Semenda C.Thangaraju ... Respondent/Plaintiff

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and decree dated 17.09.2019 made in A.S.No.60 of 2017 on the file of the Additional Sub-ordinate Judge, Namakkal, confirming the Judgment and decree dated 07.02.2017 made in O.S.No.235 of 2012 on the file of the Principal District Munsif Court, Namakkal.

For Appellants : Mr.T.Dhanyakumar

J U D G M E N T

The defendants in O.S.No.235 of 2012 have come up with this second appeal, having suffered a decree for cancellation of the Sale Deed dated 30.03.1995 executed by the plaintiff in favour of the defendants in respect of the suit properties namely an extent of 1 acre 69 cents of land in Survey No.609/1 of Ariyalur Nadu Village of Kollimalai Range.

2. The plaintiff came to Court with the specific case that the suit property has been included by the defendants stealthily in the Sale Deed dated 30.03.1995 by playing fraud on him. He would also claim that he continues to be in possession of the property.

3. The suit was resisted by the defendants contending that the properties sold were the entire properties and they were not aware of the conditions imposed under the assignment granted by the State in favour of the plaintiff. The Assignment was marked as Ex.A2.

4. The trial Court upon a consideration of the assignment document which was marked as Ex.A2, concluded that since the suit property was assigned to the plaintiff as a Schedule Tribe, alienation of the same to a non scheduled tribe is prohibited under Clause 18 of the assignment and therefore the alienation is void. On the said findings, the trial Court granted the decree for declaration. The trial court however, dismissed the suit in respect of prayer injunction. Aggrieved, the defendants preferred an appeal in A.S.No.60 of 2017.

5. The lower appellate Court also concurred with the Judgment of the trial Court and dismissed the appeal. Hence, this second appeal.

6. I have heard Mr.T.Dhanyakumar, learned counsel appearing for the appellants.

7. Mr.T.Dhanyakumar, learned counsel appearing for the appellants would vehemently contend that the Courts below were not right in granting the relief as prayed for in the suit, since the plaintiff has not proved that the defendants had played fraud on him and included the suit property as a property subject matter of the sale. He would further contend that the sale is in breach of the conditions in the assignment, then the plaintiff cannot also take advantage of his own wrong.

8. I have considered the submissions of the learned counsel for the appellants.

9. Both the Courts below, as of fact found that the property was assigned to the plaintiff as a Schedule Tribe under Ex.A2. Clause 18 of Ex.A2 prohibits alienation of the property to any person belonging to any other community other than a Schedule Tribe. Admittedly, the defendants are not Schedule Tribes. Therefore, the alienation of the property is void ab initio. However, the Courts below have rejected the relief of injunction on the ground that the plaintiff has not proved his possession on the date of the suit. Of course Mr.T.Dhanyakumar would contend that the plea of fraud has not been proved. Though the suit was based on a plea of fraud, the Courts below have categorically found that the sale in favour of the defendants is void ab initio in view of a Prohibition contained in the order of Assignment. I, therefore, do not see any perversity in the conclusions of the Courts below in declaring that the sale in

respect of the suit property is invalid. Despite his best efforts Mr.T.Dhanyakumar, is unable to make out a question of law, much less a substantial question of law in order to enable me to entertain this second appeal. The appeal therefore fails and it is accordingly dismissed without being admitted. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

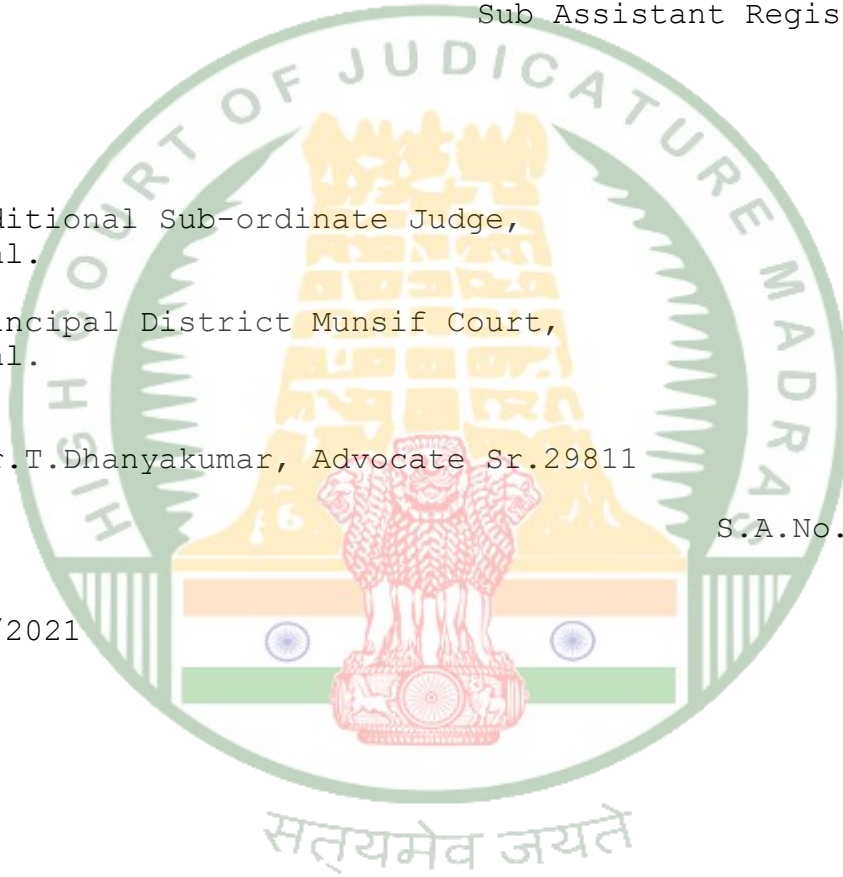
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To

1. The Additional Sub-ordinate Judge,
Namakkal.
2. The Principal District Munsif Court,
Namakkal.

+lcc to Mr.T.Dhanyakumar, Advocate Sr.29811

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