

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.775 of 2014 &
M.P.No.1 of 2014

Kudbhudeen .. Appellant/Appellant/Plaintiff

Versus

Mumtaj Begum .. Respondent/Respondent/Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree made in A.S.No.68 of 2012, on the file of Subordinate Judge Court, Mannargudi, dated 25.02.2014 confirming the Judgment and Decree made in O.S.No.96 of 2011, on the file of the District Munsif-cum-Judicial Magistrate Court, Needamangalam, dated 25.08.2012.

For Appellant : Mr.K.A.Ravindran

For Respondent : Mr.Rajaramani

JUDGMENT

This appeal is directed against the Judgment and Decree of the Sub Court, Mannargudi passed in A.S.No.68 of 2012, confirming the Judgment and Decree passed by the District Munsif-cum-Judicial Magistrate, Needamangalam in O.S.No.96 of 2011.

2. The appellant and the respondent are husband and wife. The suit in O.S.No.96 of 2011 was filed by the husband against the wife for permanent injunction. It is the case of the plaintiff that he is the absolute owner of the suit schedule property, vide sale deed, dated 07.12.1997 and since then, he has been in possession and enjoyment of the same. It is alleged that his wife making attempt to evict his sister and her husband and she is trying to encumber and alienate the suit property by creating some documents.

3. The suit was resisted by the defendant contending that the plaintiff married the defendant on 03.06.2000. The plaintiff out of love and affected executed a Hibba inam settlement deed in favour of the defendant on 12.01.2003 in respect of 4 kulis

out of 8 kulis. It is further stated that the plaintiff pledged the entire property with Needamangalam Housing and Co-operative Society on 17.08.2002, while borrowing Rs.40,000/-. In addition, he received amounts from her father at the time of going for abroad. Subsequently, he did not pay any maintenance to the defendant. It is the further case of the defendant that a house was constructed in the suit property with the funds provided by her father and prayed for dismissal of the suit.

4. On the basis of the above pleading, the trial Court framed necessary issues. During the trial, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A4. On the side of the defendant, D.W.1 to D.W.5 were examined and Exs.B1 to B8 were marked.

5. After analyzing the entire evidence, the trial Court dismissed the suit. On appeal, the finding of the trial Court was confirmed. Aggrieved over the same, the present appeal has been filed.

6. Mr.K.A.Ravindran, learned counsel appearing on behalf of the appellant submitted that the Courts below have thoroughly misdirected its approach, while appreciating both oral and documentary evidences available on record and findings have been given on mere assumption, surmises and conjectures. Hence, the Judgment and Decree of the Courts below are liable to be set-aside. It is also contended that Ex.B6-Hibba inam settlement deed is not proved in accordance with law and it is a forged and concocted one by the respondent.

7. Per contra Mr.Rajaramani, learned counsel for the respondent submitted that the appellant has not approached the Court with clean hands and the suit is liable to be dismissed for suppression of material fact. He further added that E.B6 Hibba settlement has been proved through D.W.1 and D.W.5 and the concurrent finding do not require interference of this Court.

8. In the matter on hand, the relationship of the parties are not disputed. It is an admitted fact that the appellant / plaintiff married the respondent / defendant on 03.06.2000, but they have no issues. It is the case of the appellant that he purchased the suit property under Ex.A1 sale deed, dated 07.12.1997 and constructed a house therein. It is not disputed that the plaintiff was the owner of the property in pursuance of Ex.A1 sale deed. According to the respondent, under Ex.B6-settlement deed he settled 4 kulis out of total extent of 8 kulis and thereafter, the defendant constructed the house from the fund provided her family members.

9. It is seen that except the plaintiff, no other witness was examined in support of the case of the plaintiff. D.W.2-Kothanar, who constructed the house, deposed that the entire salary was paid by the respondent / defendant. D.W.3 has given evidence stating that he knows the plaintiff and the defendant and the plaintiff gifted 4 kulis to his wife and she alone constructed the building. D.W.4 deposed that he is a carpenter and the entire building was constructed by the defendant. D.W.5 has stated that he was a Notary Public and in Ex.B6-Hibba settlement deed, after the plaintiff signed, two other persons viz., Narayanan and Kamala Basha signed as witnesses.

10. It is the case of the plaintiff that on the date of execution of Ex.B6, i.e., on 12.01.2003, he was in abroad, but admittedly he neither produced the passport nor any other evidence to substantiate the same. From the evidence of D.W.1 to D.W.5 and based on Exs.B3 to B5, the Courts below came to the conclusion that the defendant has proved Ex.B6-Hibba settlement deed and she alone had put up construction of the house in the suit property.

11. It is also argued by the learned counsel for the appellant that even assuming that Ex.B6 Hibba is valid, but as per the recital, the defendant has no authority to encumber the suit property till the life time of the appellant. I am not able to agree with the submission of the learned counsel for the appellant for the reason that even though in Ex.B6 settlement deed is stated the appellant is entitled to reside in the house, however, indisputably both are residing apart from considerable time and there is absolutely no possibility for the appellant to reside in the house. Moreover, it is already held that the house was put up by the respondent herein.

12. In my considered opinion, no question of law arises warranting interference in this appeal. For the foregoing reasons, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

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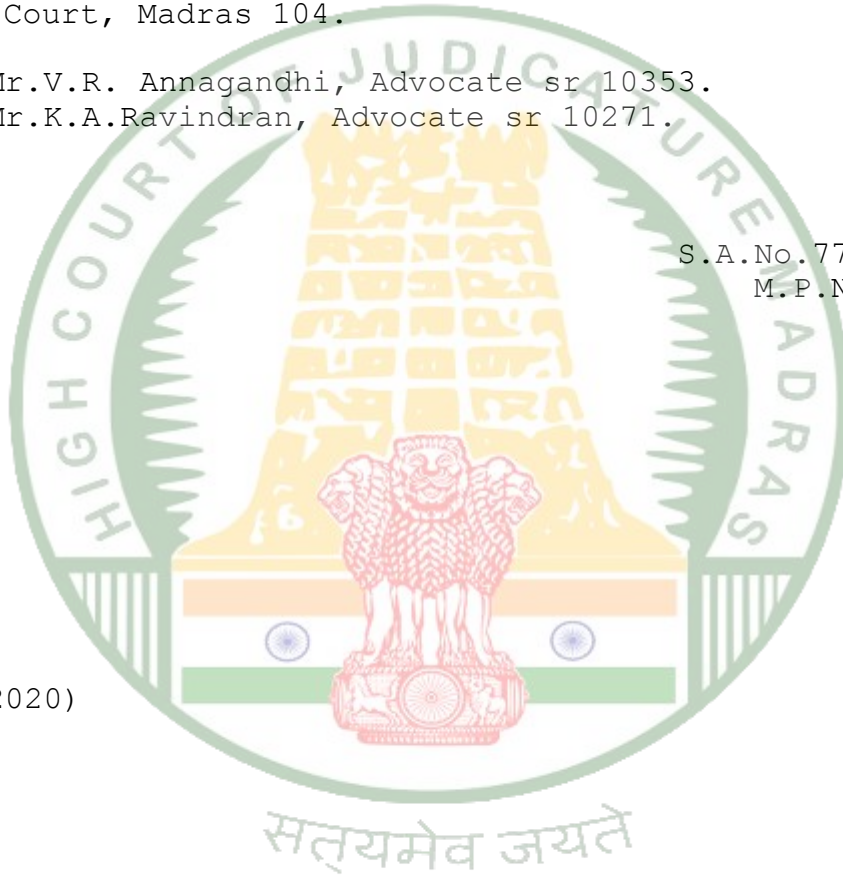
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SSD (CO)
SP (12/08/2020)



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