

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06/01/2020
Delivered on	21/01/2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1282 of 2019 &

C.M.P.No.27825 of 2019

1.A.Jothilakshmi

2.Jayanthi

.. Appellants/ Appellants
Plaintiff 1&3

Versus

1.V.Gopalakrishnan

2.V.Venugopal

3.P.Narayanan

.. Respondents/ Respondents
Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.03.2019 made in A.S.No.64 of 2018 on the file of Principal Sub Judge, Puducherry, confirming the judgment and decree dated 26.03.2018 made in O.S.No.301 of 2009 on the file of Principal District Munsif, Puducherry.

For Appellants : Mr.M.V.Venkataseshan

JUDGMENT

The present appeal has been filed by the unsuccessful plaintiffs in O.S.No.301 of 2009. The prayer in the suit is to declare the sale deed, dated 13.10.2003 executed by the third defendant in the name of the defendants 1 and 2 is void, abinitio and not binding on the plaintiffs and to declare their right over the suit property and for payment of mense profit.

2. The case of the plaintiffs is that they are the children of the third defendant. It is stated that the suit schedule property belongs to the plaintiffs by virtue of the registered sale deed, dated 30.08.1994. The first plaintiff was born on 03.01.1988, whereas the second plaintiff was born on 06.04.1990. After they became majors, wanted to take possession of the schedule mentioned property leased out to the first defendant. Hence, a notice was issued on 02.12.2008 to the first defendant to surrender possession of the suit

schedule property. From the reply dated 06.12.2008, they came to know that the third defendant sold the property under sale deed, dated 13.10.2003. The plaintiffs have alleged that the defendants

1 and 2 joined with the hands of the third defendant and fraudulently obtained the sale deed, when they were minor and hence, the sale deed is not binding on them.

3. In the written statement filed by the first defendant, which was adopted by the second defendant, they have denied the allegations of the plaintiffs. It is stated that the suit property is a joint family property of the plaintiffs and their father, third defendant. The third defendant had entered into an agreement of sale with the first defendant on 09.03.2000 and thereby agreed to sell the property for a sum of Rs.4,14,000/- and also received Rs.2,00,000/- as advance. Further on 18.05.2001, the first defendant paid another sum of Rs.1,00,000/- towards the sale agreement and after paying the balance sale consideration, the sale deed was executed on 13.10.2003 in favour of the first defendant on behalf of the plaintiffs. It is further stated that on the date of sale agreement, the third defendant handed over the possession to the first defendant and the present suit is vexatious.

4. In the additional written statement, it is stated that the third defendant filed G.O.P.No.26 of 2000 before the Principal District Judge, Puducherry, seeking permission to sell the minor property. The learned Principal District Judge has passed an order on 08.11.2000, granting permission to sell the property in favour of the defendants 1 and 2. The defendants further stated that out of the sale price received from the defendants 1 and 2, the third defendant purchased another property in Ariyur Revenue Village in favour of the plaintiffs, by a registered sale deed, dated 29.10.2001 and in the said document, the sale of the suit property has been mentioned. The property is now worth of Rs.50,00,000/- and prayed for dismissal of the suit.

5. A reply statement was filed stating that the plaintiffs were not aware of the permission granted in G.O.P.No.26 of 2000 and the averments made in the additional written statement are immaterial and irrelevant.

6. Based on the pleadings, the trial Court framed necessary issues. On the side of the plaintiffs, P.W.1 was examined and Exs.A1 to A11 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 and B2 were produced. After analyzing the entire evidence, the trial Court dismissed the suit. On appeal, the finding of the trial Court was confirmed. Hence, the present appeal.

7. Mr.M.V.Venkateseshan, learned counsel for the appellants would argue that admittedly the suit property was purchased in the name of the plaintiffs under Ex.A2 sale deed,

dated 30.08.1994. It is further contended that the property was sold when there was no legal necessity. The suit was filed on 03.03.2009, within the period of limitation, when the second appellant attained majority. These vital aspects were not considered by the Courts below.

8. In the case on hand, it is not disputed that the third defendant is the father of the plaintiffs and the suit property was purchased by the third defendant on 30.08.1994, when the plaintiffs were at the age of 6 years and 4 years respectively. It is relevant to note that the third defendant entered into an agreement of sale with the first defendant on 09.03.2000 and the property was sold to the defendants 1 and 2 under Ex.B1 sale deed, dated 13.10.2003. A perusal of Ex.B2, order copy dated 08.11.2000 would show that the third defendant after obtaining permission from the Principal District Judge, Puducherry in G.O.P.No.26 of 2000, sold the property by a sale deed, dated 13.10.2003.

9. In the additional written statement, the defendants have stated that from and out of the sale price received from the defendants 1 and 2, the third defendant purchased another property in Ariyur Revenue Village comprised in R.S.No.67/2 measuring an extent of 85.5 Kuzhies in favour of the plaintiffs, by a registered sale deed, dated 29.10.2001 and the value of the property is Rs.50,00,000/-. Though the copy of the sale deed, dated 29.10.2001 was not produced, in the reply statement, there is absolutely no denial. This shows that the sale consideration under Ex.B1 was properly utilized by the third defendant for the welfare of the plaintiffs.

10. It is true that the second plaintiff attained majority on 05.04.2008 and the suit came to be filed on 03.03.2009. A perusal of the pleadings would reveal that the vague and bald averments have been made in the plaint that the defendants 1 and 2 joined with the hands of the third defendant and fraudulently obtained sale deed, dated 13.10.2003 without any legal necessity and hence, it is not binding on the plaintiffs, but there is no evidence available on record to establish the case of the plaintiffs.

11. Both the Courts, after analyzing the material evidence available on record, came to the conclusion that the sale deed dated 13.10.2003 is a valid document and the plaintiffs are not entitled for the relief sought for in the suit. The appellants have not made out any case to show that the findings of the Courts below are perverse and material evidence was not considered by the Courts below. Hence, I find no illegality or irregularity in the finding of fact reached by the Courts below.

12. In that view of the matter, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Co mdu)

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Sub Assistant Registrar

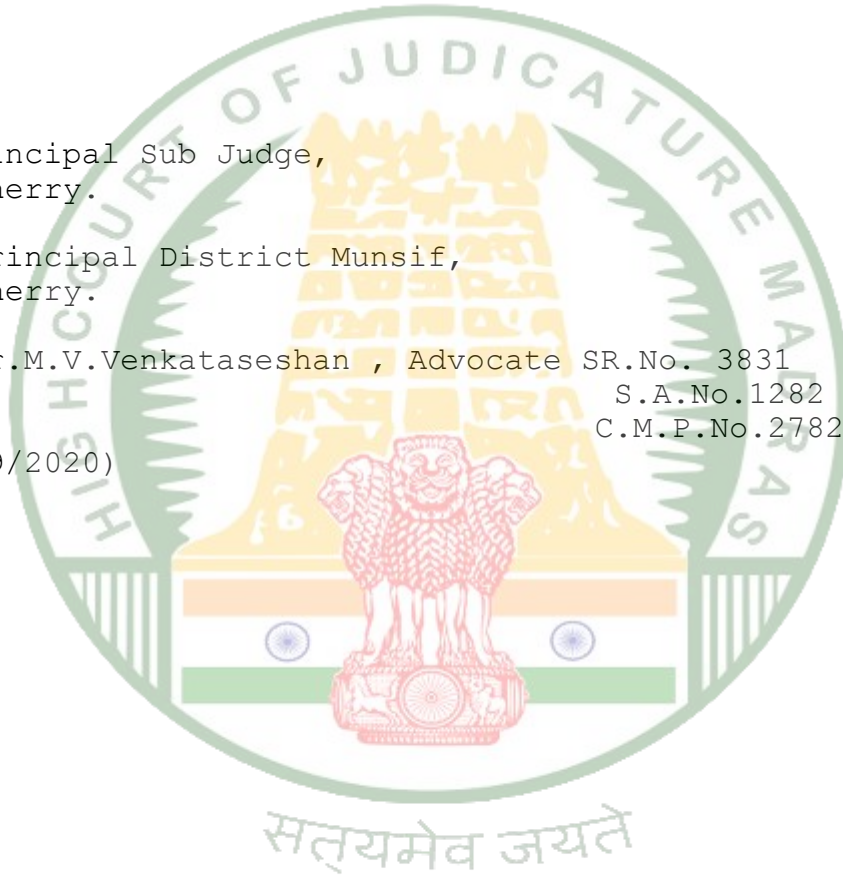
r n s
To

1. The Principal Sub Judge,
Puducherry.
2. The Principal District Munsif,
Puducherry.

+1cc to Mr.M.V.Venkataseshan , Advocate SR.No. 3831

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A.SK(03/09/2020)



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