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S.A.[MD]No.814 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. [MD]No.814 of 2014

and

M.P. [MD]No.1 of 2014

1.Shyamala
2.Geetha
3.Pappa
4.Ajee
5.Rekha

... Appellants/Appellants/
Respondents 9 to 13

Vs.

1.Shanmugam [Died]
2.Radhamani
3.Sarojini
4.Pappu Asari [Died]
5.Thamburan Kutty [Died]
6.Vasantha
7.Saraswathy
8.Anand
9.Ashok
10.Ajith

...1st & 2nd Respondents/1 & 2
Respondent/Plaintiff 3 & 4
... Respondents 3 & 4/Respondents 4 & 5/
Respondents 4 to 7/Defendants 4 to 7

11.Senthil
12.Ashika

... Respondents

[Respondents 7 to 12 are brought on record as LR's of deceased R1 vide order dated 12.12.2019 made in C.M.P.[MD]No.9444 of 2016]

PRAYER: Second Appeal is filed under Section 100 of C.P.C., against the ex-order and fair order dated 05.06.2014 in A.S.No.77 of 2010 on the file of the Sub Court, Kuzhithurai confirming the order passed in I.A.No.504 of 1999 in O.S.No.1131 of 1969 dated 20.08.2010 on the file of the Principal District Munsif of Kuzhithurai and praying to set aside the same.

For Appellants : Mr.V.Nagendran

For Respondents 1, 7 to 12 : Mr.J.Anandhavalli

For Respondents 2 to 6 : No appearance



JUDGMENT

This second appeal has been filed as against the concurrent findings of the Trial Court and the First Appellate Court, passing a fair and final order in final decree proceedings.

2.The brief facts leading to the filing of the suit are as follows:

2.1.The plaintiffs have filed a suit for redemption of mortgage property. The suit was dismissed. As against which, first appeal in A.S.No.196 of 1984 was filed and that was also dismissed. The second appeal was also dismissed by this Court confirming the findings of the Courts below for redemption of mortgage property. However, this Court has held that the property has to be identified as per Ex.A.1.

2.2.Based on the above decree and judgment, the final decree application has been filed and a Commissioner has been appointed to identify the property with reference to Ex.A.1 filed in the suit. The commissioner has visited the suit property and filed a report and he has also verified the various documents and finally found that the property shown as ABCDEFG in his plan is the mortgaged property. Based on the above, the final decree has been passed. The appeal filed against the final decree was also dismissed. Now, second appeal is filed which is pending in the admission stage.

3.The main contention of the learned Counsel for the appellants is that the Commissioner has not measured the property with reference to the revenue records. The old suit survey number is 1642/16 and 46. According to the appellants, the present survey number is 11/15-2 and 11/100. His further contention is that the present survey number is not D12/18. Hence, learned Counsel states that final decree passed by the trial Court is not based on proper appreciation of evidences.

4.However, learned Counsel for the respondents submitted that the Commissioner has properly identified the property with reference to Ex.A.1 sale deed. Evidence of D.W.1 itself clearly indicates that the property identified by the Commissioner is the mortgaged property. The survey number has been clearly identified by the Commissioner and it is further contended that there is no objection whatsoever filed by the appellants. Hence, he submitted that the plaintiffs are struggling to get the property for more than 51 years. Hence, he prays for dismissal of the suit.

5.I have perused the entire materials.

6.This Court framed the following substantial questions of law:

<https://hcservices.ecourts.gov.in/hcservices/>



i) Whether the Courts below have not appreciated the facts properly and passed an order?

ii) Whether the correlation of the survey numbers has not been proved?

7.A suit for redemption of mortgage and recovery of possession was filed and it has reached finality in S.A.No.196 of 1984. This Court has also confirmed the finding of the trial Court. These facts are not in dispute. The original property was mortgaged in the year 1912 with specific boundaries. But, due to passage of time, there were certain transactions effected by mortgagee. But, the fact remains that the suit for redemption is already decreed and the Commissioner has already identified the property with reference to various documents. It is also to be noted that no objections whatsoever has been filed by the appellants for the Commissioner's report. Therefore, now it cannot be contended by the learned Counsel for the appellants that survey number is not tallying with the old survey number and the property has not been properly identified.

8.In fact, the Courts below analysed the oral and documentary evidence in the proper sense and arrived at a conclusion that the property has been properly identified. The respondents claim right only on the basis of mortgage of the predecessor. Once the predecessors come as mortgagees, now they cannot dispute the identity of the property. It is also be noted that D.W.1 evidence itself clearly identify the properties. Her evidence shows that three shops were built on the mortgaged property and those properties have been sold. Those properties alone have been properly identified by the Commissioner. Apart from D.W.1, the Commissioner was also examined and in his cross examination, nothing could be established to show that the correlation is incorrect.

9.The persons claiming right under the mortgage they themselves admitted the exact location of the mortgaged property where the buildings have been put up. Therefore, this Court is of the view that no other proof is required to identify the property. When the parties themselves have clearly identified that only in the mortgaged property three shops have been built up and they dealt the same during the pendency of the suit, this Court is of the view that the contention of the appellants that the property has not been properly identified has no legs to stand. When the Commissioner has identified the property on the basis of the various documents and no objections whatsoever has been filed, now, the identify of the property cannot be questioned. The substantial questions of law are answered accordingly.



10. Accordingly, the findings of the Courts below are confirmed and the second appeal is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

MR

To

1.The Sub Court,
Kuzhithurai.

2.The Principal District Munsif Court,
Kuzhithurai.

Copy to

The Section Officer, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.V.NAGENDRAN, Advocate (SR-2851[F] dated 24/01/2020)

+1 CC to M/s.J.ANANDAVALLI, Advocate (SR-3062[F] dated 27/01/2020)

ORDER MADE IN
S.A.[MD]No.814 of 2014
24.01.2020

VB(21.02.2020) 4P 7C