



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A. (MD) No.522 of 2015

and

M.P (MD) .No. 1 of 2015

WEB COPY

Velusamy (died)

V.M.Palaniappan (died)

Padma (died)

1.Ravikumar

2.Senthilkumar

3.Sathasivam

4.Ramathal

... Appellants/Appellants/Plaintiffs

vs.

1.S.Jayabalan

2.P.Subramanian

3.P.Murugesan

...Respondents/Respondents/Defendants

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the decree and judgment passed by the II Additional Sub Judge, Karur dated 30.01.2015 made in A.S.No.67 of 2011 confirming the decree and judgment made in O.S.No.863 of 1994 dated 06.11.2001 by the Principal District Munsif, Karur.

For Appellants : Mr.S.Mathavan

For Mr.M.Karthikeya Venkitachalapathy

For Respondents : Mr.K.Govindarajan

J U D G M E N T

The plaintiffs, who had lost their suit for bare injunction successively before the Courts below have come forward with this Second Appeal.

2.The parties are referred to as their ranks before the trial Court.

3.The case of the plaintiffs was that the suit property originally belonged to one Amanullah Sahib. On 29.04.1945, Amanullah Sahib had created a usufructuary / necessary mortgage in favour of one Kumar Gounder. Kumar Gounder died sometime in 1953 and the



plaintiffs 1 to 6 are his heirs. During the pendency of the suit, the first plaintiff passed away and his heir is impleaded as seventh plaintiff. A certificate copy of the mortgage deed was marked as Ex.A2.

4.The case of the plaintiffs are that the mortgage was not redeemed by the mortgagor Amanullah Sahib and consequently by efflux of time the right of redemption was lost to the mortgagor and that the plaintiffs are the absolute title holders of the suit property.

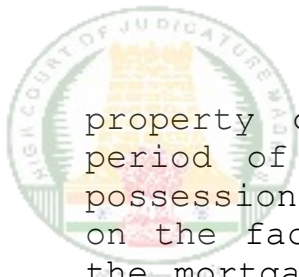
5.In the written statement, it was alleged that after the demise of Amanullah Sahib, his heirs have executed Ex.B3 sale deed dated 20.07.1962 in favour of one Kamatchi and Subbaraya Gounder based on which, the purchasers of the property have become the absolute owners. They in turn sold the property under Ex.B4 sale deed dated 15.03.1966 to the defendants. Since the purchase under Ex.B4, the defendants have mutated their names in the revenue records and have been paying all taxes and rates payable on the property.

6.When the matter went to trial, both sides produced oral and documentary evidence. On appreciating the evidence, the trial Court found that the plaintiffs have produced only a certified copy of the mortgage deed originally executed by Amanullah Sahib. In Ex.B3 sale deed executed by heirs of Amanullah Sahib in favour of Kamatchi in 1962, it is positively stated that the said mortgage had been redeemed and hence, it concluded that the mortgage should have been redeemed between the dates of Ex.A2 and Ex.B3. It has also taken into account the omission of the plaintiffs to produce original mortgage deed and inasmuch as the suit is for bare injunction, the trial Court appreciated the various tax receipts and revenue records produced by the defendants to find a preponderating probability that the defendants alone could be in possession of the suit property and consequently it dismissed the suit. In an appeal preferred by the plaintiffs, the First Appellate Court concurred with a view of the trial Court and dismissed the same. Hence, this Second Appeal.

7.Heard both sides.

8.The learned counsel for the appellants made a valiant attempt to convince the Court in the absence of any receipt to show that the burden of proving that the mortgage had been redeemed was on the defendants.

9.This Court is plainly not impressed with the said submissions. It should be emphasized the suit itself is laid for bare injunction on the foundation that the plaintiffs are in possession and their allegation that they have perfected title to the



property on the alleged non-redemption of property within the period of limitation is only intended to lend legality to the possession. If the statement of the plaintiffs were to be accepted on the face value, then they ought have produced the original of the mortgage deed. Secondly, beyond certified copy of Ex.A2, they have not produced any document to show the actual possession and enjoyment of the suit property. Here, the defendants score over the plaintiffs when they produced not only their title documents but also all necessary revenue records to substantiate their possession.

10.This Court does not find any error in the approach and findings of the Courts below as to warrant interference. There is no perversity in the Judgments and necessarily no substantial question of law is involved.

11.Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM/msa

To

1.The Second Additional Subordinate Judge, Karur

2.The Principal District Munsif, Karur.

3.The Section Officer

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

+1 CC to M/s.K. GOVINDARAJAN, Advocate (SR-15997[F] dated 04/09/2020)

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mr(CO)

TR(15.09.2020) 3P 6C