



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.No.1491 2008
and
M.P.No.1 of 2008
and
C.M.P.No.10143 of 2021

Murali ...2nd defendant/Appellant/Appellant
Vs.

1.Razia John (died)
2.Khaja Sheriff
3.Sirajudeen
4.John Basha
5.Noor Banu
6.Noor Jahan
7.Dowlat Bee
8.Alavudeen Basha

...Plaintiffs/Respondents 1 to 5/
Respondents 1 to 5

...Defendants 1, 3 and 4/
Respondents 6 to 8/Respondents 6 to 8

(Respondents 2 to 5 are legal representatives of the deceased R1
vide Court order dated 20.04.2021 made in S.A.N.1491 of 2008 in
Memo SR.1992 dated 04.03.2014 by PTAJ)

PRAYER: Second Appeal filed under Section 100 of the Code of
Civil Procedure against the Judgment and Decree dated 24.10.2007
in A.S.No.12 of 2007 on the file of the learned Additional
Subordinate Judge, Salem confirming the Judgment and Decree
dated 15.09.2006 in O.S.No.1163 of 2004 on the file of the
learned II Additional District Munsif, Salem.

For Appellant : Mr.D. Shivakumaran

For Respondents: Mr.T.M.Hariharan
for Mr.K.Balaji for R2 to R5
R6-Served - No appearance
R1-died
Not ready in notice
regarding R7 and R8

JUDGMENT

The 2nd defendant is the appellant before this Court. The
Second Appeal arises against the Judgment and Decree in
A.S.No.12 of 2007 on the file of the learned Additional



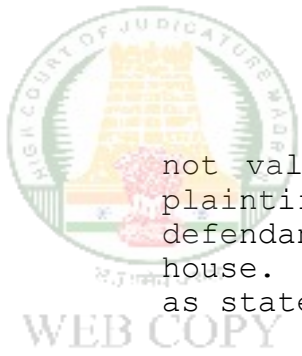
Subordinate Judge, Salem, confirming the Judgment and Decree of the learned II Additional District Munsif, Salem, in O.S.No.1163 of 2004 which was originally filed before the learned Subordinate Judge, Salem and registered as O.S.No.333 of 2003. The parties are referred to in the same ranking as in the Plaintiff.

The facts in brief which are necessary for disposing of the above Second Appeal are as follows:

2.The plaintiffs/respondents 1 to 5 herein had filed the above suit for a declaration of their title to the suit property, for recovery of possession and for permanent injunction, restraining the defendants from creating any encumbrance over the suit property. It was the case of the respondents 1 to 5 that the suit property was purchased by one N.D. Usman Baig under two Sale Deeds in 1935. The said Usman Baig had four sons and three daughters. He died intestate leaving behind him his widow, his four sons and four daughters. After the death of Usman Baig, his two sons Karim Baig and Anwar Baig and his three daughters have released their rights in all the properties of Usman Baig under a registered Release Deed dated 15.02.1960 in favour of the other two sons, namely, Ahamed Sheriff and Rahim Baig.

3.It was the case of the plaintiffs that Ahamed Sheriff had occupied the suit property and converted the thatched shed into a tiled house. His brother Rahim Baig did not raise any objection. On 19.10.1972, Ahamed Sheriff and Rahim Baig had partitioned the property. The suit property is situate on the Northern extremity to the portion allotted to the 1st defendant who was the daughter of Anwar Baig, the brother of Ahamed Sheriff. The plaintiffs are the legal representatives of Ahamed Sheriff. After the death of the 1st defendant's father Anwar Baig, since there was no one to look after her she requested permission to live in the suit tiled house. The 1st plaintiff's husband Ahamed Sheriff permitted her to live in the suit property. After the death of Ahamed Sheriff on 08.03.1983 the respondents 1 to 5 became the absolute owners of the property.

4.Since the plaintiffs were not very happy with the activities of the 1st defendant they asked her to vacate the suit property and it was only then that they came to know that the 1st defendant had created a sham and nominal Sale Deed in favour of the 2nd defendant under a false power of attorney said to have been executed by Ahamed Sheriff in the year 1989. On 19.08.1989, a Varthamana Letter is said to have been executed by the Ahamed Sheriff. This appears to be a fabricated document. In fact, the sale in favour of the 2nd defendant has been created after the death of Ahamed Sheriff. Therefore, the Sale Deed is



not valid in law and not binding on the respondents 1 to 5 / plaintiffs. When the plaintiffs were out of station the 2nd defendant occupied the house and the 1st defendant had left the house. Hence, the plaintiff has filed the suit for the reliefs as stated above.

5.The 1st defendant had denied the averments contained in the Plaint and would contend that it was her father who was in possession of the suit property and it is only the other properties which were divided between Ahamed Sheriff and Rahim Baig. She would state that after her father's death, she is in possession and enjoyment of the suit property. The said Ahamed Sheriff had executed a Power of Attorney in her favour at the instance of some Mediators and given her all rights to the suit property and on the very same day, had executed a Varthamanam Letter whereby he has given up his right in the suit property.

6.By reasons of these two documents, the 1st defendant has become the owner of the property and therefore, she had sold the same to the 2nd defendant/appellant herein. The Varthamanam Letter had been acted upon on the basis of which the revenue records have also been mutated in favour of the 2nd defendant.

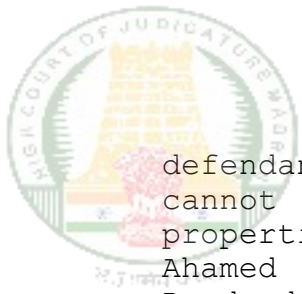
7.The 2nd defendant had filed a Written Statement more or less adopting the stand taken by the 1st defendant.

8.The 1st plaintiff was examined as P.W.1 and she had marked Ex.A.1 to Ex.A.10 in support of her case. On the side of the defendants, the 2nd defendant was examined as D.W.1 and one Ayyanar as DW2 and the General Power of Attorney and Varthamanam Letter said to have been executed in favour of the 1st defendant was marked as Ex.B.1 and Ex.B.2. The learned II Additional District Munsif, Salem on considering the evidence on record had decreed the suit. Aggrieved by the said Judgment and Decree, the 2nd defendant alone had filed A.S.No.12 of 2007 on the file of the learned Subordinate Judge, Salem. The learned Subordinate Judge also dismissed the appeal confirming the Judgment and Decree of the trial Court. Challenging the same, the appellant is before this Court.

9.The Second Appeal has not been admitted.

10.Heard the learned counsel appearing on either side and perused the records.

11.The 2nd defendant and his vendor, namely, 1st defendant claims a right to the property on the basis of Varthamanam Letter and a General Power of Attorney. The Original of the documents have not been produced before the Court. That apart, the Varthamanam Letter which appears to confer title on the 1st



defendant is an unregistered document. Therefore, the same cannot be looked into for any purpose. That apart, the suit properties and other properties had been given to the share of Ahamed Sheriff and Rahim Baig by virtue of a registered Release Deed dated 15.02.1960 executed by the wife and the other children of Usman Baig, the original owner of the property. This included the father of the 1st defendant. Therefore, the property in question only belonged to the two of them, namely, Ahamed Sheriff and Rahim Baig. Thereafter, in a partition between them, on 19.10.1972, the suit fell to the share of Ahamed Sheriff under whom the plaintiffs claim a right.

12. That apart, the Sale Deed executed in favour of the 2nd defendant is of the year 1995, nearly two years after the death of Ahamed Sheriff and the sale has been created on the basis of the Power of Attorney said to have been executed by Ahamed Sheriff in favour of the 1st defendant. The Sale Deed in favour of the 2nd defendant has not been produced. The sale has been executed by a Power Agent after the death of the Principal. The Courts below have rightly considered the evidence on record and decreed the suit as prayed for. I do not find any questions of Law much less the Substantial Questions of Law warranting interference under Section 100 of the Code of Civil Procedure.

Accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

1. The Additional Subordinate Judge, Salem.
2. The II Additional District Munsif, Salem.

+1cc to Mr.D.Shivakumaran, Advocate, S.R.No.34440

+2cc to Mr.K.Balaji, Advocate, S.R.No.34280

S.A.No.1491 2008
and M.P.No.1 of 2008&C.M.P.No.10143 of 2021

VBM(CO)
RGA(10/12/2021)