



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.784 of 2008

- 1.C.Nagarajan (died)
- 2.Vasuki
- 3.N.Paramasivam
- 4.N.Balamurugan
- 5.N.Yuvaraj
- 6.Banurani
- 7.Hemalatha

... Appellants

(Appellants 2 to 7 brought on record
as LRs of the deceased sole appellant
viz., Nagaraja Iyer vide order of Court
dated 12.07.2019 made in CMP.
No.11290/2018 in S.A.No.784/2008)

Vs.

- 1.Kalyanasundaram
- 2.Muniappa
- 3.Gnanambal
- 4.Thirupurasundari
- 5.C.Balaiar

... Respondents 1 & 2/Defendants 1 & 3

... Respondents 3 & 4/Respondents 3 & 4

... 5th Respondent/3rd Appellant

Prayer: The second appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 24.12.2003 passed in A.S.No.84 of 1998 on the file of the Additional District Judge, Fast Track Court, Kancheepuram, confirming the judgment and decree dated 08.08.1995 passed in O.S.No.1217 of 1990 on the file of the Principal District Munsif Court, Kancheepuram.

For Appellants : Mr.A.Muthukumaran

For Respondent Nos.1 & 2 : Mr.V.Balasubramanian

For Respondent Nos.3 to 5 : No appearance

JUDGMENT

Challenge in this second appeal is made to the Judgment and decree dated 24.12.2003 passed in A.S.No.84 of 1998 on the file of the Additional District Judge, Fast Track Court,



Kancheepuram, confirming the judgment and decree dated 08.08.1995 passed in O.S.No.1217 of 1990 on the file of the Principal District Munsif Court, Kancheepuram.

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2.The unsuccessful plaintiff in O.S.No.1217 of 1990 is the appellant in this second appeal.

3.The suit has been laid by the plaintiff viz., Krishnaveni Ammal against the defendants for the relief of declaration that the Court sale deed 30.07.1962 in favour of the first defendant is a nullity ab initio and for recovery of the possession of the suit property from the third defendant after the demolition of the superstructure, if any.

4.From the pleas put forth by the respective parties in the matter and considering the judgement of the Courts below, it is seen that the suit property originally belonged to the plaintiff and the second defendant in execution of the decree obtained by him in O.S.No.148 of 1958 against the plaintiff, the suit property was brought for auction and the first defendant was declared the Court auction purchaser on 17.07.1962 and after the confirmation of the auction sale by the Court, the first defendant had taken the delivery of the property through the Court process on 06.10.1962 and subsequent thereto, the first defendant has alienated the suit property to the third defendant.

5.The defendants resisted the plaintiff's suit, inter alia, mainly on the point of limitation. The plaintiff by way of the suit has sought for the relief of declaration that the Court auction sale deed dated 30.07.1962 is nullity ab initio and the suit has come to be laid by the plaintiff on 15.06.1990.

6.From the materials available on record, both oral and documentary and the defence version, it is found that as rightly concluded by the Courts below that the claim of the plaintiff that she was not aware of the Court auction sale earlier, as such, is untenable and the same has been correctly disbelieved by the Courts below. Further more, the plaintiff has admitted in the Course of her evidence that at the time of Court auction sale, the first defendant was a minor and would also admit that she is not aware whether she has questioned the auction sale on the footing that the first defendant was a minor. Therefore, it is obvious that the plaintiff is aware of the Court auction, when the same took place and despite the abovesaid position, the plaintiff has not evinced any interest to challenge the Court



auction sale within the time prescribed under law. The contention of the plaintiff that only a paper delivery has been given to the purchaser qua the suit property, has been rightly disbelieved by the Courts below.

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7.The materials placed on record on the part of the plaintiff would not establish that the plaintiff has been in the lawful possession and enjoyment of the suit property after the Court auction sale. Therefore, the Courts below are found to be justified in holding that the plaintiff has not established the possession of the suit property after the Court auction sale and considering the fact that the plaintiff is aware of the Court auction sale on the date of the auction itself and the plaintiff having laid the suit very belatedly, all put together, it is obvious that as determined by the Courts below, the plaintiff's suit is clearly barred by limitation. The Courts below have invoked Articles 59 and 27 of the Limitation Act and concluded that the plaintiff's suit is barred by limitation and the abovesaid determination of the Courts below are not projected to be unacceptable by the plaintiff in the second appeal.

8.In the light of the abovesaid factors, when the reliefs sought for by the plaintiff are obviously and clearly barred by limitation as determined by the Courts below and when no exception could be taken to the same, in such view of the matter, in my considered opinion, no substantial question of law is involved in this second appeal.

9.In conclusion, the Judgment and decree dated 24.12.2003 passed in A.S.No.84 of 1998 on the file of the Additional District Judge, Fast Track Court, Kancheepuram, confirming the judgment and decree dated 08.08.1995 passed in O.S.No.1217 of 1990 on the file of the Principal District Munsif Court, Kancheepuram, are confirmed. Accordingly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sms



To

1. The Additional District Judge,
Fast Track Court,
Kancheepuram.

2. The Principal District Munsif Court,
Kancheepuram,

3. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.A.Muthukumaran, Advocate, S.R.No.6477

S.A.No.784 of 2008

RSI (CO)
HS (03/09/2021)