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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.310 OF 2012
AND MP NO.1 OF 2012

Vani

...Appellant / Appellant /
2nd Defendant

Vs.

1.R.Manoharan

...1st Respondent / 1st Respondent /
Plaintiff

2.P.V.Jayaraman

...1st Respondent / 1st Respondent /
1st Defendant

(2nd Respondent set exparte in Lower
Court, Hence given up in S.A.)

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 31.07.2008 made in A.S.No.6 of 2007 on the file of Additional District Judge (Fast Track Court - 2) Gobichettipalayam confirming the judgment and decree dated 29.06.2005 made in O.S.No.142 of 2002 on the file of District Munsif Court, Sathyamangalam.

For Appellant : Mr.R.T.Doraisamy

For Respondents : Mr.G.K.Muthukumar
for M/s.Roshan Atiq

R2 : Given Up

J U D G M E N T

The second defendant is the appellant before this Court against the concurrent findings of the Courts below.

2. Originally, the first respondent / plaintiff filed a Suit for recovery of possession on the basis of a registered Sale Deed executed in his favour by the second respondent / first defendant on 13.11.2000.



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3. The admitted facts are that the house property originally belonged to the second respondent / first defendant. He entered into an agreement of sale with the first respondent / plaintiff on 20.11.1998 and paid a sum of Rs.1,50,000/- out of the total sale consideration of Rs.2,00,000/-. The time for completion of contract was fixed as two years. On 16.05.2000, the first respondent / plaintiff issued notice to the second respondent / first defendant for execution of the Sale Deed. Thereafter, on 13.11.2000, the Sale Deed was executed by the second respondent / first defendant in favour of the first respondent / plaintiff and symbolic possession was also taken by the first respondent / plaintiff. Thereafter, on the request of the second respondent / first defendant, he was allowed to continue in the same property as tenant. Since the second respondent / first defendant refused to vacate the premises, the first respondent / plaintiff, filed a Suit for recovery of possession.

4. During the pendency of the Suit, the appellant / second defendant filed a Suit for maintenance against the second respondent / first defendant/husband, in O.S.No.207 of 2001. It was decreed on 27.11.2001. She filed an Execution Petition in EP No.19 of 2002, in which, she filed a claim petition vide E.A.No.22 of 2003. She filed an appeal in CMA No.4 of 2006 and the same was dismissed, against which, she filed CMSA No.11 of 2013 and the same was also dismissed. This Court has given a categorical finding that the decree passed in O.S.No.207 of 2001 will not bind the purchaser of the property, namely, the first respondent herein.

5. Both the Trial Court and the First Appellate Court have decreed the Suit in favour of the first respondent / plaintiff. Aggrieved over the same, the second defendant / appellant / wife is before this Court.

6. Heard the submissions made on either side.

7. The admitted facts remains that the house property absolutely belonged to the second respondent / first defendant / husband. He entered into an agreement on 20.11.1998 and received a sum of Rs.1,50,000/- out of the total sale consideration of Rs.2,00,000/-. He issued a notice for performance of contract on 16.05.2000 and subsequent to that, on 13.11.2000, the Sale Deed was executed on receipt of the balance sale consideration.

8. Thereafter, the appellant / wife filed a Suit for maintenance in O.S.No.207 of 2001 and a decree was passed on 27.11.2001. Whether the decree passed in the maintenance case will have a bearing on the sale made in favour of the first respondent / plaintiff is the moot question here. It is already decided by this Court in CMSA No.11 of 2013 that the decree



passed in the maintenance case will not bind the sale made on 13.11.2000 and therefore, we need not go further into this issue.

9. Now that the decree of recovery of possession granted in favour of the first respondent / plaintiff is disputed by the appellant / second defendant / wife. The second defendant is neither owner of the property nor had any charge over the property during the pendency of the Suit. In the absence of any charge over the property, she has no locus to question the sale made by a true owner. Further, the first respondent / plaintiff is the purchaser for valid consideration and that he has become the owner of the property. He has every right to recover possession of the property.

10. In fact, the second respondent / first defendant / husband has some legal right to question the validity of the Sale Deed dated 13.11.2000. But till date, the Sale Deed was not challenged before any Court. In the absence of challenge to the Sale Deed, the second defendant / appellant / wife cannot have any legal right to set aside the decree of recovery of possession granted in favour of the first respondent / plaintiff.

11. The learned counsel for the appellant placed his reliance on Section 14 of Hindu Succession Act, 1956, whereby, the right of a Hindu female becomes absolute. When she obtained a decree of maintenance, any person, who succeeds the estate of husband has a legal obligation to satisfy the maintenance decree or clear the arrears of maintenance.

12. In support of his contention, the learned counsel for the appellant would rely on a judgment of the Hon'ble Supreme Court in VADDEBOYINA TULASAMMA VS. VADDEBOYINA SETHA REDDI (DEAD) BY LRS. [AIR 1977 SC 1944] wherein it is observed that any person who succeeds the estate of husband has a liability to clear the arrears of maintenance due to the wife.

13. In the instant case, the second defendant / appellant is neither legal heir nor succeeds the estate of the first defendant / second respondent / husband. In fact, the first defendant / husband is very much alive and that he sold his self acquired property, in which, the second defendant / appellant has no right till his death. Therefore, the question of succeeding the estate of husband does not arise and the judgment of the Hon'ble Supreme Court referred above will not apply to the present case.

14. From the factual background, I do not find any question of law much less any substantial question of law arises to grant admission to the Second Appeal. The Second Appeal does not



deserve any consideration and accordingly stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

TK

To

1.The Additional District Judge
(Fast Track Court - 2)
Gobichettipalayam.

2.The District Munsif
District Munsif Court
Sathyamangalam.

S.A.NO.310 OF 2012

KJ(CO)
RVM(06/06/2022)