



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.06.2022

Pronounced on : 13.07.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.97 of 2010

and

M.P.No.1 of 2010

Nagappan

...Defendant /Appellant / Appellant

Vs.

- 1.Kanniah Reddiyar (died)
- 2.Saraswathi Ammal
- 3.G.K.Aadhi Sesham
- 4.P.Geethalakshmi
- 5.G.K.Padmanaban
- 6.K.Vijayalakshmi
- 7.G.K.Damodharan

...Plaintiffs / Respondents / Respondents

RR3 to 7 are brought on record as legal representatives of the deceased 1st respondent vide order dated 10.09.2020 made in CMP.No.16064 of 2019 (GJJ).



The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.37 of 2007 dated 12.10.2009 on the file of the Sub Court, Vellore confirming the judgment and decree made in O.S.No.506 of 2001 dated 01.03.2007 on the file of the Additional District Munsif Court, Vellore.

For Appellant	: Ms.R.T.Sundari
For R2	: Mr.M.Sivakumar
R1	: Died
R3 to R7	: Mr.M.Santhanaraman

JUDGMENT

The defendant in O.S.No.506 of 2001 which was on the file of the Additional District Munsif Court Vellore, is the appellant herein.

2.O.S.No.506 of 2001 had been filed by the respondents seeking permanent injunction restraining the defendant from interfering with peaceful possession of the suit properties. There were five items of suit properties and they were situated in S.No.412 in Athiyur Village, Vellore,



measuring to an extent of 8.21 acres namely, Item No.1 comprised 1.36 ½ acres with 1/6 share in the well. Item No.2 comprised another 1.36 ½ acres with 1/6 share in the well. Item No.3 also comprised 1.36 ½ acres with 1/6 share in the well. Item No.4 comprised 1.00 acres and item No.5 comprised 2.73 acres with 2/6 share in the well. The plaintiffs were spouses. They claimed that the 1st plaintiff had purchased item Nos. 1 and 2 properties by way of two registered sale deeds dated 02.02.1960 and 29.03.1960. The 2nd plaintiff had purchased item Nos.3, 4 and 5 by way of registered sale deeds dated 17.11.1961, 19.08.1963 and 20.08.1965 respectively. Claiming that the defendant was interfering with possession the suit had been filed for permanent injunction.

3.The defendant filed a written statement disputing the execution, registration and also the validity of the sale deeds. The defendant claimed his grandfather Munusamy Gounder had six sons, viz., Patchaiyappa Gounder, Govindasamy Gounder, Appasamy Gounder, Kanna Gounder, Ramasamy Gounder and Perumal Gounder. The defendant was the son of Patchaiyappa Gounder. He stated that the grandfather had purchased the total extent of 8.21 acres in S.No.412 by a registered sale deed dated 13.03.1944, but also



stated that the sale deed was lost. He stated that there was a family arrangement among the sons of Munusamy Gounder and that they all took a share in the aforementioned lands. He further stated that the father of the defendant was also allotted a particular share. He claimed that he also purchased further land and was in possession of 3.10 acres of punja land in S.No.412. He therefore disputed that the title of the plaintiffs and their assertion that they were in possession.

4.The Additional District Munsif, Vellore, took up the suit for trial and framed issues. The primary issues were whether the sale deeds relied on by the plaintiffs were true, valid and binding and whether the alleged partition among the sons of Munusamy Gounder was true, valid and binding and whether relief of permanent injunction could be granted.

5.After analysing the evidence adduced during the course of trial, wherein, on the side of the plaintiff one witness was examined and Exs.A1 to A9 were marked and on the side of the defendant two witnesses were examined and Exs.B1 to B4 were marked, the Additional District Munsif held that the sale deeds under which the plaintiffs claimed title were true,



valid and binding and also that the partition among the sons of Munusamy Gounder was also true, valid and binding and further stated that it was only in accordance with such partition that five separate sale deeds had been executed for the suit schedule properties. However, it was also found that the plaintiffs have not proved possession and therefore, holding that the suit was for permanent injunction, the suit was dismissed.

6.Questioning that particular judgment, the defendant filed A.S.No.37 of 2007 and the plaintiffs filed Cross Obj. No.37 of 2007. Both the appeal suit and the cross objection were taken up together by the Principal Sub Judge, Vellore, who by judgment dated 12.10.2009, affirmed the findings of the District Munsif, Vellore and dismissed both the appeal suit and the cross objection.

7.The plaintiffs has not filed any second appeal questioning dismissal of the cross objection. However, the defendant has filed the present Second Appeal. The Second Appeal had not been admitted and notice alone had been directed to the respondents / plaintiffs.



8. Pending the Second Appeal, the 1st respondent / 1st plaintiff died and his legal representatives had been brought on record as respondents 3 to 7.

9. Heard Mrs.R.T.Sundari, learned counsel for the appellant and Mr.M.Sivakumar, learned counsel for the 2nd respondent and Mr.M.Santhanaraman, learned counsel for the 3rd and 7th respondents.

10. One of the contentions raised by the appellant before the Trial Court and before the First Appellate Court was that he had instituted O.S.No.4 of 2004 before the Additional District Munsif Court Vellore, for declaration and permanent injunction of the properties, which according to him, he was entitled and was in possession. It emanated during the course of arguments that the said suit had also been dismissed. In the said suit, the appellant herein had filed I.A.No.838 of 2006 under Order 23 Rule 3 of CPC to withdraw the suit with liberty to file a fresh suit on the same cause of action. That application had been dismissed by order dated 11.01.2007 passed by the Additional District Munsif, Vellore. I am informed that subsequently, the suit has also been dismissed.

11. In the instant case, the respondents relied on five registered sale



deeds and the executants of the sale deeds had not brought forward any legal ground to set aside the same. The sale deeds which have been held by both the Courts as valid, true and binding, which is a definite conclusion of a fact are therefore binding on the executants of the sale deeds. Accordingly, the title of the respondents cannot be questioned or impinged. Though the suit for permanent injunction has been dismissed, a finding had been given by the Trial Court, upholding the validity of the sale deeds. The appeal filed questioning such finding had been dismissed by the First Appellate Court. The appellant herein has not been able to put forth any ground necessitating interference with the findings on fact. The registered sale deeds have been executed and therefore, it would not be appropriate on the part of this Court to interfere with that finding of fact.

12.The appellant herein had instituted a separate suit to protect his rights in O.S.No.4 of 2004. He cannot question the sale deeds executed in favour of the respondents and no legal ground has been raised questioning the right of the executants of the sale deeds to so convey the respective properties and that the sale deeds will have to be rejected by this Court.

13.As a matter of fact, the appellant had not even raised any counter



claim questioning the validity of the sale deeds. Therefore, the findings of the Courts below upholding the sale deeds have to be confirmed by this Court. The concurrent findings on possession is also upheld. No substantial question of law arises for consideration. The Second Appeal is therefore dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

13.07.2022

Index:Yes/No
Internet:Yes/No
smv

To

- 1.The Sub Court, Vellore.
- 2.The Additional District Munsif Court, Vellore.
- 3.The Section Officer, VR Section, Madras High Court.



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C.V.KARTHIKEYAN,J.

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Pre-delivery Judgment made
in
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and
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