



S.A.No.351 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Second Appeal No.351 of 2015
and M.P.No.1 of 2015

1.M.Sekar
2.S.Velvizhi

... Appellants

-Vs-

1.R.Raju
2.M.Baskar
3.Ramachandra Naicker
4.Karthikeyan
5.Sitharathan

... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 10.02.2014 made in A.S.No.1 of 2014 on the file of 1st Additional District Judge, Tindivanam confirming the judgment and decree dated 04.11.2009 made in O.S.No.5 of 2002 on the file of District Munsif, Vanur.

For Appellant : Mr.K.Mayilsamy
For Respondents : Mr.T.M.Naveen – for R1
R2 to R4 – Not ready in notice
R5 – No appearance

J U D G M E N T

The defendants 2 and 3 are the appellants in this second appeal. The first respondent / plaintiff filed a suit seeking for the relief of declaration of title and permanent injunction.



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2. The case of the plaintiff is that the suit property was originally owned by one Jagadhambal and she sold the property in favour of the fourth defendant by virtue of a registered sale deed dated 27.08.1968, marked as Ex.A.1. The fourth defendant in turn settled the property in favour of the fifth defendant through a registered settlement deed dated 24.05.1977, marked as Ex.A.2. After the settlement, he also mutated his name in the revenue records and the patta has been marked as Ex.A.3. Later, the fourth and fifth defendants executed a sale deed in favour of the plaintiff on 11.07.1997 which was marked as Ex.A.4. After the purchase, the name of the plaintiff was also mutated in the revenue records and the patta was granted in favour of the plaintiff, which was marked as Ex.A.5.

3. The grievance of the plaintiff is that the defendants who do not have any right or title over the suit property were attempting to interfere with the possession and enjoyment of the property and were also creating a cloud over the title. Hence, the suit came to be filed for the relief cited supra.

4. The case of the second and third defendants is that the above said Jagadhambal executed a settlement deed in favour of her son on 24.05.1990 marked as Ex.B7. He is the first defendant in the suit. The first defendant in turn sold the suit property through Ex.A8 in favour of the second defendant and the second defendant has executed a settlement deed in favour of his minor son through Ex.B.11. The second and third defendants have taken a stand that none of the documents that are relied upon by



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the plaintiff has been acted upon and they were never in possession and enjoyment of the property and hence according to them, the plaintiffs do not have any right or title over the property. Both the Courts below, on considering the facts and circumstances of the case and after marshalling the evidence available on record, held against the defendants. Aggrieved by the same, the second and third defendants have filed this second appeal.

5. When the matter came up for hearing on 18.02.2022, this Court passed the following order.

“ The learned counsel for the first respondent submitted that the suit property was purchased by one of the son of the first appellant in the name of one Gowthaman through a sale deed dated 13.03.2020. The learned counsel for the appellant shall take instructions in this regard. If the properties has already been purchased, the dispute will no more survive. Post this case on 10.03.2022.”

6. When the matter was taken up for hearing, learned counsel for the appellants submitted that the sale deed dated 13.03.2020 does not in any way take away the right of the appellants and even though one of the son is shown as an attestor to the said document, that will not bind the appellants and in any case, there is some misunderstanding between the first appellant and his son. Therefore, the learned counsel submitted that he will make his submissions on merits.



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7. The learned counsel for the appellants focussed his arguments mainly on two issues. The first issue is on the bar of the subsequent suit under Order IX Rule 9 of C.P.C., and the second issue is on the ground that both the Courts below failed to appreciate the evidence available on record and hence according to the learned counsel for the appellants, the findings are perverse.

8. Insofar as the first issue is concerned, both the Courts took into consideration the earlier suit that was filed by the vendor of the plaintiff in O.S.No.455 of 1995, which was dismissed for default. According to the appellants, the subsequent suit is barred under Order IX Rule 9 of C.P.C. While dealing with this issue both the Courts have held that the plaintiffs were not parties to the earlier suit and it is the vendor of the plaintiffs who had filed the suit against the first and second defendants and hence, the plaintiffs will be entitled to maintain the present suit. The learned counsel submitted that the bar will apply even to the subsequent purchasers since they have derived their title from the vendor.

9. It is true that the reasoning that was given by both the Courts below may not be right. However, the ultimate finding of both the Courts below is sustainable since, in the considered view of this Court, the dismissal for default is relatable to Order IX Rule 3 of C.P.C., and Order IX Rule 4 itself makes it clear that the suit can be filed on the same cause of action and it will not be barred under the doctrine of *res judicata*. Reliance can be placed on the judgment of the Hon'ble Supreme Court in "**Bajranglal Shivchandra**



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Ruia -Vs- Shashikant N.Ruia and Others [2004 (5) SCC 272]” and the Division

Bench judgment of this Court in **“A.Akthar Hussain -Vs- K.Pappireddiyar and Others” (2016) 4 MLJ 192.** Hence the findings of both the Courts below can be sustained on this ground.

10. Insofar as the appreciation of evidence is concerned, it is clearly seen that Jagadhambal had already sold the property as early as in the year 1968 itself and therefore there was nothing left for Jagadhambal to settle the property once again in the year 1990. Even though the second and third defendants have taken a plea that the sale deed was never acted upon and they continued to be in possession, the fact that there were subsequent registered documents executed in the year 1977 and 1997 and the mutation in the revenue records also took place subsequent to the said documents clearly shows that the original sale was acted upon. This Court does not find any perversity in the findings of both the courts below and it does not warrant any interference.

11. In any event, this Court does not find any substantial questions of law involved in this second appeal. In the result, the second appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

10.03.2022

Index : Yes/No
Internet : Yes/No
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N.ANAND VENKATESH, J.

KST

To

1.1st Additional District Judge, Tindivanam

2.District Munsif, Vanur.

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