

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.1099 of 2013

D.Mohan

... Appellant

Vs.

1. P.D.Gangadurai

2. D.Parameshwaran

3. P.M.Ahamed

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 04.11.2011 made in A.S.No.373 of 2010 on the file of VII Additional Judge, City Civil Court, Chennai dismissing the appeal suit and confirming the judgment and decree dated 01.02.2010 made in OS No.2706 of 2007 on the file of XIV Assistant Judge, City Civil Court at Chennai.

For Appellant : Ms.Yogapriya
for M/s.V.R.Kamalanathan

For Respondents : Mr.N.Siva Prakash, for R3
No appearance, for R1
R2 Died

JUDGMENT

The plaintiff is the appellant in the Second Appeal.

2. The plaintiff filed a suit seeking for the relief of permanent injunction restraining the first and second defendants from alienating or encumbering the suit property.

3. The case of the plaintiff is that the suit property was allotted in favour of one Saroja Ammal and her two sons by virtue of a Partition Deed dated 24.11.1986. The said Saroja Ammal executed a Settlement Deed dated 05.10.2005 by relinquishing her share in the property in favour of her sons, who are the plaintiff and the first and second defendants. In view of the same, the plaintiff claims that the suit property is jointly owned by himself and the first and second defendants.

4. The grievance of the plaintiff was that the second defendant wanted to sell his share in the property and hence entered into a sale agreement with the third defendant on 13.12.2006. According to the plaintiff, the share is sought to be sold even without the property being

properly demarcated by metes and bounds and by allotment of the specific shares of the plaintiff and the first and second defendants. Therefore according to the plaintiff, the alienation of 1/3rd share in favour of the third defendant will cause disturbance in the possession and enjoyment of the property and hence the suit was filed seeking for the relief of permanent injunction.

5. The first and second defendants took a specific stand that even at the time of entering in to the agreement of sale with the third defendant, it was made very clear that there will be a partition between the plaintiff and defendants 1 and 2 and subsequent to the execution of the agreement of sale, the plaintiff and defendants 1 and 2 jointly submitted the building plan for sanction before the concerned Authority and by submitting such a plan they had specifically shown the respective portion which was allotted to each sharer. According to the defendants, the plaintiff was intentionally trying to stop the second defendant sell his share of the property and the suit itself was vexatious.

6. Both the Courts below on considering the oral and documentary

evidence and also after taking into consideration the facts and circumstances of the case, came to a categorical conclusion that there was an understanding between the parties to separate the property into three equal shares and what was intended to be sold by the second defendant was only his share in the property. Therefore, both the Courts held that the plaintiff is not entitled to injunct the second defendant from entering into an agreement of sale with respect to 1/3rd share. Accordingly both the Courts below concurrently held against the plaintiff. Aggrieved by the same the present Second Appeal has been filed before this Court.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the third respondent.

8. This Court carefully considered the materials available on record. This Court also carefully considered the findings of both the Courts below.

9. In the considered view of this Court, both the Courts below have taken into consideration the evidence available on record and given a factual finding to the effect that the second defendant had only entered

into an agreement of sale with respect to his share namely 843 sq. feet in the suit property and it was also specifically mentioned in the agreement of sale that after the agreement of sale, all the three sharers will enter into a partition and divide and allot the respective shares to each sharer. Accordingly, application was also submitted before the concerned Authority seeking for planning permission wherein the respective shares of the plaintiff and the defendants 1 and 2 was shown in the application itself. This fact was not denied by the plaintiff, who was examined as P.W.1. In view of the same, both the Courts below held that the second defendant is entitled to alienate 1/3rd share in favour of the third defendant and it cannot be enjoined on the side of the plaintiff.

10. This Court does not find any perversity in the findings of both the Courts below and it does not warrant any interference. That apart the learned counsel for the third respondent submitted that a suit for specific performance was filed against the defendants to enforce the agreement of sale and this suit was ultimately compromised and the advance amount was refunded by the defendants that was received under the agreement of sale. It is therefore clear that the very cause of action for filing the suit no

more survives. In any event, this Court does not find any substantial questions of law involved in the Second Appeal.

11. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

01.03.2022

Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order

jv

To

- 1.The VII Additional Judge,
City Civil Court, Chennai
- 2.The XIV Assistant Judge,
City Civil Court at Chennai
3. The Section Officer
VR Section,
High Court Madras.

S.A.No.1099 of 2013

N. ANAND VENKATESH, J.

jv

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