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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.588 of 2015
and
CMP Nos.2454 and 2462 of 2019

1. Ettikkan Shanmugam (Deceased)
S/o.Etikkan, Residing at BLK 723#12-163,
Yishun ST-71, Singapore 760 723
Through His POA Agent T,Vanavil
S/o. A.V.Thangavel, 585,
Salem Main Road,
Attur, Salem District

2. Sanmugam Sarojadevi

3. Dhurrga Sanmugam

4. Sivakanes Sanmugam

5. Sivakarthik Sanmugam

... Appellants / Appellants /
LRS of the Plaintiff

Appellants 2 to 5 brought on record as LRS
of the deceased Sole Appellant vide order of
Court dated 05.10.2018 made in CMP No.16811/2017
in SA No.588/2015(TRNJ)

Vs.

R. Doraisami

... Respondent / Respondent / Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 20.12.2013 in A.S.No.3 of 2007 on the file of the I Additional District Judge, Salem reversing the judgment and decree dated 28.04.2006 in OS No.522 of 2001 on the file of the Additional Subordinate Judge, Salem.



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For Appellants : Mr.D.Shivakumaran

For Respondent : Mr.C.Vediappan
for M/s.C.S.Associates

JUDGMENT

The plaintiff is the appellant in the Second Appeal.

2. The plaintiff filed the suit seeking for the relief of declaration that he is the owner of the bus along with the route permit and to deliver the bus along with its route permit to him and for a preliminary decree for rendition of accounts from 24.07.1995 to 22.09.1997 and for the payment of the mesne profits along with interest.

3. The case of the plaintiff is that he is the owner of the stage carriage bus and he purchased the same from one Madheswaran on 31.07.1995 and the permit was also transferred in his name on 06.09.1995. The further case of the plaintiff is that he appointed the defendant as his Power Agent to run the bus and the Original Registration Certificate, Permit and Insurance Policy were handed over to the said Power Agent. The plaintiff was not satisfied with the performance of his agent and hence he cancelled the agency on 22.09.1997. The plaintiff also called upon the defendant to deliver the Original Registration Certificate, Permit and Insurance Policy and other documents pertaining to the Bus. The grievance of the plaintiff is that the defendant along with others had taken away the Bus forcibly and were operating the Bus. The defendant also denied the title of the plaintiff in the Bus and was continuing to unlawfully possess the Bus. Hence the suit was filed seeking for the reliefs stated supra.

4. The defendant claims to be the absolute owner of the Bus from the year 1994 onwards and the defendant has denied the fact that he acted as an Agent to the plaintiff. According to the defendant, he had purchased the Bus from one Balagangatharan on 20.11.1994. At that point of time, he had borrowed a sum of Rs.11,50,000/- from Madheswaran, as loan. For this purpose, the documents relating to the Bus were transferred in favour of Madheswaran as security. The defendant has further stated that the plaintiff was illegally claiming for the title over the Bus and according to the defendant, the plaintiff has absolutely no right or title over the Bus and hence sought for the dismissal of the suit. Both the Courts below after considering the facts and circumstances of the case and after analysing the oral and documentary evidence, concurrently held against the plaintiff.



Aggrieved by the same, the plaintiff has filed the Second Appeal before this Court.

5. Heard Mr.D.Shivakumaran, learned counsel appearing for the appellants and Mr.C.Vediappan, learned counsel appearing for the respondent. This Court also carefully perused the materials available on record and the findings of both the Courts below.

6. Both the Courts below have categorically held that the plaintiff failed to establish that he purchased the Bus from Madheswaran and that he also appointed the defendant as the Power Agent to manage the Bus. It was also further found that the plaintiff failed to establish that the Bus was forcibly taken by the defendant. On the contrary, both the Courts below found that the defendant had established the ownership over the Bus after the purchase of the same from one Balagangatharan. Hence, it was held that the defendant was entitled to operate the Bus as the real owner of the Bus. The Lower Appellate Court on re-appreciation of the evidence concurred with this finding of the Trial Court. However, the Lower Appellate Court took into consideration the fact that the defendant had admitted the receipt of loan amount and hence thought it fit to modify the judgment of the Trial Court to the effect that the defendant should pay a sum of Rs.11,33,734/- with interest.

7. It is brought to the notice of this Court by the learned counsel for the respondent that the amount that was directed to be paid by the Lower Appellate Court was also deposited on 20.01.2015 and a sum of Rs.11,92,311 was deposited.

8. In the considered view of this Court, there is no perversity in the findings of both the Courts below and in fact the Lower Appellate Court had rendered justice to the plaintiff by ordering for the repayment of the loan amount and that has also been complied with by the respondent. No substantial question of law is involved in this Second Appeal.

9. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar



To

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1. The I Additional District Judge,
Salem.
2. The Additional Subordinate Judge,
Salem.

Copy to

The Section Officer
VR Section,
High Court Madras.

+1cc to Mr.D.Shivakumaran, Advocate, S.R.No.16326
+1cc to M/s.C.S.Associates, Advocate, S.R.No.16165

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AJS[co]
NSK 31/03/2022