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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.367 of 2013
and M.P.No.1 of 2013

D.Prabhu

...Appellant/Appellant/Plaintiff

Vs.

1.Duraisamy

2.Kamalam

3.Kalaivani

4.Selvam @ Puthaiyalkaran

5.Palanisamy

...Respondents/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree in A.S.No.18 of 2012, on the file of the Subordinate Court, Harur, Dated 16.10.2012, confirming the judgment and decree in O.S.No.2 of 2006, on the file of the District Munsif Court, Harur dated 19.03.2012.

For Appellant : Mr.C.Jagadish

For Respondents : Mr.R.Bharanidharan for R5

No Appearance for R1 to R4

JUDGMENT

The plaintiff is the appellant in this Second Appeal.

2.The plaintiff is the son of the 1st defendant. The 2nd defendant is the mother and the 3rd defendant is the sister of the plaintiff. The case of the plaintiff is that the suit properties were owned by the 1st defendant by way of a partition and by the plaintiff and 3rd defendant, joint family properties. That apart yet another property in S.No.231/2 was purchased in the name of the 2nd defendant. The further case of the plaintiff is that defendants 1 to 3 colluded with each other and attempted to create documents. Since the suit property is an ancestral property, the plaintiff was claiming 1/3 share in the properties. When the plaintiff demanded for a partition, it was evaded by defendants 1 to 3 and hence, partition suit was filed by the plaintiff claiming for 1/3 share in the property and the



plaintiff also sought for the relief of permanent injunction.

3. Defendants 1 to 3 did not contest the suit and were set ex-parte. The 4th defendant purchased the properties and he sold an extent of two acres to the 5th defendant by means of registered Sale Deed dated 28.11.2005. The 4th defendant had also chosen to remain ex-parte.

4. The 5th defendant filed a written statement and contended that he purchased the suit property from the 4th defendant and the revenue records were also mutated in his name. The further case of the 5th defendant is that the plaintiff attempted to encroach upon the suit property and he colluded with defendants 1 to 3 and he has laid the present suit. The 5th defendant has therefore sought for the dismissal of the suit.

5. Both the Courts below on considering the oral and documentary evidence and also taking into consideration the facts and circumstances of the case found that the Sale Deed executed in favour of the 4th defendant by defendants 1 to 3 and the Sale Deed executed in favour of the 5th defendant are true and valid and it is binding upon the plaintiff. The Courts below also came to a categorical conclusion that the suit itself has been filed by the plaintiff in collusion with defendants 1 to 3 only with an intention to grab the property which was already sold in favour of the 5th defendant. The Courts below also came to a conclusion that defendants 1 to 3 chose to remain ex-parte right through the proceedings and whereas, the mother of the plaintiff who is the 2nd defendant examined herself as a witness and tried to help the plaintiff and thereby the collusion got totally exposed.

6. In the considered view of this Court, there are absolutely no grounds to interfere with the judgments of both the Courts below and infact, the suit itself was filed with ulterior motives to grab the property from the 5th defendant. No substantial questions of law are involved in the present second appeal.

7. In the result, the second appeal stands dismissed. Considering the fact that the second appeal is pending from the year 2013, the parties shall bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar



ssr

To

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1.The Subordinate Judge,
Harur.

2.The District Munsif,
Harur.

+lcc to Mr.C.Jagadish, Advocate SR. No.9366

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and M.P.No.1 of 2013

RSV (CO)
PR (30/03/2022)