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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM

THE HONOURABLE Ms. JUSTIcCE P.T. ASHA

S.A.No.813 of 2022
and
C.M.P.No.16713 of 2022

1.G.Usha Rani
2.Vennila
3.Akila
4.Sridevi
5.Boopathi ...Appellants

Vs

N.Kalarani ... Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 29.04.2021 made in A.S.No.62 of 2018 on the file of the I Additional District Court, Salem, confirming the judgment and decree dated 16.07.2018 made in O.S.No.174 of 2015 on the file of the I Additional Sub-Court, Salem.

For Appellants : Mr.V.Rajesh

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JUDGEMENT

The defendants are the appellants before this Court challenging the concurrent judgment and decree of the courts below. While narrating the facts culminating in the filing of the appeal, the parties are referred to the same ranking as before the trial Court.

2. The facts in brief are as follows:

The plaintiff had filed the above suit in O.S.No.174 of 2015 before the learned I Additional Subordinate Judge, Salem, seeking recovery of possession of the suit property. It is their case that one Mani @ Govindasamy was her paternal uncle, the 1st defendant is his wife and defendants 2 to 5 are his children. The said Govindasamy owned a land measuring 2140 Sq.ft., with a constructed area of 1200 Sq.ft., and he had sold the same to the plaintiff on 21.03.2003 for a valid consideration to meet his medical expenses. A sale deed was also executed and registered. The defendants had also joined with

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Govindasamy in executing the sale deed and they were confirming parties. The plaintiff therefore became the absolute owner of the suit property and vacant possession was handed over to her. The said Govindasamy had requested the plaintiff to permit him and his family members to stay in the suit property. On 17.01.2007, Govindasamy passed away and the defendants 2 to 5 being close relatives of the plaintiff and since the defendants 2 to 5 were very young, the plaintiff had permitted them to continue to stay in the suit property without paying any rent. Later, when the plaintiff had requested the defendants to vacate the suit property or to pay rent, the defendants refused to do both. Therefore, the plaintiff had lodged a police complaint who advised her to seek remedy from civil Court. Therefore, the plaintiff sent a legal notice dated 07.01.2015 terminating the permissive occupation by them and demanded them to vacate and hand over the possession of the suit property.

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3. The written statement was filed by the 1st defendant and the same was adopted by the defendants 2 to 5. The defendants had denied the sale of the property by Govindasamy to the plaintiff and they denied the contention that the plaintiff had permitted them to reside without paying rent. The defendants had contended that the suit property is the property of a Hindu Undivided Family which belong to the defendants' paternal grand mother Krishnammal @ Thayammal. The said Krishnammal @ Thayammal had two sons namely Nagappan and Govindasamy. During her lifetime, Krishnammal partitioned the property by a deed dated 19.02.1976 in which A-schedule was allotted to Nagappan and B-schedule was allotted to Krishnammal herself and Govindasamy, the father of the defendants 2 to 5. After partition the suit property remained in possession of Krishnammal @ Thayammal and her younger son Mani @ Govindasamy. Since Krishnammal died, Govindasamy succeeded and thereafter Govindasamy also died on 17.01.2007. It is the case of the defendants that the Govindasamy was

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an alcoholic and completely under the control of his elder brother Nagappan. The said Nagappan had guided the defendants and the deceased Mani @ Govindasamy to execute a sham and nominal sale deed in favour of his daughter. The defendants sought to have the suit dismissed.

4. The additional written statement came to be filed by the 1st defendant and adopted by the defendants 2 to 5, wherein the 1st defendant had contended that the suit for recovery without a prayer for declaration was not maintainable and the suit has to be dismissed.

5. The trial Court on a perusal of the pleadings had framed the following issues:

1.Whether the sale deed executed by Mani @ Govindasamy in favour of plaintiff is sham and nominal ?

2.Whether the plaintiff is entitled for recovery of

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possession?

3.Whether the suit claim is barred by limitation ?

4.To what any relief is entitled for ?

6. On the side of the plaintiff, the plaintiff had examined herself as P.W.1 and one Mohan was examined as P.W.2. and Exs.A1 to A15 were marked. On the side of the defendants, the first defendant examined herself as D.W.1 and Ex.B1 was marked.

7. Heard the learned counsel for the appellants and the learned counsel for the respondent and perused the materials available on record.

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8. The learned counsel for the appellants/defendants submitted that the plaintiff has come forward with the case that she had purchased the property from the husband of the 1st defendant and father of the defendants 2 to 5, under the registered sale deed. The execution of the said deed is not questioned. The plaintiff has filed the documents to show her possession of the property from the date of the sale in her favour. The said Govindasamy is none other than the junior paternal uncle of the plaintiff. The defendants who had come forward with a contention that the sale deed was a sham and nominal one has not filed any documents to substantiate the same and their defence was that the plaintiff's father who is the brother of Govindasamy has taken advantage of his addiction to alcohol to have the sale deed executed in his name and the arrangement are only a temporary one. The sale deed Ex.A1 contains a recital as to the purpose for which the said Govindasamy had sold the property to the plaintiff. The plaintiff has acted upon the sale deed by obtaining a loan for further construction

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and has also got the revenue Records, tax receipts and electricity connections transferred in her name which would go to show that the sale was intended to be given effect to and not a sham and nominal one as contended by the defendants. The plaintiff has also pleaded that they had permitted the defendants to stay in the premises without paying rent temporarily taking into consideration the death of Govindasamy and also the fact that the defendants 2 to 5 were minors. The plaintiff has proved the purchase and her right to the property and the defendants who have taken out a plea that the sale was only on sham and nominal are unable to substantiate the same. Both the Courts below have elaborately considered the evidence on record and decreed the suit and I see no reason to interfere with the same particularly when the defendants were not able to make out the substantial question of law.

9. Accordingly, the second appeal is dismissed and Judgement and Decree dated 29.04.2021 made in A.S.No.62 of 2018 on the file of

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the I Additional District Court, Salem, confirming the judgment and decree dated 16.07.2018 made in O.S.No.174 of 2015 on the file of the I Additional Sub-Court, Salem, are confirmed. No costs. Consequently, connected civil miscellaneous petition is closed.

10.10.2022

Index : Yes/No
Speaking order/non-speaking order
ssn

To

1. The I Additional District Court,
   Salem.

2. The I Additional Sub-Court,
   Salem.

3. The Section Officer,
   V.R.Section,
   High Court, Madras.

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P.T.ASHA, J.,

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