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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.02.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

Second Appeal No.928 of 2016
and CMP No.18787 of 2016

1.K.Munusamy
2.Narasammal

..Appellants/Appellants/Plaintiffs

.Vs.

1.Kannammal @ Rajammal
2.P.Sisubalan
3.P.Nandakumar

..Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree passed in A.S.No.56 of 2013 dated 29.06.2016 on the file of the Additional Special Judge, Krishnagiri confirming the judgment and decree dated 22.10.2013 in O.S.NO.285 of 2008, on the file of the District Munsif of Krishnagiri.

For Appellant : Mr.V.Rameshvel

For Respondents : Mr.V.Nicholas
Mr.N.E.A.Dinesh
for R 1 to R 3

JUDGMENT

The plaintiffs are the appellants in this Second Appeal.

2.The plaintiffs filed a suit seeking for the relief of declaration of title and permanent injunction against the defendants.

3.The case of the plaintiffs is that the father of the 1st plaintiff late Kempan, took a loan from the husband of the 1st defendant and father of the 2nd and 3rd defendants. A registered Sale Deed dated 23.04.1956, was executed in his favour. The specific case of the plaintiffs is that this document was executed only for loan purposes and there was no intention to convey the property. The further contention of the plaintiffs is that the very next day i.e., on 24.04.1956, there was a reconveyance agreement executed by the husband of the 1st defendant in favour of late Kempan and the 1st plaintiff and it



was agreed that the loan amount will be repaid back within three years and the property will be reconveyed back in favour of late Kempan.

4. It is stated that the entire loan amount was discharged by the father of the 1st plaintiff to the husband of the 1st defendant and an endorsement was also made to that effect in the Sale Deed. According to the plaintiff, this happened in the year 1962. In spite of the discharge of the loan, no steps were taken to reconvey the property. The request made by the father of the 1st defendant to get the records transferred in his name based on the reconveyance agreement was also not complied with. It is specifically pleaded that the property continued to be in possession and enjoyment of the plaintiffs and the plaintiffs have paid the necessary kist for cultivating in the subject property.

5. The respondents/defendants filed a written statement and took a stand that the registered Sale Deed dated 23.04.1956 was meant for conveying the title in the suit property and it was never considered to be a loan document as contended by the plaintiffs. The defendants completely denied the execution of the reconveyance agreement and according to them, it is a fabricated document. It was further stated that the husband of the 1st defendant had purchased some other properties from the father of the 1st plaintiff in the year 1973 and hence, there was no requirement to accept the plea of reconveyance as was sought to be projected by the plaintiffs. The defendants therefore, prayed for the dismissal of the suit.

6. Heard Mr. V. Rameshvel, learned counsel for the appellants and carefully perused the findings of both the Courts below.

7. The learned counsel for the appellants submitted that both the Courts below failed to take into consideration the reconveyance agreement dated 24.04.1956 and the endorsement made in the original Sale Deed on 12.04.1962 whereby, the entire loan amount stood discharged and the plaintiffs became the absolute owners of the suit properties. It was further submitted that the plaintiffs continued to be in possession and enjoyment of the property and to establish the same, the Kantharayan receipts were marked as Ex.A-2 for the period from 1969 to 2000 and this will clearly show that the plaintiffs are in possession and enjoyment of the suit property. The learned counsel further submitted that the defendants have not filed any documents to prove their possession from the year 1956 onwards and the only documents that were marked in the course of trial pertained to the documents which came into existence after the filing of this suit. Therefore, the learned counsel submitted that those documents ought not have been considered by the Courts below. It was further contended that the 2nd defendant, who was examined as DW-2 is working in the



revenue department and he managed to secure the documents after the filing of the suit.

8. On a careful reading of the findings rendered by both the Courts below, it can be seen that the registered Sale Deed dated 23.04.1956, was ever intended to be a loan document and the recitals contained in the document clearly established that the title was conveyed in favour of the husband of the 1st defendant. The Courts below had extracted the relevant portions from the Sale Deed to come to such a conclusion. Both the Courts below have also taken into consideration the conduct of the parties. PW-1 in the course of evidence has categorically admitted that no steps were taken till the year 2008 seeking for the reconveyance of the property and not even a legal notice was issued in this regard. The Courts below took into consideration this fact and found that the inaction on the part of the plaintiffs will establish that there was no agreement between the parties for reconveyance of the suit properties.

9. The Courts below also took into consideration the fact that not a single witness was examined on the side of the plaintiffs to prove that the so called loan amount was settled. The relevant portion in the evidence of PW-1 was also extracted in the judgment.

10. The Courts below took into consideration the specific Clause in the Sale Deed, which was marked as Ex.A-1 wherein, it was stated that the possession of the property was handed over to the defendants on the same day the Sale Deed was executed. Even though, Ex.A-2 Kantharayan receipts were marked in the course of evidence, the Courts below found that there was no seal and there was no specific reference to the survey number. Therefore, both the Courts below did not take into consideration these receipts. The Courts below also took into consideration the fact that the plaintiffs did not take any steps to even mutate the revenue records, if really, they are in possession and enjoyment of the suit property. It was rightly held that the kist receipts by itself will not confer any right or title or establish the possession and enjoyment of the property. The Courts below took into consideration the fact that there was a joint patta standing in the name of the father of the 1st defendant and one Shankar. Obviously, the mutation in the revenue records should have taken place based on the Sale Deed executed in favour of the husband of the 1st defendant.

11. Both the Courts below have rendered their findings based on the evidence available on record. This Court does not find any perversity in the findings of both the Courts below. In any case, no substantial question of law is involved in this Second Appeal.



12. In the result, this Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Additional Special Judge,
Krishnagiri

2. The District Munsif,
Krishnagiri.

Copy to:

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

+1cc to Mr. V. Nicholas, Advocate SR. No. 9999

Second Appeal No. 928 of 2016

PMK (CO)
PR (13/04/2022)