



S.A.No.377 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.377 of 2014

1. N.A.Rajamohan @ Srinivasan
2. Nagamma

... Appellants

Vs

Choodappa @ Narayappa

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 30.07.2012 in A.S.No.40 of 2011 on the file of the Subordinate Judge, Hosur and against the Judgment and Decree dated 30.08.2011 in O.S.No.136 of 2008 on the file of the District Munsif Court, Hosur.

For Appellants : Mr.Krishna Bhagavat
for Mr.P.Subba Reddy

For Respondent : Mr.V.Raghavachari

JUDGMENT

The defendants are the appellants in this second appeal.

2. The respondent/plaintiff filed a suit seeking for the relief of declaration of title in the suit property and for permanent injunction



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restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.

3. The case of the plaintiff is that the suit property originally belonged to his paternal great grandfather. He died intestate leaving behind one son named Pedda Muniappa leaving behind the properties. The said Pedda Muniappa is the paternal grandfather of the plaintiff. The grandfather of the plaintiff had one son named Chinna Nagappa, who is the father of the plaintiff and the second defendant. In the year 1952, the father of the plaintiff died intestate leaving behind two wives, the plaintiff and the second defendant. There was also one minor son left behind through the second wife.

4. A suit was instituted for the division of the property and on the advise of the elders, the parties decided to go for compromise. Accordingly, a partition deed came to be executed on 18.05.1954, which is a registered document marked as Ex.A1. The 'B' schedule in the said partition deed was given to the share of the plaintiff. The partition between the parties was also recorded by the Court and the suit was disposed of.



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5. The grievance of the plaintiff is that his mother, who did not have any right, title or interest in the suit property, was compelled to execute the sale agreement on 24.04.2006 in favour of the first defendant. Based on this sale agreement, the first defendant proceeded to file a suit for specific performance and he started claiming right over the property. It is stated that an ex-parte decree was passed and subsequently a sale deed was also executed in favour of the first defendant by Court, which was marked as Ex.B4. Hence, the plaintiff, left no other option, filed the suit seeking for the relief of declaration of title and permanent injunction.

6. The first defendant filed a written statement. The case of the first defendant is that the mother of the plaintiff executed a registered sale agreement on 17.01.2002 and the plaintiff stood as a witness and as an affirming party to the document. Since the mother of the plaintiff refused to execute the sale deed in favour of the first defendant, a suit for specific performance was filed in O.S.No.389 of 2004 and an ex-parte decree was passed. Based on the ex-parte decree, an execution petition was filed and the sale deed was executed in favour of the first defendant by Court. The first defendant has therefore denied the right of the



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plaintiff and has stated that the plaintiff colluding with the second defendant, is attempting to defeat the rights of the first defendant and accordingly the first defendant sought for the dismissal of the suit.

7. Both the Courts below, based on the facts and circumstance of the case and after appreciating the oral and documentary evidence, concurrently held in favour of the plaintiff and the suit was decreed. Aggrieved by the same, the first defendant has filed the present second appeal.

8. Heard, Mr.Krishna Bhagavat, the learned counsel for the appellants and Mr.V.Raghavachari, the learned counsel for the respondent. This Court carefully perused the materials available on record and also the findings of both the Courts below.

9. The plaintiff is tracing his right through Ex.A1, which is a registered partition deed. The plaintiff is also placing reliance upon the patta granted in his favour and the kist receipts, which were marked as Ex.A2. On the other hand, the first defendant is claiming right over the property based on the registered sale agreement executed by the mother



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of the plaintiff and the consequent decree passed in the specific performance suit and the sale deed executed in his favour by Court in execution of the ex-parte decree.

10. Both the Courts below, on appreciation of evidence, found that the mother of the plaintiff did not have any right or title over the property to execute a sale agreement in favour of the first defendant. It was also found that merely because the plaintiff was an attester to the said sale agreement, that by itself cannot confer any title on the mother of the plaintiff. The lower Appellate Court also took into consideration the fact that only a left arm thumb impression was found in the sale agreement and no effort was taken by the first defendant to prove that his thumb impression belongs to the plaintiff. Even otherwise, mere attestation in the document does not prove that the plaintiff knew about the contents of the document. In short, the conduct of the plaintiff by itself will not confer a title on his mother, who otherwise does not possess any title whatsoever in the suit property.

11. In the considered view of this Court, there is no perversity in the findings of both the Courts below and it is based on appreciation of



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oral and documentary evidence. In any case, this Court does not find any substantial questions of law involved in the second appeal.

12. In the result, this second appeal is dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

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Index :Yes/No

Internet :Yes/No

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To

1.The XV Additional Judge, City Civil Court, Chennai

2.The III Assistant Judge, City Civil Court, Chennai.



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N. ANAND VENKATESH, J.

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