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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.NO.605 OF 2014

AND

M.P.NO.1 OF 2014

1. Jaibunnisa Bee

2. Maibun Bee

... Appellants/Appellants/
Plaintiff

.Vs.

1. Mubarak

2. Rahima Bee

... Respondents/Respondents/
Defendants

PRAYER:-

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 24.02.2014 and made in A.S.No.40 of 2012 on the file of Principal Sub Court, Tindivanam, dismissing the appeal and confirming the judgment and Decree dated 27.04.2012 and made in O.S.No.519 of 2007 on the file of Additional DMC, Tindivanam.

For Appellant : Mr.N.A.Nissar Ahmed

For Respondents : Mr.R.Sunil Kumar

JUDGMENT

The plaintiffs are the appellants in the Second Appeal.

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

3. The case of the plaintiffs is that the suit property originally belonged to one Abdul Kafoor. The said Abdul Kafoor executed a registered Settlement Deed in favour of his niece



Safiyabeevi through Ex. A1. She in turn mortgaged the suit property with one Mohamed Hanif in the year 1977 through Ex. A2. By virtue of this Mortgage Deed, the plaintiffs claim that the Settlement Deed was acted upon by Safiyabeevi. The mortgage was later discharged on 22.10.1998 and as per the Settlement Deed, the said Safiyabeevi was given life interest and her male and female heirs were given the vested remainder. The properties were ultimately inherited by the son and daughter of Safiyabeevi. The 1st plaintiff who is the daughter of Safiyabeevi became entitled to 13 cents. The son Syed Ahamed who became entitled to 13 cents, sold one half of the property to one Nasif Ali who is the son of the 1st plaintiff and he in turn sold the same in favour of the 2nd plaintiff. Thereby, the plaintiffs are claiming absolute title and ownership over the suit property.

4. The further case of the plaintiffs is that the defendants attempted to interfere with the possession and enjoyment of the property and hence, a legal notice was issued on 22.07.2007 which was marked as Ex. A5. For this legal notice, a reply was given by a defendants on 30.07.2007, marked as Ex. A6. Only on receipt of this reply notice, the plaintiffs came to know that the suit property was dealt with by a so-called power agent and the property was sold in the year 1964 to one Abdul Jabar. This document was marked as Ex.B1. Thereafter, the defendants had purchased the property on 15.07.2003, marked as Ex. B3. In view of the cloud over title and in view of the fact that the defendants were attempting to interfere with the possession and enjoyment of the property, the suit came to be filed seeking for the relief of declaration of title and permanent injunction.

5. The defendants filed written statement and they took a stand that the entire suit property was sold on 23.12.1964 itself and the purchaser namely Abdul Jabar was in possession and enjoyment of the suit property and the revenue records were also mutated in his name. The said Abdul Jabar died intestate in the year 1984 leaving behind his wife, daughters, sons and the children of the pre-deceased daughter. The defendants purchased the property from the legal heirs on 15.07.2003 and are in possession and enjoyment of the property. Accordingly, the defendants had sought for the dismissal of the suit.

6. Both the Courts below on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, concurrently held against the plaintiffs. Aggrieved by the same, the present Second Appeal has been filed before this Court.

7. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the respondents.



8. This Court carefully went through the pleadings and also the findings rendered by both the Courts below based on the evidence available on record.

9. Both the Courts below have rendered their findings after appreciating the oral and documentary evidence. In the present case, there is a fundamental flaw on the part of the plaintiffs in not challenging the Sale Deed that was executed by the power agent of Abdul Kafoor on 23.12.1964. Admittedly, the plaintiffs are deriving their right through the Settlement Deed dated 21.09.1996, marked as Ex.A1. If the Sale Deed dated 23.12.1964, is not put to challenge and this document remains in force, the natural consequence would be that the said Abdul Kafoor will not have any right or title to execute the Settlement Deed in the year 1996. It is true that both the Courts below have gone into the stand taken by both the parties and upheld the Sale Deed that was executed on 23.12.1964. Even otherwise, where a person seeks for the relief of declaration of title, while doing so, when there is a document directly challenging the title of that person, unless this document is void ab initio, the said document ought to be challenged and a cancellation of that document should be sought for before claiming for declaration of title in the property. If the document is not challenged and it is continuing to remain in force, no Court can declare the title over the same property arising out of a document which came into existence subsequently. In the present case, the plaintiffs even in the pleadings have specifically stated that they came to know about the Sale Deed of the year 1964 on receipt of the reply notice from the defendants. If the reply notice is taken to be the date of the knowledge of the said Sale Deed, Article 58 of the Limitation Act specifically provides for three years time from the date of knowledge. Therefore, it would have been open for the plaintiffs to challenge the Sale Deed even at that point of time. Unfortunately, this has not been done and as a consequence, the Settlement Deed that is relied upon by the plaintiffs and which was executed subsequently in the year 1996 becomes questionable. This is in view of the fact that the Settlement Deed could not have been executed in the light of the Sale Deed that was already executed in the year 1964. In the considered view of this Court, this was a fatal mistake that was committed by the plaintiffs and it is too late in the day to rectify this mistake.

10. In view of the above discussion, this Court does not find any grounds to entertain this Second Appeal and the findings of both the Courts below does not warrant the interference of this Court. In any event, no substantial questions of law are involved in this Second Appeal.



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

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Principal Subordinate Judge,
Tindivanam.
2. The Additional District Munsif,
Tindivanam.

+1cc to Mr.R.Sunil Kumar, Advocate, S.R.No.17878

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M.P.NO.1 OF 2014

RSV(CO)
PBS/01/06/2022