



WEB COPY



S.A.No.341 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Second Appeal No.341 of 2017

and

Civil Miscellaneous Petition No.8111 of 2017

Krishnamoorthy @ Kunju (since deceased)
rep. by his L.Rs

2. Ramadoss
3. Rajendiran
4. Ravi
5. Panneerselvam

... Appellants

Versus

- 1.Smt.Sundari Ammal
- 2.Sivakumaran
- 3.Vembu
- 4.Senthil

... Respondents

Prayer: The Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree made in A.S.No.91 of 2011 dated 17.10.2012, on the file of the Principal Subordinate Court, Mayiladuthurai confirming the Judgment and decree in O.S.No.306 of 2003 dated 21.04.2011, on the file of the District Munsif @ Sirkali.

For Appellants : Mr.K.M.Subramaniam

For Respondents : Mrs.S.Radha Gopalan



S.A.No.341 of 2017

JUDGMENT

WEB COPY

The Second Appeal had been filed by the defendant in O.S.No.306 of 2003, on the file of the District Munsif Court at Sirkali.

2. The said suit had been filed by the respondents/plaintiffs seeking permanent injunction restraining the defendant therein namely the deceased 1st appellant herein, or anybody acting under him from interfering with peaceful possession of the suit schedule property.

3. The suit schedule property had been described as land in R.S.No.723/2, at Thirumullaivasal Vattam, Thoduvai Village in Sirkali Taluk.

4. The 1st plaintiff, was the owner of the property. The 2nd plaintiff had been described as her Kariyasthar. The 3rd and 4th plaintiffs had been impleaded in the suit consequent to their purchase of the suit schedule property by a Sale Deed, dated 01.09.2004. Pending the suit, they had been impleaded as 3rd and 4th plaintiffs by an order dated 12.09.2006 in



S.A.No.341 of 2017

I.A.No.275 of 2006. The deceased 1st appellant herein was the only defendant in the suit. He had filed a written statement and in paragraph No.3 of the written statement had stated as follows:

“ It is true to say, that the 1st plaintiff was the owner of the property”.

5. The 1st appellant herein had admitted to the title of the 1st plaintiff, but claimed that he was in possession or rather that the 1st plaintiff was not in possession. Once that fact is stated by the 1st defendant then, there is a burden cast on the said defendant to establish that he is in possession by producing relevant documents.

6. It had been observed by the Trial Court that Adangal and Kist receipts had not been produced by him to establish possession.

7. Even though such observations were made, additional documents were not sought to be produced before the First Appellate Court, under Order 41 Rule 27 of the Code of Civil Procedure.



S.A.No.341 of 2017

8. Both the Courts below returned a specific finding that the respondents/plaintiffs are in possession of the suit schedule property. It is a concurrent finding of the fact.

9. Pending the appeal, the 1st appellant died and it is seen that the 2nd, 3rd, 4th and 5th appellants have been brought on record.

10. Even as early as 22.03.2021, it had been stated by the learned counsel that the 2nd and 3rd appellants had passed away. Time was sought to implead the legal representatives.

11. Time had been granted for the past nearly one year and ten months. Still steps have not been taken. The 2nd, 3rd and 4th appellants only step into the shoes of the deceased 1st appellant herein. They cannot claim any independent right over the property or can they advance any different stand than taken by the deceased 1st appellant who was the only defendant in the suit.



S.A.No.341 of 2017

12. As stated in the written statement, the 1st appellant who filed the written statement had admitted to the title of the plaintiff. The land is admittedly a vacant land. Once title is affirmed in favour of the respondents, injunction to protect possession will necessarily follow.

13. There is no ground made out for admitting the Second Appeal. It had been adjourned without being admitted for the past five years. Even though the 2nd and 3rd appellants are dead, I hold that there is no merit in the Second Appeal. The only two substantial questions of law as drafted at the time when the appeal was filed, is whether the 3rd and 4th plaintiffs were necessary parties. They are purchasers and they had been impleaded consequent to an order in an Interlocutory Application. That order has attained finality. Therefore the said issue cannot be taken as a point of law in the Second Appeal.

14. The first substantial question of law which had been framed in the memorandum of grounds also revolves around the sale to the 3rd and 4th plaintiffs. As stated, they had been impleaded consequent to an order of



the Court which has not been challenged or set aside in manner known to law.

15. Reliance had been placed on the report of an Advocate Commissioner but an Advocate Commissioner as an officer of the Court is not appointed to gather evidence, but only to state facts. The appellant cannot rely on the facts relating to possession stated in the report. Even though the 2nd and 3rd appellants are dead, it would not preclude me from passing final orders in the Second Appeal.

16. The Second Appeal is not admitted and the same is liable to be dismissed as no substantial question of law arises for consideration.

17. In the result, the Second Appeal is dismissed. The Judgment of both the Courts below are hereby confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

06.12.2022

Index:Yes/No
Speaking Order : Yes/No
ssi



S.A.No.341 of 2017

WEB COPY

To

- 1.The Principal Sub Judge, Mayiladithurai.
- 2.The District Munsif Judge, Sirkali.
- 3.The Section Officer, V.R.Section,
High Court of Madras.



WEB COPY



S.A.No.341 of 2017

C.V.KARTHIKEYAN,J.

ssi

S.A.No.341 of 2017 and
C.M.P.No.8111 of 2017

06.12.2022