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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.76 of 2017

1.Kesava Reddy (died)
2.Dhananjeyan
3.Harikrishnan
4.Lakshmipathy
5.Chandrasekhar
6.Prakash ...Appellants
7.C.Devi Latha
[Appellant 7 brought into Record
as legal heirs of the deceased First Appellant
viz., Kesava Reddy, vide Court Order
dt.15.02.22, made in C.M.P.Nos.2052,
2053 & 2054 / 2022 in S.A.No.76/17 (SSSRJ)]

Vs

1.P.Bagyalakshmi (Died)
2.P.Geethalakshmi ... Respondents
[Memo recorded (USR.No.28533 dt.27/9/22)
R1 Died, R2 is the only legal heir of the
deceased R1 vide Court Order dated 29/11/2022
made in S.A.No.76/17(PTAJ).

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree of the Sub-ordinate Judge's Court, Thiruttani dated 12.08.2015 made in A.S.No.29 of 2013 reversing the Judgment and decree passed in O.S.No.66 of 2008 dated 28.02.2013 on the file of the District Munsif Court at Tiruttani.

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For Appellants : Mr.S.Rajendra Kumar
for M/s.Norton and Grant

For Respondents : Mr.K.Balajee[R2]
R1 - Died
[Vide Memo SR 28533 dated 27.09.2022]

JUDGMENT

The defendants are the appellants before this Court challenging the judgment and decree in A.S.No.29 of 2013 of the learned Sub-Court, Tiruttani reversing the judgment and decree passed by the learned District Munsif, Tiruttani in O.S.No.66 of 2008.

2. It is necessary to briefly allude to the facts of the case and for ease of understanding, the parties are referred to in the same rank as before the trial Court.

3. The plaintiffs had filed the above suit for a declaration of their right and title over the suit property and for an injunction restraining the

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defendants and their man and agents from interfering with the peaceful possession and enjoyment of the suit schedule property. It is the case of the plaintiffs that in the year 1986, the 1st plaintiff's husband had orally purchased the property from the defendants for a sum of Rs.90/- and enjoying the possession of the same. The 1st defendant is the father of the defendants 2 to 6. She would submit that the said property was being used by her for stocking hay rick and later she had constructed the house thereon. The house was also assessed to property tax which is being remitted by the 1st plaintiff. It is the further case that the 1st plaintiff's husband died on 19.02.2001 leaving behind his wife, the 1st plaintiff and his daughter, the 2nd plaintiff. The defendants taking advantage of the 1st plaintiff's old age, is attempting to encroach into the suit property and staking a claim thereon. Therefore, she has come forward with the instant suit.

4. The defendants on entering appearance had filed their written

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statement which was verified by the 1st defendant whose written statement was adopted by the others. In their written statement, the defendants had denied the sale of the property in favour of the 1st plaintiff's husband and her possession and enjoyment of the same. It is the case of the defendants that the suit property is a Grama Natham comprised in Old Survey No.269 / New Survey No.305/7 to 305/9 measuring East-West 88 feet, North-South 117 feet upto 44 feet and North-South 95 feet. The defendants would further submit that the suit property has been wrongly shown as Old Survey No.269 whereas the actual Survey number is 267. It is the further case of the defendants that the suit property belonged to Palayatha Reddy, S/o.Kandappa Reddy who had 5 sons. Of these 5 sons, one of the son Kollapuri Reddy had no issues. The property was divided among the 4 other sharers with 1st two sharers namely Madhur Reddy and Kanniappa Reddy being allotted the property measuring East-West 22 feet and North-South 117 feet and other two sharers Gengu Reddy and Ramasamy Reddy being allotted the

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remaining east-west 22 feet and north–south 95 feet. The property is said to be bounded on the south by street, north by Ponnappa Reddy and Logan's house and sites, east by Gopal Chetty house and west by Bala Sundara Reddy and others house. The boundaries that are provided in the suit schedule property are totally wrong. The defendants would further submit that on 12.08.2013, Gengu Reddy's son Munirathina Reddy has sold his share to one Kuppu Reddy measuring East-west 22 feet, north-south 95 feet for a sum of Rs.495/-. The other sharers and the defendants had not sold their shares. There is no sale in favour of the plaintiff's husband. The defendants would point out the falsity in the case of the plaintiffs by contending that in the year 1983, a smaller extent had been sold for a sum of Rs.495/- and therefore, by no stretch an imagination would the suit schedule property which is measuring a larger extent be sold for a paltry sum of Rs.90/-. The tax certificate which has been produced are all fabricated by taking advantage of the fact that the plaintiffs' close relative was the President of the village Panchayat. It is

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the further case of the defendants that till the first week of March 2008, the suit property was kept vacant and therefore, the 1st defendant put up a thatched house and has been residing their. The 1st defendant had also filed an additional written statement, in which, they had, besides reiterating the pleading in the earlier written statement, also stated that they have the assessment number which has been shown in the schedule relates to the property of the plaintiffs situate in the south of the street.

5. The learned District Munsif had framed the following issues:

"*1. Whether the plaintiff's husband Parthasarathy Reddy orally purchased the property from the defendant in the year 1986?*

2. Whether the description of the property given by the plaintiff is not correct?

3. Whether the defendant and other sharers are in

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absolute possession and enjoyment of the suit property?

4. Whether the plaintiff is entitled to the relief as prayed for?

5. To what relief, if any, the plaintiffs entitled to?"

6. The learned Judge had dismissed the suit holding that the house tax receipts does not relate to the suit property situate in the south of the street and further, the tax receipts of the period 2001-02 to 2007-08 excluding the period 2003-04 and 2004-05. Further, Exs.A1 and A2 are post the suit. The learned Judge had referred to the admission of PW1 that the property originally belonged to Palayatha Reddy. The learned Judge had also highlighted the discrepancies in the oral evidence both in chief and cross of PW1 where in the chief examination, she has stated that at the time of oral sale, she, Sathyanarayanan, Padmanabha and others were present at the time of oral sale and in the cross she would submit that though she was present at the time of sale, she does not know

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who were present at the time of the oral sale. That apart, PW2 examined to prove the oral sale would state that at the time of the oral sale, PW1 was not present, but, that he and one Govindan were alone are present. The name of others were not mentioned. The learned Judge had also taken into account the fact that the property which is situate next to the suit property had been sold to a sum of Rs.495/- in the year 1983, where the suit property by a larger extent sold three years later in the year 1986 availed for the sum of Rs.90/- which was unbelievable. Therefore, the same appears to be concocted. That apart, the sale agreement Ex.B2, which was subsequently filed clearly shows that the sale is a created document. In order to prove the possession no proof has been provided in the instant case and no independent witnesses have been examined on the side of the plaintiffs. The defendants however had examined the original owner Palayatha Reddy as DW3. Ultimately the Court held that the oral sale has not been proved and there was discrepancy in the schedule of properties. Further, Ex.B2 which is the alleged agreement of sale would

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show that the property is comprised in S.No.369, whereas, the property which was the subject matter of the suit is stated to be situate in S.No.268 and the same corresponds to new S.No.305/7 to 305/9. Therefore, the suit had been dismissed. Challenging the same, the plaintiffs had filed A.S.No.29 of 2013 on the file of the Sub-Court, Tiruttani. The learned Sub-Judge, Tiruttani, by judgment and decree dated 12.08.2015 reversed the judgment of the trial Court on the basis of Exs.C1 and C2, Commissioner's Report, wherein, the Commissioner had stated that at the time of his visit, the defendants were not available and only the plaintiff who had identified the property for the Commissioner. The learned Judge also stated that the comparison of Exs.C1 and C2 with the suit schedule property would indicate that the two are one and the same. He had also relied upon the statement of the defendants that they had no documents to prove their possession. The said Palayatha Reddy who had been examined as DW3 had spoken about the sale in favour of the 1st plaintiff's husband. On this basis, the learned Judge has proceeded

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to allow the appeal. Challenging the same, the defendants are before this Court.

7. Upon hearing the arguments on either side, the following substantial questions of law is being framed and the both counsels have addressed their arguments on the same:-

"i) Has not the lower appellate Court committed an error of law in decreeing the suit based upon the original sale deed as pleaded by the plaintiff as against the statement made by the third defendant especially when it is for the plaintiff to establish his case?

ii) Whether the Courts below is correct in law in relying upon the evidence of Advocate Commissioner to arrive at a conclusion regarding possession when there is no acceptable documents are evidence to prove the same?"

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8. The plaintiffs had come forward with the case that the suit property has been purchased by the 1st plaintiff's husband under an oral sale for a sum of Rs.90/-. The plaint does not give the date of the oral sale but states that the sale was in the year 1986. The plaintiffs have also contended that the property was originally used as a place for stocking the hay and cow dung. This was later converted into a residential house. The pleading is totally silent as to when the residential house had been constructed especially when the plaintiffs pleads that she has paid the house tax from the date of the sale till the date of filing of the suit. The defendants have been able to rebut the oral sale by contending that such a sale could not have taken place since three years prior to the alleged oral sale and that too for a larger extent, the property was sold for a sum of Rs.495/-. Therefore, no prudent person would have sold a larger extent for just a sum of Rs.90/-. The documents which are filed are receipts for payment of house tax which is relating to a different property and not the

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suit property. The plaintiffs who have come forward with the contention that she has put up a thatched house on the property which is assessed to tax has not produced the documents to prove the same. That apart, the discrepancy in the evidence of PW1 and PW2 with regard to the persons present at the time of oral sale points a needle suspicion on the plaintiffs in the mind of the Court.

9. A perusal of Ex.B2 would show that a portion of the property in S.No.269 measuring an extent of 1980 sq.ft., has been sold for a sum of Rs.495/-, whereas, the suit property which measures an extent of 2,200 sq.ft., three years later fetches only a sum of Rs.90/-. The appellate Court has reversed the judgment and decree of the trial Court without assigning reasons as to why the findings of the trial Court is wrong. That apart, the 1st plaintiff has not proved the oral sale in favour of her husband since the witnesses who were examined in this regard have given contradictory statements. Therefore, the substantial questions of law are answered

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against the plaintiffs.

10. In the result, this Second Appeal is allowed and Judgement and Decree of the Sub-ordinate Judge's Court, Thiruttani dated 12.08.2015 made in A.S.No.29 of 2013 reversing the Judgment and decree passed in O.S.No.66 of 2008 dated 28.02.2013 on the file of the District Munsif Court at Tiruttani are set aside. No costs.

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

P.T.ASHA, J.,

ssn

To

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1. The Sub-ordinate Judge,
   Thiruttani.

2. The District Munsif Court,
   Tiruttani.

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

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