



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.371 of 2010

WEB COPY

1.K.Meyyappan

2.Muthuperumal

... Appellants / Appellants /
Defendants 1 & 3

-Vs-

1.K.Chitra

2.K.Meyyappan Minor

3.K.Alagumayil Minor

(Minors 2 & 3 are represented by their
mother & guardian K.Chitra)

... Respondents / Respondents 1 to 3/
Plaintiffs

4.M.Mani

... Respondent / 4th Respondent /
2nd Defendant

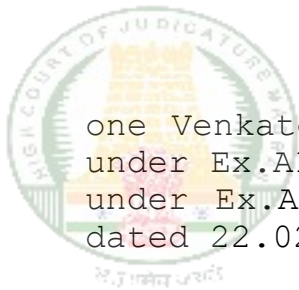
PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 28.07.2009 made in A.S.No.8 of 2009 by the learned Subordinate Judge, Devakottai, confirming the judgment and decree dated 31.07.2008 in O.S.No.20 of 2004 by the learned Principal District Munsif cum Judicial Magistrate, Karaikudi.

For Appellants : Mr.M.S.Velusamy
For R1 to R3 : Mr.A.Sivaji

JUDGMENT

The contesting defendants in O.S.No.20 of 2004 on the file of the Principal District Munsif Court, Karaikudi, are the appellants in the second appeal.

2. The respondents 1 to 3 herein filed the said suit seeking the relief of permanent injunction. The suit property is a residential house. The appellants were originally shown as D1 and D3. Meyyappan and Muthuperumal are none other than the sons of one Karuppiyah. The plaintiff Chitra claimed to be the second wife of Karuppiyah, while D1 and D3 would characterise her as their father's concubine. Be that as it may, the suit property very much stands in the name of the first plaintiff Chitra. It originally belonged to



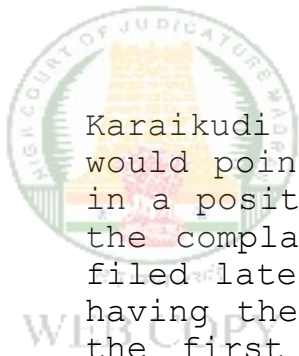
one Venkateswaran. Venkateswaran sold the property to one Belixrani under Ex.A1 dated 11.12.1991. Belixrani sold the same to Ramanathan under Ex.A2 dated 13.01.1992. Ramanathan executed Ex.A3 sale deed dated 22.02.1993 in favour of the first plaintiff Chitra.

3. The case of the plaintiff is that Chitra executed a power of attorney in favour of Karuppiyah and that based on the same, Karuppiyah entered into a sale agreement with the third defendant Muthu Perumal on 12.12.1997 (Ex.B2). According to the defendants, the entire sale consideration was fixed at Rs.3,00,000/- and the entire amount was paid to Karuppiyah and that is why, the original title document is with the third defendant and it was also marked as Ex.B4. Since the purchaser was not impleaded as defendant, he later filed an IA and got himself impleaded as the third defendant. The first plaintiff Chitra examined herself as P.W.1 and one Palaniyandi was examined as P.W.2. Ex.A1 to Ex.A11 were marked. The defendants examined three witnesses on their side. Ex.B1 to Ex.B5 were marked. After consideration of the evidence on record, the trial court by judgment and decree dated 31.07.2008 decreed the suit as prayed for. Aggrieved by the same, D1 and D3 filed A.S.No.8 of 2009 before the Sub Court, Devakottai. The first appellate court by the impugned judgment and decree dated 28.07.2009 confirmed the decision of the trial court and dismissed the appeal. Aggrieved by the same, the second appeal came to be filed. Though the second appeal was filed way back in the year 2010, only notice was ordered and till date, it has not been admitted.

4. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame the substantial question of law and admit the second appeal and take it up 'for disposal' later.

5. Per contra, the learned counsel for the plaintiffs / respondents 1 to 3 submitted that the impugned judgment and decree do not warrant any interference.

6. I carefully considered the rival contentions and went through the evidence on record. There is no dispute that the suit property stands in the name of Chitra / first plaintiff. The plaintiffs have marked quite a few documents to show that they are in possession and enjoyment of the suit property. The suit was filed only for the relief of permanent injunction. Therefore, the factum of possession alone is relevant. The other issues pale into insignificance. Of-course, the original title document was marked on the side of the defendants. This is explained by the learned counsel appearing for the plaintiffs by pointing out that following the demise of Karuppiyah, there arose dispute between the sons born through the first wife and the plaintiffs and that her house was looted and quite a few valuable properties including the title documents were stolen and hence, the plaintiffs gave a complaint leading to registration of Crime No.694 of 2000 on the file of the



Karaikudi Police Station. The learned counsel for the appellants would point out that the said FIR was closed and did not culminate in a positive final report. That may be so; the fact remains that the complaint was given on 09.08.2000, while the present suit was filed later. More than anything else, the first appellant is only having the sale agreement standing in his name. If as claimed by the first appellant, he had paid the entire sale consideration, then, nothing stopped him from filing a suit for specific performance. He had not done so. On the other hand, the first appellant has explained as to how the document had gone away from his hands. When the property is very much standing in the name of the first appellant and when she has proved her possession over the suit property, the courts below were justified in decreeing the suit in her favour. No substantial question of law arises for consideration. The second appeal stands dismissed. No cost.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Devakottai.

2.The Principal District Munsif cum Judicial Magistrate, Karaikudi.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.S.VELUSAMY, Advocate (SR-7882[F] dated 22/02/2022)

S.A.(MD)No.371 of 2010

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MGJ(28.03.2022) 3P 6C