



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.40 of 2012

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Vijayakumar

... Appellant/Appellant/Plaintiff

-Vs-

Valsala Kumari

... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.08.2011 of the learned first Additional Subordinate Judge, Nagercoil and made in A.S.No.114 of 2010 on his file, confirming the judgment and decree dated 12.08.2010 of the learned Principal District Munsif Court, Padmanabhapuram and made in O.S.No.167 of 2007 on his file.

For Appellant : Mr.K.N.Thampi

For Respondent : Mr.V.M.Balamohan Thampi

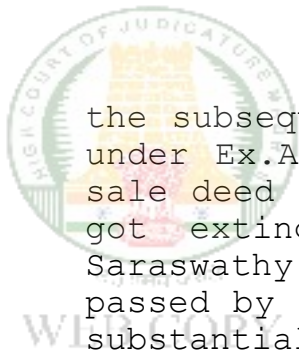
JUDGMENT

The plaintiff in O.S.No.167 of 2007 on the file of the Principal District Munsif, Padmanabhapuram is the appellant in this second appeal.

2. The said suit was filed for the relief of declaration and permanent injunction. An alternative relief of partition and separate possession was also sought. The defendant is none other than the sister of the plaintiff. The defendant filed written statement controverting the plaint averments. The trial court framed the necessary issues. The plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A10. The defendant examined herself as D.W.1 and marked Ex.B1 to Ex.B11. After consideration of the evidence on record, the trial court by judgment and decree dated 12.08.2010 held that the plaintiff is entitled to 2/6th share in the 'B' schedule property. The preliminary decree was granted to that effect. The reliefs of declaration and permanent injunction were negatived. Aggrieved by the same, the plaintiff filed A.S.No.114 of 2010 before the first Additional Sub Court, Nagercoil. The first appellate court confirmed the decision of the trial court and dismissed the appeal. Challenging the same, the second appeal came to be filed. The second appeal was admitted on the following substantial question of law:-

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the subsequent sale in favour of Bhageerathypillai by Sankarapillai under Ex.A3 and the fact there is no reference to any othi in the sale deed (Ex.A7), I come to the conclusion that the said mortgage got extinguished in due course and therefore, the rights of Saraswathy Amma as mortgagee do not survive. The preliminary decree passed by the courts below does not call for any interference. The substantial question of law is answered against the appellant. The second appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The first Additional Subordinate Judge, Nagercoil.

2.The Principal District Munsif, Padmanabhapuram.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.K.N.THAMPI, Advocate (SR-7306[F] dated 21/02/2022)

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RK(28/03/2022) 3P 6C