



S.A.(MD) No.595 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.CHANDRASEKHARAN**

S.A.(MD) No.595 of 2023
and
C.M.P.(MD) No.13886 of 2023

N.Anand Sudharasan

..Appellant

Vs.

1.Subbiah

2.Nagaraj

3.Rengammal

4.Naranammal @ Nalini

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.8 of 2019 dated 03.01.2022 on the file of the Subordinate Judge, Kovilpatti, confirming the judgment and decree passed in O.S.No.176 of 2011 dated 20.12.2018 on the file of the District Munsif Court, Kovilpatti.

For Appellant

: Mr.V.Vasi Kumar



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JUDGMENT

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This second appeal is filed against the judgment of the learned Subordinate Judge, Kovilpatti, in A.S.No.8 of 2019 in O.S.No.176 of 2011.

2.The appellant/plaintiff filed the suit for permanent injunction restraining the respondents/defendants from interfering with the possession and enjoyment of the suit property. The suit properties are i) 70 cents in S.No.97/3A1 and b) 1.82 acres in S.No.97/3B in Kollankinaru Village, Ottapidaram Taluk, Tuticorin District. It is seen from the plaint averments that the suit properties originally belonged to one L.S.Venkatasamy Naickar. After his death, the suit properties devolved on the defendants 1 and 2, who are the sons of L.S.Venkatasamy Naickar. The defendants 1 and 2 had executed a registered power of attorney deed dated 14.09.2000 in favour of one Murugan.

3.The defendants 3 and 4 are the sisters of the defendants 1 and 2 and they have no right or enjoyment in the suit properties. The defendants 3 and 4 had given an undertaking affidavit on 02.04.2008 in the presence of Notary Public stating that they have no objection for the power of attorney agent to sell the property. Based on the documents, the power of attorney agent, Murugan, sold the suit properties to his wife, namely Madathi, on 29.04.2009. Thereafter, Madathi had sold the suit properties to the plaintiff on 04.02.2010. From the date of



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purchase, the plaintiff/appellant is in possession and enjoyment of the suit properties. When the defendants tried to interfere with the possession, the suit was filed. Defendants 1 and 2 remained *ex parte*.

4.It is seen that the fourth defendant filed a written statement disputing the execution of undertaking affidavit dated 02.04.2008 in favour of power of attorney agent, Murugan. It is claimed that the said document is a forged document. As per records, the name of the fourth defendant is Nalini and she used to sign only as Nalini. Item No.1 of the suit property belonged to the defendants' mother and item No.2 alone belonged to the defendants' father. The defendants 3 and 4 are entitled for equal right in the suit properties and they are in joint possession of the suit properties along with other defendants. The defendants 1 and 2 have no independent right to execute the sale deed in respect of the entire properties. The documents have been created and against that, a criminal case was given and FIR in Crime No.29 of 2011 was registered at Naraikinaru Police Station. Thus, the defendants opposed the suit.

5.On the basis of these pleadings, the trial Court framed the following issues:-

“1.Whether the plaintiff is in actual, physical and lawful possession over the suit properties or not?”



2. *Whether the plaintiff is entitled to the relief of injunction or*

not?

3. *To what other reliefs, the plaintiff is entitled to?"*

6. During the course of trial, P.W1 was examined and Ex.A1 to Ex.A7 were marked. D.W1 and D.W2 were examined and Ex.B1 to Ex.B7 were marked. On considering the oral and documentary evidences, the learned trial Judge found that the defendants 3 and 4 have also right in the suit properties; that they denied the execution of Ex.A2, undertaking affidavit. Relinquishment of share should only be through registered instrument and concluded saying that the appellant/plaintiff is not entitled for the relief of permanent injunction against the true owner. In this view of the matter, the suit was dismissed. The learned first appellate Judge has also dismissed the appeal filed in A.S.No.8 of 2019, confirming the judgment of the trial Court.

7. It is the submission of the learned counsel for the appellant that Ex.A2, undertaking affidavit given by the defendants 3 and 4, is not required to be registered. They have not taken any steps for disproving the signature in Ex.A2. The plaintiff is a *bona fide* purchaser for value and he is in possession and enjoyment of the property and thus, the plaintiff/appellant is entitled for the decree of permanent injunction.



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8.This Court on going through the materials produced, the pleadings and the judgments of both the Courts below finds that there is no dispute with regard to the fact that the defendants are the legal heirs of the deceased L.S.Venkatasamy Naickar. It is claimed in the plaint that the suit properties belonged to L.S.Venkatasamy Naickar, whereas in the written statement of the fourth defendant, it is claimed that the first item of suit property belonged to the mother of the defendants 1 to 4 and only the second item of suit property belonged to L.S.Venkatasamy Naickar.

9.Whatever be the case, it is no doubt that the defendants are the legal heirs of the deceased L.S.Venkatasamy Naickar and his wife. They are entitled to equal share in the suit properties. From the evidence produced, it is seen that only the defendants 1 and 2 had executed the power of attorney deed in favour of Murugan. This power of attorney deed was not executed in respect of their share alone, but was executed in respect of the entire extent of the suit properties. That is not correct. Obviously, to circumvent this situation, it appears that Ex.A2 came into existence.

10.It is claimed that Ex.A2 is an undertaking affidavit given by the defendants 3 and 4 in favour of power of attorney agent, Murugan, for selling the suit properties. The execution of this document is stoutly denied by the fourth



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defendant. When it is stoutly denied by the fourth defendant with regard to its execution, it is for the plaintiff to prove that this document had been executed by the defendants 3 and 4. Assuming that this document was executed by the defendants 3 and 4, the next question arose for consideration is whether this document is legally admissible one. The suit properties are the immovable properties and no doubt that it worth more than Rs.100/-. Release of any right or relinquishment of any right in respect of any immovable property worth more than Rs.100/- should be only by registered document. Ex.A2 is not a registered document and therefore, even assuming without admitting that it was executed by the defendants 3 and 4, it has no legal validity.

11.As of now, the plaintiff can only claim right in respect of $\frac{1}{2}$ share in the suit properties. The suit properties were vacant lands and the plaintiff has not purchased the entire extent of property from the rightful owners. It is settled proposition of law that the plaintiff cannot seek injunction against the rightful owners, especially the defendants 3 and 4. This Court finds that the Courts below have rightly decided the case on the basis of the oral and documentary evidences and denied the relief of permanent injunction in favour of the plaintiff/appellant. This Court also finds that there is no cause for any interference in the judgment and decree of the Courts below. Thus, they are confirmed.



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12.In *Sir Chunilal V. Mehta and Sons v. The Century Spinning Co.*

Ltd., 1962 reported in *AIR 1962 SC 1314*, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties *and if so*,
3. Whether it is *either* an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) *(or)*
4. The question is not free from difficulty and calls for discussion of alternative views.

13.In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

14.In fine, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

- 1.The Subordinate Judge,
Kovilpatti.
- 2.The District Munsif,
Kovilpatti.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

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