



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 196 of 2022

and C.M.P. No.3899 of 2022

1. Aathimoolan

2. Kolanjiammal

... Defendants / Appellants / Appellants

Vs.

1. Kolanji

2. Jayalakshmi

3. Jaya Prakash

4. Jayamani ammal

5. Usha

6. Roja

... Plaintiffs/ Respondents / Respondents

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree of the learned Subordinate Judge, Ulundurpet dated 21.11.2020 passed in A.S. No.14 of 2020 confirming the Judgment and Decree of the learned Principal District Munsif Court, Ulundurpet dated 17.07.2020 passed in O.S. No.148 of 2014.

For Appellants

:

Mr. R. Nilesh Kumar

For RR 1 to 6

:

Mr. V. Anthony Elangovan
(for T. Suresh)



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JUDGMENT

This appeal has been filed challenging the concurrent finding of both Courts below, wherein the Trial court has decreed the suit filed by plaintiffs seeking for declaration of title and permanent injunction against defendants.

2. The case of the plaintiffs is that, originally the suit property was assigned in favour of one Mariammal, who is the wife of the first plaintiff and mother of other plaintiffs in the year 1996 vide Ne/Mu/A/116/1996. After the death of Mariammal, the plaintiffs, who are legal representatives of the deceased Mariammal were in possession and enjoyment of the suit property. On 15.06.2014, the defendants were trying to take possession of the suit property, which was objected by the plaintiffs and consequently, plaintiffs have issued legal notice dated 27.06.2014 to the defendants. The defendants after receipt of the same, sent a reply notice stating that the first plaintiff had received a sum of Rs.6,000/- from the defendants and executed an unregistered sale deed on 23.07.2007. Therefore, the plaintiffs have come forward with the suit seeking for declaration of title.



3. The defendants have filed written statement stating that on 23.07.2007, the first plaintiff had sold the property to the defendants for a sum of Rs.6,000/- and executed an unregistered sale deed. On the same day, the original assignment deed was also handed over to the second defendant. Based on the same, the second defendant was in possession and enjoyment of the suit property for the past seven years. After lapse of seven years, the plaintiffs have demanded the possession of the suit property, which was refused by the defendants, hence the suit.

3. After considering the pleadings and submissions of the parties, the Trial Court has framed the following issues:

1. *Whether the suit property belong to plaintiffs?*
2. *Whether the suit property is in possession of the plaintiffs?*
3. *Whether the defendants have right over the suit property?*
4. *Whether the plaintiffs is entitled for the relief claimed for?*
5. *To what relief the plaintiffs are entitled to?*

4. The Trial Court after appreciating the evidence adduced on both sides has held that the plaintiffs are entitled to decree, as prayed for. Aggrieved over the same, the defendants had filed an appeal suit against the judgment and



decree of the Trial Court, whereas the lower Appellate Court, after considering the submissions and evidences placed on record, confirmed the judgment and decree of the Trial Court and dismissed the appeal.

5. Aggrieved over the dismissal of the appeal by the lower Appellate Court, the defendants have come forward with this appeal. This Court before admitting the appeal, ordered notices to respondents/ plaintiffs.

6. The learned counsel appearing for the appellants/ defendants submits that both Courts have failed to appreciate the fact that the original assignment deed was handed over to the second defendant and also the unregistered sale deed was also executed in favour of the second defendant. He further contended that even though, the unregistered sale deed could not be relied on for the purpose of transfer of title, whereas it can be considered as a collateral document for proving the possession of the defendants over the suit property for the past 7 years. He further submitted that both Courts have also failed to appreciate the fact that the original assignment deed was in possession of the defendants and the plaintiffs have failed to explain, how this document was in possession of the defendants. He further submitted that the suit filed by the plaintiffs is not maintainable since, they have already sold the property.



7. Per contra, the learned counsel for the respondents/ plaintiffs submits that originally the assignment was made in favour of Mariammal, who is the wife of the first plaintiff. The said Mariammal has five children and they are not party to the unregistered sale deed, further without any title or right over the suit property, this unregistered sale deed has been relied on by the defendants to deny the right of the plaintiffs, which is not maintainable. He further submitted that both the Courts have rightly held that the defendants are not entitled to claim any right over the suit property based on the unregistered sale deed and based on the possession of the original assignment deed and prays to confirm the judgment and decree of the Trial Court.

8. I have considered the submissions made on both sides and perused the evidences placed on record.

9. Admittedly, both Courts below have appreciated the evidence of the plaintiffs to the effect that the suit property was originally assigned to Mariammal, who is the wife of the first plaintiff and mother of other plaintiffs, and they were in possession and enjoyment of the same. Subsequently, after the death of Mariammal, all the plaintiffs are entitled to inherit the same equally.



Even though, it is an admitted fact that the first plaintiff is not having exclusive right to sell or deal with the suit property, it is claimed by the defendants that they have purchased the suit property from the first plaintiff for a sum of Rs.6,000/- and the original assignment deed was also handed over to them by the first plaintiff.

10. Both Courts below have categorically discussed about the validity of the unregistered sale deed relied on by the defendant and also their claim of possession over the suit property. After appreciating the evidences placed on record, both Courts have accepted the case of the plaintiffs and held that the unregistered sale deed executed in favour of the defendants is not valid and the decreed the suit in favour of the plaintiffs.

11. It is also pertinent to record that the defendants have not adduced any oral evidence, though D.W.1 was examined, he has not come forward to subject himself for cross examination, thereby both Courts have rejected the oral evidence of D.W.1. Therefore, in the absence of any evidence on the side of the defendants, both Courts after appreciating the evidence placed on record have accepted the case of the plaintiffs, this Court finds no reason to interfere with the said findings regarding the title as well as the possession of the suit property.



Though, it is admitted that the original assignment deed is with the defendants, that alone would not confer any right to claim or dispute the title of the plaintiffs over the suit property, further the defendants have also failed to prove that they were in possession and enjoyment of the suit property.

12. In view of the above discussions, this Court is of the view that both Courts below have rightly accepted the case of the plaintiffs and declare the title in favour of the plaintiffs, this Court finds no substantial question of law involved in this appeal and no reason to interfere in the judgment and decree of the Courts below, thereby this appeal is liable to be dismissed.

13. Accordingly, this second appeal is dismissed. Consequently connected civil miscellaneous appeal stands closed. No cost.

21.10.2024

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No



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K. RAJASEKAR, J.

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To:

1. The Section Officer,
VR Section,
High Court, Madras.

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