



S.A.No.256 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.256 of 2021
and
C.M.P.No.5126 of 2021

1.Minor. Balaraman
2.Santhi

... Appellants

Vs.

1.Rajendran
2.Pappathi

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside the judgment and decree dated 18.09.2019 in AS.No.31 of 2018 on the file of the Subordinate Judge, Chidambaram confirming the judgment and decree dated 08-09-2016 in O.S.No.18 of 2008 on the file of the District Munsif cum Judicial Magistrate, Portonovo.



S.A.No.256 of 2021

WEB COPY

For Appellant : M/s.M/s.B.Manoharan

For Respondent : Mr.A.Muthukumar [R.1 and R.2]

JUDGEMENT

The defendants 2 and 3 are the appellants before this Court challenging the concurrent judgment and decree passed against them. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.18 of 2008 on the file of the District Munsif cum Judicial Magistrate, Portonovo for a declaration of his title to the B schedule property and for recovery of possession of the same from the defendants 1 and 2.

3. It is the case of the plaintiff that he had purchased the suit property from the 1st defendant on 27.03.1995. The suit property consisted of A and B schedules. The A schedule property was the



S.A.No.256 of 2021

larger extent measuring 20½ cents comprised in S.No.256/3 Ariyagoshti, Village Chidambaram. After the purchase of the suit property, the plaintiff and the 1st defendant had both filed suits before the District Munsif cum Judicial Magistrate, Portonovo in O.S.Nos.4 and 20 of 2000 respectively seeking an injunction against each other.

4. The 1st defendant is none else than the father-in-law of the plaintiff. The plaintiff had purchased the A schedule property from the 1st defendant. Since the 1st defendant was causing hindrance to his enjoyment of the B schedule property, the plaintiff had filed O.S.No.4 of 2000. The 1st defendant had also filed a suit O.S.No.20 of 2000 with false particulars. Pending the above proceedings, the 1st defendant informed the plaintiff that since he had to maintain his mentally retarded son Murugesan, he needed to do something for his maintenance. Therefore, the plaintiff agreed to relinquish the B schedule property for the enjoyment of the 1st defendant's mentally



S.A.No.256 of 2021

WEB COPY

retarded son. Therefore, the Court had given a finding that the B schedule property can be enjoyed by Murugesan, the mentally retarded son of the 1st defendant. The plaintiff had however not relinquished his right over this extent of 10 1/4 cents.

5. Thereafter, Murugesan died on 18.06.2003. On his death, the B schedule property reverted back to the plaintiff. However, the 1st defendant with an intent to cheat the plaintiff sold the B schedule property to the 2nd defendant, represented by his guardian and mother, the 3rd defendant. The plaintiff would submit that this sale deed is not a valid one and is only a sham and nominal document and the he is entitled to recover the B schedule property. The 1st defendant had died pending the suit on 10.02.2012 leaving behind his 2 daughters, the 2nd plaintiff and the 3rd defendant. Therefore, the suit is filed for a declaration of the title of the plaintiff to the B schedule property and for recovery of possession.



S.A.No.256 of 2021

WEB COPY

6. The defendants 1 and 2 had filed a written statement inter alia contending that the sale in favour of the plaintiff on 27.03.1995 is not a true and valid document and it is not supported by consideration. It is their contention that the plaintiff by practicing fraud had created this fraudulent sale deed. They had also denied the compromise arrived at in the earlier proceedings. It is their contention that the plaintiff had clearly and categorically, in the earlier proceedings admitted that the B schedule property is under the possession and enjoyment of the 1st defendant. Therefore, the plaintiff had voluntarily and knowingly relinquished his claims raised in the suit O.S.Nos.4 and 20 of 2000. Further, the defendants would submit that the suit is barred by limitation and also suffers from a failure to seek a relief of declaring the sale deed dated 04.01.2006 as null and void.

7. They would submit that though the sale had taken place in 1995 the B schedule property continued to be in the possession of the



S.A.No.256 of 2021

defendants for over 12 years and therefore, the defendants had acquired prescriptive title by adverse possession. Therefore, they sought to have the suit dismissed.

8. The Trial Court had framed the following issues:

- 1. Whether the plaintiff is entitled for the relief of declaration and recovery of possession over the plaint B schedule property or not?*
- 2. Whether the suit is hit by the Doctrine of Res-judicata or not?*
- 3. Whether the suit alleged sale deed dated 27.03.1995 is genuine or not?*
- 4. To what other relief the plaintiff is entitled to?*

9. The 1st plaintiff had examined himself as P.W.1 and one Kadirvel as P.W.2 and Ex.A.1 to Ex.A.8 were marked on the side of the plaintiff. On the side of the defendants, the 3rd defendant had



S.A.No.256 of 2021

examined herself as D.W.1, Mumurthy, Swaminathan and Rajamani as D.W.2 to D.W.4. and marked Ex.B.1 an B.2.

10. The Trial Court on considering the evidence on record decreed the suit as prayed for. Against which the defendants 2 and 3 had filed A.S.No.31 of 2018 on the file of the Sub Court, Chidambaram. Along with the appeal the defendants had also filed two interlocutory applications; i) I.A.No.59/2019 was filed to receive a copy of plaint in O.S.No.12/2018 on the file of the District Munsif cum Judicial Magistrate, Portonovo as additional evidence and ii) I.A.No.75 of 2019 was filed to receive a copy of the Judgement in O.S.No.20/2000 on the file of the District Munsif cum Judicial Magistrate, Portonovo as additional evidence.

11. The learned Sub Judge on considering the evidence on record concurred with the findings of the Trial Court and dismissed the appeal and I.A.No.59/2019. However, I.A.No.75/2019 was allowed in and by



S.A.No.256 of 2021

which the judgement in O.S.No20/2000 was received in evidence and marked as Ex.B.3.

WEB COPY

12. Challenging the same, the defendants 2 and 3 have filed the above Second Appeal which was admitted on the following Substantial Questions of law :-

“i. Whether the findings of the courts below that the suit in O.S.No.4 of 2008 (Ex.A2) is not a bar for the present suit under Order II Rule 2, is sustainable in law?

ii. Whether the decree of permanent injunction in O.S.No.20 of 2000 granted in favour of Gopalakrishnan (1st defendant in present suit) will be redundant on death of Murugesan who is not the plaintiff in O.S.No.20 of 2000?

iii. Whether the Judgment and Decree in the earlier suits in O.S.No.4 of 2000 and O.S.No.20 of 2000 will operate as Estopped by Judgment for the present suit in



S.A.No.256 of 2021

WEB COPY

O.S.No.18 of 2008 in respect of the B-Schedule property?

iv. Whether the findings of the courts below that the appellants have not established their allegations regarding fraudulent execution of sale deed dated 27.03.1995 (Ex.A1) without proper appreciation of the deposition of P.W.1, is sustainable in law?"

13. It is the case of the learned counsel for the appellants that the relief in the present suit is barred by the provisions of Order 2 Rule 2 CPC since an earlier suit O.S.No.4 of 2000 had been filed in respect of the very same suit property but however for a relief of injunction. He would further submit that the 1st plaintiff had conceded that he was not in possession of the B schedule property and consequently, the suit O.S.No.20/2000 filed by the 1st defendant had been decreed and this decree would act as an estoppel against the plaintiffs. He would submit



S.A.No.256 of 2021

that the sale deed dated 27.03.1995 would not give any right to the plaintiff since this right has been determined by the judgement in O.S.No.4 of 2000 and O.S.No.20 of 2000 which have been marked as Ex.A.2 and Ex.B.3 respectively. Another argument that had been put forward was that the 1st defendant was addicted to alcohol and the plaintiff had taken advantage of this to get the sale deed Ex.A.1 in his favour.

14. Per contra, Mr.Muthu Kumar learned counsel appearing on behalf of the respondents would draw the attention of this Court to the evidence of the deceased 1st defendant in the suit O.S.No.20 of 2000 filed by him. In his cross-examination he has clearly admitted that he had sold the A schedule property which includes the B schedule property to the plaintiff and that since he had interfered with the possession of the plaintiff, the plaintiff had filed a suit for injunction. Therefore, the contention of the defendants that the sale has been



S.A.No.256 of 2021

WEB COPY

brought about fraudulently is not maintainable. Further, the B schedule property has been given to the 1st defendant only for the maintenance of his mentally retarded son, Murugesan for his life time and this would not give any right to the deceased 1st defendant and on the death of Murugesan, the property automatically reverts back to the plaintiff. He would therefore submit that the Courts below have considered the evidence in detail and decreed the suit and this Court sitting in the Second Appeal cannot revisit the evidence.

15. Heard the learned counsels on either side and perused the records.

16. Ex.A.1 sale deed has been admitted by the deceased 1st defendant in the other suit O.S.No.20 of 2000. That apart, from the perusal of the lower Appellate Court's judgement it is seen that under Ex.A.2 and Ex.B.3, the learned Judge had given a finding that the entire property belongs to the plaintiff. The Courts below had rejected



S.A.No.256 of 2021

the 1st defendant's contention that the sale deed is not a valid sale deed.

WEB COPY

The Trial Court had given a finding that the suit property was in the possession of the 1st defendant. Injunction had been granted with respect to the eastern 10 - 1/4th cents only on the ground that the 1st plaintiff had admitted the possession of the deceased 1st defendant for the eastern 10 - 1/4th cents till the life time of the 1st defendant's mentally retarded son, Murugesan in O.S.No.20/2000. The granting of the injunction in respect of the eastern 10 - 1/4th cents in favour of the 1st defendant would not therefore give him any right or title to the B schedule property. On the death of the said Murugesan, the property automatically reverts back to the 1st plaintiff. Therefore, once the title to the property rests with the 1st plaintiff, the deceased 1st defendant had no right to alienate the property to the 2nd defendant.



S.A.No.256 of 2021

WEB COPY

17. The institution of this suit is not barred under the principles of order 2 Rule 2 CPC in as much as the earlier suits had been filed only on account of the defendants disturbing the possession of the plaintiff and in the said suit the defendants have clearly admitted the title of the plaintiff. The Courts below have extensively considered the evidence on record and decreed the suit and I see no reason to interfere with the same. Substantial Questions of Law are therefore answered against the defendants. No costs. Consequently, the connected Miscellaneous Petition is closed.

15.02.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
shr

To

1. The Subordinate Judge, Chidambaram.
2. The District Munsif cum Judicial Magistrate, Portonovo.
3. The Section Officer,
V.R.Section,
High Court, Madras.

13/14



WEB COPY



S.A.No.256 of 2021

P.T.ASHA, J.,

shr

S.A.No.256 of 2021
and
C.M.P.No.5126 of 2021

15.02.2024