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S.A.No.41 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.41 of 2024
and
C.M.P.No.902 of 2024

S.Purusothaman

... Appellant

Vs.

1.Rukmani

2.R.Subramaniam

. . . Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside the Judgement and decree dated 17.10.2019 passed in AS.No.9 of 2018 by the Learned Principal Subordinate Judge, Tirupur, confirming the Judgement and decree dated 20.4.2017 passed in OS.No. 389 of 2007 by the Learned District Munsif, Tirupur.

For Appellants : M/s.S.S.Swaminathan



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JUDGEMENT

The 2nd defendant is the appellant before this Court challenging the judgment and decree passed by the Principal Subordinate Judge, Tirupur in A.S.No.9 of 2018 in and by which the learned Judge has confirmed the judgment and decree passed by the District Munsif, Tirupur in O.S.No.389 of 2007.

2. The facts are briefly set out herein below and the parties are referred to in the same array as before the Trial Court.

3. The plaintiff had filed the above-referred suit for declaring that she is the absolute owner of the suit property by virtue of the sale deed dated 21.04.1989 and to direct the defendants to deliver vacant possession of the suit property to her.

4. It is the case of the plaintiff that the suit schedule property had been purchased by her under a sale deed dated 21.04.1989 from the 1st defendant to whom the suit property originally belonged. The 1st defendant had purchased the same under a sale deed dated 17.02.1984.



The plaintiff would submit that the 1st defendant had sold a specific extent of 1020 Sq.ft. in Site No.58A measuring East-West 20 feet and North-South 51 feet comprised in SF.No.106 within specified boundaries. From the date of the purchase, the plaintiff has been in continuous possession and enjoyment of the suit property without any hindrance.

5. The plaintiff would submit that since the property is a vacant site, it has not been assessed to property tax. Further, the plaintiff has made necessary application for including her name in the joint patta and the same is pending. The plaintiff would submit that she is a permanent resident of Vellalore, Coimbatore and is engaged in the business of weaving. Whenever she visited Tiruppur, she would visit the suit property. During one such visit in the month of June, she had decided to sell the suit property on account of the fact that she had to discharge her personal debts and had to reconstruct her house at Vellalore.



6. Once again, on 02.07.2007 when the plaintiff visited the suit property, she saw the 2nd defendant constructing a small room with hollow brick stone and when the same was questioned, the 2nd defendant informed that on 22.03.2007, his father, the 1st defendant had executed a settlement deed in his favour and that he is the absolute owner of the property and therefore he is putting up the construction. The plaintiff had tried to stop the construction, however, she was driven away by the defendants who had taken the assistance of certain rowdy elements. The plaintiff had therefore issued a legal notice on 04.07.2007 which was duly served on the defendants. However, they continued with their work and did not reply to the notice. On 09.07.2007, the plaintiff's husband had lodged a police complaint against the defendants at the Perumanallur Police Station. The defendants being influential persons, the police did not take any action and directed the plaintiff to seek remedy before the Civil Court.



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7. The plaintiff would submit that the 1st defendant having sold the property to the plaintiff had no right to settle the same in favour of the 2nd defendant and the settlement is an invalid and void document and not binding on the plaintiff. The 1st defendant had committed an act of cheating. The construction therefore put up by the 2nd defendant in the suit property is an unauthorized construction. The plaintiff had also taken photographs to show the construction made by the defendants in the suit schedule property on 08.07.2007.

8. In the third week of July 2007, the defendants took steps to assess the unauthorized construction for property tax before the local Panchayat. On 21.07.2007, the plaintiff had issued a notice to the President, Neruperichal Panchayat requesting him not to assess the unauthorized construction. Since the defendants' illegal act is continuing, the plaintiff had filed the suit for declaration of title and for delivery of possession against the defendants in O.S.No.305 of 2007 on the file of the District Munsif, Tirupur and had also filed an application



in I.A.No.1438/2007 for appointment of an Advocate Commissioner to note down the physical features of the suit property. The Advocate Commissioner had visited the suit property and filed a detailed report.

9. Once the notice had gone in this suit to the defendants, they had attempted to compromise/settle the matter and in the presence of well-wishers of the plaintiff and the defendants which included the plaintiff's husband, the defendants agreed to give possession of the suit property with the building to the plaintiff within a week and the plaintiff was supposed to pay the cost of the building constructed and withdraw the suit. Therefore, the plaintiff had filed a memo on 23.08.2007 stating that since the matter was settled, she was withdrawing the suit as settled out of Court.

10. Despite this settlement/compromise and the plaintiff withdrawing the suit as settled out of Court on 23.08. 2007, the defendants were not delivering possession of the property. On 16.09.2007, one of the panchayatdars Mr.A.Vellingiri approached the



defendants to act as per the settlement/compromise but the defendant did not comply with the request. In the light of this act of the defendants in not complying with the earlier settlement/compromise, the plaintiff had filed the suit for the reliefs set out supra.

11. The defendants had filed a written statement inter alia admitting that the property originally belonged to the 1st defendant by virtue of a sale deed dated 17.02.1984. He would submit that the 1st defendant is in possession and enjoyment of the property by paying necessary taxes. The revenue records also stood in his name and he had also obtained a bank loan in this regard.

12. He would contend that on 22.03.2007, he had settled the property in favour of his son, the 2nd defendant who has ever since been in possession and enjoyment of the same. It is the specific contention of the defendants that the 1st defendant had not executed any sale deed in favour of the plaintiff and the plaintiff had never been in possession and enjoyment of the suit property. Further, they had



denied the compromise pleaded by the plaintiff in the earlier suit O.S.No.305 of 2007. The defendants further submitted that the second suit is barred by the principles of res judicata. Therefore, the defendants sought for dismissal of the suit.

13. The Trial Court had framed the following issues which when translated from the vernacular would read as follows:

- 1. Whether it is true to state that the suit property is belonged to the plaintiff?*
- 2. Whether the plaintiff is entitled for the relief of declaration as prayed for?*
- 3. To what other relief?*

14. The plaintiff had examined herself as PW.1 and another witness as PW.2 and marked Ex.A.1 to A.8. The defendants had examined themselves as D.W.1 and DW.2 and marked Ex.B.1 to B.17.



15. The learned Trial Judge on considering the evidence on record decreed the suit as prayed for and directed the defendants to vacate the premises within a period of three months.

16. Aggrieved by the said judgment and decree the defendants had filed A.S.No.9 of 2018 on the file of the Principal Subordinate Judge, Tiruppur. The Appellate Judge had observed that the defendants had not questioned the validity of Ex.A.1 before the Trial Court and were questioning it for the first time in the appeal. The learned Appellate Judge had also observed that the defendants were very much aware about the earlier suit and the compromise between the parties and that the suit was not one that had been decided on merits and hence the bar under Section 11 of the CPC and Order 23 Rule 1 of the CPC is not applicable to the case on hand. This judgement has attained finality since the defendants have not challenged the same further. Therefore the learned Appellate Judge observed that the suit is not barred by the provisions of Section 11 of the CPC and Order 23 Rule 1 of the CPC. Ultimately, the learned Appellate Judge had upheld the judgment and



decree of the Trial Court and dismissed the appeal. Aggrieved by the same the 2nd defendant is before this Court.

17. Heard the counsel for the appellant.

18. The only argument that is put across by the defendants is that the suit is barred in the light of the provisions of Section 11 of the CPC and Order 23 Rule 1 of the CPC. The provisions would apply if the matter had been heard and finally decided by the Court on merits. Admittedly in the instant case, there was no hearing and a reading of the judgement of the Appellate Court would clearly show that the earlier suit had been withdrawn on the memo filed by the plaintiff herein. The suit was withdrawn as settled out of Court. The parties therein had not contested the case and invited a considered judgment. Therefore the bar under the provisions of Section 11 of the CPC and Order 23 Rule 1 of the CPC would not apply to the instant case.

19. Admittedly, the sale deed in favor of the plaintiff is much prior in point of time than the settlement deed in favor of the 2nd



defendant. Therefore, the settlement deed executed by the 1st defendant after the sale of the property is totally invalid. The Courts below have extensively considered the evidence and decreed the suit and dismissed the appeal and I see no reason to interfere with this concurrent Judgment and decree of the Courts below. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

22.01.2024

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

1. The Principal Subordinate Judge, Tirupur.
2. The District Munsif, Tirupur.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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