



S.A.(MD)No.567 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.11.2024

Pronounced on : 31.01.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.567 of 2019

and

C.M.P.(MD)No.11379 of 2019

Subbulakshmi

... Appellant/
Respondent/
1st Defendant

Vs.

1.Vijaya Jeyaseelan

... 1st Respondent/
Appellant/
Plaintiff

2.R.Suresh

3.M.Padmanaban

4.Ramamoorthy

... Respondents 2to4/
Respondents 2to4/
Defendants 2 to 4

Prayer : This Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 31.07.2019 passed



S.A.(MD)No.567 of 2019

in A.S.No.67 of 2016 on the file of the 4th Additional District Court, Tirunelveli reversing the judgment and decree dated 25.07.2016 passed in O.S.No.112 of 2012 on the file of the Additional Sub Court, Tirunelveli allowing this second appeal with cost.

For Appellant : Mr.H.Arumugam

For R1 : Mr.A.Prasanna Rajadurai

For R2 to R4 : No appearance

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.67 of 2016 dated 31.07.2019 on the file of the 4th Additional District Court, Tirunelveli, reversing the judgment and decree made in O.S.No.112 of 2012 dated 25.07.2016 on the file of the Subordinate Court, Tirunelveli.

2. The appellant is the first defendant. The first respondent/plaintiff has filed a suit in O.S.No.112 of 2012 seeking a decree directing the respondents 2 to 4/defendants 2 to 4 to execute a sale deed in his favour towards their 2/8th shares in the suit property and for partition and separate possession of the first respondent/plaintiff's 5/8th shares in the suit property.



S.A.(MD)No.567 of 2019

WEB COPY

3. For the sake of convenience and brevity, the parties herein will be referred to as per their status/ranking in the trial Court.

4. The case of the plaintiff is that the suit property belonged to one V.Muthu Reddiar vide sale deed dated 30.05.2003, that the said Muthu Reddiar died intestate on 20.05.2007 leaving behind his wife Saroja, four sons, namely, Muthukrishnan, Padmanaban, Tirupathi and Jegadeesan and three daughters, namely, Venkatalakshmi, Subbulakshmi (first defendant) and Thanalakshmi, that after the death of the said Muthu Reddiar, all his legal heirs had been in possession and enjoyment of the suit property, that the said Venkatalakshmi-daughter of the said Muthu Reddiar died on 24.08.2007 leaving behind her husband Ramamoorthy (fourth defendant) and her son Suresh (second defendant) as her legal heirs and after her death, the defendants 2 and 4 inherited share of the said Venkatalakshmi, that all the legal heirs of the said Muthu Reddiar except the defendants 1 to 4 executed a registered sale deed dated 31.03.2008 in favour of the plaintiff for valuable sale consideration and prior to the sale deed, the defendants 1 to 4 had also agreed and joined with the other legal heirs to execute the sale deed in favour of the plaintiff, that the first defendant has



S.A.(MD)No.567 of 2019

WEB COPY

later refused to join with the other legal heirs to execute the sale deed, that though the defendants 2 to 4 had come to the Sub Registrar Office, Palayamkottai on 31.03.2008, they were not having any identity proof and as such, they were not able to execute the sale deed, that the defendants 2 to 4 received the entire sale consideration for their respective shares from the plaintiff's power agent and issued a cash receipt therefor, that the plaintiff was in abroad for the past 15 years and hence, he appointed one S.Mariappan as his power agent, that since the plaintiff has now returned from abroad and settled here, he cancelled the power of attorney deed on 14.02.2012 and that since the defendants 2 to 4 were evading to execute the sale deed on some pretext or other, he was constrained to file the above suit for partition and also for execution of sale deed in respect of 2/8th shares of the suit property by the defendants 2 to 4.

5. The defence of the first defendant is that the case of the plaintiff that the suit property was owned by one V.Muthu Reddiar and after his death, the suit property came to be owned by his wife and legal heirs are false and untenable, that the suit property came to be owned by the first defendant's husband Kirubai Raja vide sale deed dated 24.03.1994 and



S.A.(MD)No.567 of 2019

since then, he has been in possession and enjoyment of the same, that the suit property was assessed in the name of the said Kirubai Raja and he has been paying property tax continuously, that since the said Kirubai Raja is the owner of the property being a necessary party, the suit is bad for non-joinder of necessary party, that the plaintiff has only impleaded the husband and son of the deceased Venkatalakshmi and not impleaded the daughters of the deceased Venkatalakshmi and as such, the suit is bad for non-joinder of necessary parties, that the legal heirs of the said Muthu Reddiar have absolutely no right to execute the sale deed and the alleged sale deed does not bind the first defendant and her husband, that the suit is not properly valued and Court fee paid is incorrect, that the plaintiff has no cause of action to file the suit and the cause of action alleged is false and imaginary and that therefore, the suit is liable to be dismissed.

6. The learned trial Judge, upon perusing the pleadings of both the parties, has framed the following issues;

1. *Whether the suit property came to be owned by the plaintiff vide sale deed dated 31.03.2008 and he has been in possession and enjoyment of the same?*
2. *Is it true that the first defendant has consented for entering*



WEB COPY



S.A.(MD)No.567 of 2019

into partition as alleged by the plaintiff?

3. *Is it true that the suit property is belonging to the first defendant, as alleged by her?*
4. *Whether the details of the suit property, given therein is incorrect?*
5. *Whether the plaintiff has paid the required Court fee on the plaint?*
6. *Whether the suit is bad for non-joinder of necessary parties?*
7. *To what other relief the plaintiff is entitled to?*

7. During trial, the plaintiff has examined himself as P.W.1 and his power agent Mariappan as P.W.2 and exhibited 10 documents as Ex.A1 to Ex.A10. The defendants 2 to 4 had remained *ex-parte*. The first defendant has examined herself as D.W.1 and exhibited 8 documents as Ex.B1 to Ex.B8.

8. The learned trial Judge, upon considering the pleadings and the evidence both oral and documentary and on hearing the arguments of both the sides, has passed a judgment and decree dated 25.07.2016, dismissing the suit. Aggrieved by the dismissal judgment, the plaintiff has preferred an appeal in A.S.No.67 of 2016 and the same was made over to the 4th



S.A.(MD)No.567 of 2019

Additional District Court, Tirunelveli. The learned First Appellate Judge, upon considering the materials available on record and on hearing the arguments of both the sides, has passed the impugned judgment and decree dated 31.07.2019 reversing the judgment and decree made by the trial Court and allowed the appeal partly directing the defendants 2 to 4 to execute the sale deed in respect of their shares and also granted preliminary decree in respect of the plaintiff's 5/8th shares. Challenging the impugned judgment and decree, the present second appeal came to be filed.

9. At the time of admission, the following substantial questions of law came to be formulated:-

- 1. Whether the First Appellate Court is correct in its findings that the suit is not bad for non joinder of parties?*
- 2. Whether the First Appellate Court is correct in its findings that the husband of the Appellant is not the owner of the suit property in his absence?*
- 3. Whether the First Appellate Court is correct in its findings that Ex.A4 is not a mortgage bond even after the candid admission of PW1 and PW2 in their chief examination itself?*
- 4. Whether the First Appellate Court is correct to hold that Ex.A5 is a sale deed but only deed of assignment of mortgage?*



S.A.(MD)No.567 of 2019

WEB COPY

10. It is not in dispute is that one Muthu Reddiar and his wife Saroja had four sons, namely, Muthukrishnan, Padmanaban, Tirupathi and Jegadeesan and three daughters, namely, Venkatalakshmi, Subbulakshmi and Thanalakshmi.

11. It is also not in dispute that the said Muthu Reddiar died intestate on 20.05.2007 leaving behind his wife, four sons and three daughters. It is also not in dispute that Venkatalakshmi-daughter of the said Muthu Reddiar died intestate on 24.08.2007 leaving behind her husband Ramamoorthy (fourth defendant) and a son Suresh (second defendant) and two other daughters.

12. The case of the plaintiff is that the suit property came to be owned by one Muthu Reddiar vide sale deed dated 30.05.2003, that after the death of the said Muthu Reddiar, the suit property came to be owned by his wife and children, that the plaintiff purchased 5 shares out of 8 shares from the Muthu Reddiar's wife and children excluding the defendants 1 and 3 and the legal heirs of the deceased daughter Venkatalakshmi and that the defendants 2 to 4 received the sale



S.A.(MD)No.567 of 2019

consideration and executed a receipt dated 31.03.2008.

WEB COPY

13. The plaintiff's further case is that since the defendants 2 to 4 have been evading to execute the sale deed and the first defendant has refused to effect partition and allot 5/8th shares belonging to the plaintiff, he was constrained to file the above suit for partition and for direction to the defendants 2 to 4 to execute the sale deed in respect of 2/8th shares owned by them.

14. The defence of the first defendant is that the suit property came to be owned by her husband Kirubai Raja vide sale deed dated 24.03.1994 and after making construction, he has been in possession and enjoyment of the property and that he has been paying the property tax and other statutory dues.

15. It is not in dispute that the first defendant's husband Kirubai Raja purchased the suit property as a vacant land from one Selvaraj vide sale deed dated 24.03.1994.



S.A.(MD)No.567 of 2019

WEB COPY

16. It is the specific case of the plaintiff that the said Kirubai Raja executed a mortgage deed in favour of one Anthony Raja vide mortgage deed dated 09.03.1999 under Ex.A2 and on the same date, the said Kirubai Raja has executed a power of attorney deed under Ex.A3 in respect of the suit property in favour of one Amala Selvaraj and that the said power agent Amala Selvaraj executed a sale deed in favour of the mortgagee Anthony Raja on 19.03.1999, who in turn executed a sale deed in favour of the said Muthu Reddiar on 30.05.2003 under Ex.A5. Admittedly, the first defendant has not disputed the above documents and it is also not her case that the above documents came to be created fraudulently behind the back of her husband.

17. It is evident from the documents under Ex.A2 to Ex.A5 that the power agent has adjusted Rs.1,50,000/- which came to be received as mortgage money from the sale price and received balance sale price of Rs.25,000/- from the said Anthony Raja and executed the sale deed under Ex.A4. As rightly observed by the learned First Appellate Judge, since the power agent of Kirubai Raja has executed the sale deed in favour of Anthony Raja by adjusting the mortgage amount, the said Kirubai Raja has



S.A.(MD)No.567 of 2019

lost his title at that time itself.

WEB COPY

18. No doubt, the plaintiff would admit that the first defendant had been in possession and enjoyment of the property and the property tax came to be assessed in the name of Kirubai Raja. As rightly contended by the learned counsel appearing for the plaintiff, the first defendant nor her husband has claimed ownership over the suit property on the basis of adverse possession. Admittedly, the first defendant has not produced any other materials or evidence to show that the suit property came to be owned by her husband, after Ex.A4. Even before the First Appellate Court, they have not produced any iota of evidence to substantiate their stand that the suit property is belonging to the said Kirubai Raja.

19. The learned counsel appearing for the first defendant would mainly contend that the deceased Venkatalakshmi had two daughters but they were not added as parties to the suit and as such, the suit itself is bad for non-joinder of necessary parties.

20. No doubt, as rightly contended by the learned counsel appearing



S.A.(MD)No.567 of 2019

for the first defendant, the deceased Venkatalakshmi is having 1/8th share in the suit property being a daughter of the Muthu Reddiar. Admittedly, husband and son of the Venkatalakshmi alone were impleaded and not the daughters. The First Appellate Court, after going through the materials on record, has specifically observed that the first defendant has failed to furnish the particulars of the daughters of the deceased Venkatalakshmi and the same came to be recorded by the trial Court.

21. As already pointed out, the defendants 2 to 4 had remained *ex-parte* before the trial Court as well as before the First Appellate Court.

22. The learned counsel appearing for the first defendant would further contend that there is no cause of action for claiming the relief of specific performance, that there is no plea regarding the sale agreement executed by the defendants 2 to 4 and the sale price and time for performance of the agreement and when it expired and when the defendants 2 to 4 refused to execute the sale deed and that the receipt under Ex.A7 was executed on 31.03.2008 and since the suit was filed on 20.04.2012 after the lapse of four years, the suit is hopelessly barred by



S.A.(MD)No.567 of 2019

WEB COPY

limitation. He would further submit that the plaintiff has not specifically averred that he was ready and willing to perform the contract as per Section 16(c) of the Specific Relief Act.

23. As rightly contended by the learned counsel appearing for the plaintiff, the first defendant has absolutely no right or *locus standi* to canvass the above aspects and the defendants 2 to 4 alone are having the competency to raise the above pleas, but as already pointed out, they remained *ex-parte*.

24. Since the two daughters of the deceased Venkatalakshmi were not impleaded, the learned First Appellate Judge has rightly directed the defendants 2 and 4 to execute their shares in 1/8th share belonging to the deceased Venkatalakshmi.

25. Considering the above, the decision of the First Appellate Court in granting the preliminary decree in respect of 5/8th shares belonging to the plaintiff and directing the third defendant to execute the sale deed in respect of his undivided 1/8th share and also directing the defendants 2 and



S.A.(MD)No.567 of 2019

4 to execute the sale deed in respect of their shares in undivided 1/8th share belonging to the deceased Venkatalakshmi, cannot be found fault with and this Court is in entire agreement with the reversal findings recorded by the learned First Appellate Judge. Hence, substantial questions of law are answered in favour of the first respondent and against the appellant.

26. It is pertinent to note that when the Second Appeal was taken up under the caption for dismissal on 17.03.2023, only at the request of the learned counsel for the appellant/first defendant, the matter was adjourned for reporting settlement on 27.03.2023, but on 27.03.2023, there was no representation for the appellant/first defendant and hence, this Court, after recording a memo dated 22.03.2023 filed by the learned counsel for the first respondent/plaintiff that the first respondent/plaintiff has already taken possession of the suit scheduled property through an execution petition, that since the first respondent/plaintiff has purchased 7/8th shares i.e., 3743.25 sq.ft., the remaining extent of 534.75 sq.ft. belongs to the appellant/first defendant and that he will not disturb the appellant/first defendant's share in the suit property, has dismissed the Second Appeal for non-prosecution.



S.A.(MD)No.567 of 2019

WEB COPY

27. The learned counsel appearing for the first respondent/plaintiff would submit that as per the memo dated 22.03.2023 already filed, which came to be recorded by this Court on 27.03.2023, the appellant/first defendant is having right over 534.75 sq.ft. being 1/8th share and that the first respondent/plaintiff undertakes that he will not disturb the share of the appellant/first defendant and as such, nothing survives in the present Second Appeal.

28. Considering the above, this Court decides that the Second Appeal is liable to be dismissed and is dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

29. In the result, the Second Appeal stands dismissed. Consequently, connected Miscellaneous Petition is closed. The parties are directed to bear their own costs.

31.01.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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WEB COPY



S.A.(MD)No.567 of 2019

K.MURALI SHANKAR,J.

csn

To

1. The 4th Additional District Judge,
Tirunelveli.
2. The Subordinate Judge,
Tirunelveli.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Judgment made in
S.A.(MD)No.567 of 2019
and
C.M.P.(MD)No.11379 of 2019

Dated : 31.01.2025