

Thamaraiselvi Vs. 1. Mariammal

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Court : Chennai

Decided On : Jun-24-2014

Judge : The Honourable Mrs.Justice Pushpa Sathyanarayana

Appellant : Thamaraiselvi

Respondent : 1. Mariammal

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

24. 6/2014 CORAM THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA Second Appeal (MD) No.16 of 2009 Thamaraiselvi ... Appellant Vs 1. Mariammal 2. Balaganesan 3. Pillaiarsami 4. Sekar 5. Athimoola Kumar ... Respondents PRAYER Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.13 of 2006 on the file of the learned Subordinate Judge, Sankarankoil dated 30/7/2008 confirming the judgment and decree passed in O.S.No.43 of 2003 on the file of the learned District Munsif-cum-Judicial Magistrate, Sivagiri dated 29/9/2005. !For Appellant ... Mr.M.P.Senthil *For Respondents ... Mr.F.X.Eugene :

JUDGMENT

Dissatisfied with the decree of the Courts below, the plaintiff has filed the above Second Appeal.

2. The suit is for declaration and for recovery of possession of the same and for an injunction restraining the defendants from making any construction in the plaint schedule property. The plaint schedule property belongs to the plaintiff.

3. The case of the plaintiff is that the suit property originally belonged to one Durairaj and brother Malaikani ancestrally. In an oral partition, the eastern side of the property was allotted to Malaikani and the western side was allotted to Durairaj. The said Durairaj sold the plaint schedule property to one Chinna Kuthalam, who is the father of the plaintiff as per sale deed dated 19/4/1988 under Ex.A.5. The said Durairaj had executed Ex.A.5 = B.7 on behalf of himself and for his minor children. Though the said Durairaj sold the property, he was continuing in possession of the property as a tenant on a monthly rent of Rs.150/-. As there was default in payment of rent, a suit also came to be instituted against him in O.S.No.447 of 1994 on the file of the District Munsif Court, Sankarankoil. Pending that suit, the said Durairaj died and the suit came to be dismissed on 21/1/1998 as the same was compromised between the parties. The defendants herein who are the legal heirs of the said Durairaj had agreed to vacate the premises. Hence the suit was dismissed for default.

4. While so, the purchaser of the property viz., Chinna Kuthalam, who is the father of the plaintiff herein settled the property on 27/1/2008 under Ex.A.4 in favour of the plaintiff. Based on the settlement deed, the plaintiff has filed the present suit.

5. The suit was contested by the defendants on various grounds. According to the defendants, the said Durairaj never sold the property to the plaintiff's father Chinnakutthalam. It was further contended by them that the said Durairaj was a drunkard and the sale was obtained from him fraudulently without any sale consideration when he was not in sound disposing state of mind. The defendants further pleaded ignorance about the earlier suit in O.S.No.447 of 1994 against Durairaj. The sale was also challenged by them on the ground that Durairaj would not have sold the property binding their share also. According to the defendants, the plaintiff is entitled to claim only 12 feet x 11 feet as that was the extent purchased by Chinna Kuthalam from Durairaj. Therefore, Durairaj could not have settled more than what he has purchased under Ex.B.7.

6. Before the trial Court, on behalf of the plaintiff P.W.1 has been examined and Exs.P.1 to P.6 had been marked. On the side of the defendants, D.W.1 has been examined and Exs.B.1 to B.14 had been marked.

7. After a thorough consideration of the documents and materials available, the trial Court decreed the suit in part only to an extent of 12 feet east west and 11 feet north south and the house bearing Door No.61 on the same and the further relief of injunction not to alter the physical features and vacate the premises within a period of three months. Aggrieved by the same, the plaintiff had preferred the first appeal which also met with the same fate. Challenging the same, the appeal has been filed.

8. At the time of admission, only notice was issued.

9. Heard Mr.M.P.Senthil for the appellant and Mr.F.X.Eugene for the respondents.

10. Ex.A.5 is the registered sale deed executed by the husband of the first defendant and father of the defendants 2 to 5 Durairaj regarding the schedule property in S.No.1100 to an extent of east west 12 feet and north south 11 feet with a hut bearing Door No.61. The said sale deed dated 19/4/1988 is admitted by both the parties. The plaintiff is claiming right to the same under Ex.A.4 dated 27/3/2003 settlement deed executed by her father. Now, the dispute is regarding the measurements of the suit property. In the suit schedule, the plaintiff has claimed 14.3/4 east west and 40 = on north south in S.No.1100. Admittedly, Durairaj sold only 11 x 12 in S.No.1100 under Ex.A.5 to the father of the plaintiff Chinnakuthalam. Under Ex.A.4 the said Chinnakuthalam has settled the same in favour of the plaintiff. While so, the plaintiff cannot claim more than what was purchased by her father and subsequently, settled in her name. When the father of the plaintiff has purchased a specific extent, he cannot settle larger extent than what he is entitled to.

11. Though the learned counsel for the appellant strenuously contended that the boundary recitals in Ex.B.7 had not been adverted to there is not much force in the same as what is conveyed under Ex.B.7 is settled under Ex.A.4.

12. Regarding right, title and possession of the property of Durairaj, the trial Court findings are not challenged by the defendants. It is only the plaintiff, who was aggrieved by the measurements have come up with the present appeal and the Courts below have correctly found that father of the plaintiff/appellant herein has executed a larger extent under Ex.A.4 for which he has got no right. The plaintiff who had failed to establish the right of her father that he owned more than 11 x 12 feet cannot succeed in the appeal as there is no question of law much less a substantial question of law arising for consideration from the above said facts.

13. In the result, the Second Appeal is dismissed. The judgment and decree passed in A.S.No.13 of 2006 on the file of the learned Subordinate Judge, Sankarankoil and O.S.No.43 of 2003 on the file of the learned District Munsif-cum-Judicial Magistrate, Sivagiri are confirmed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed. To
1. The Subordinate Judge, Sankarankoil 2. The District Munsif-cum-Judicial Magistrate, Sivagiri

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