
(2011) 08 MAD CK 0449

In the Madras High Court

Case No : S.A. No. 1599 of 2010 and M.P. No. 1 of 2010

Baggiammal (since Deceased) and Mrs. Gunasundari

APPELLANT

Vs

K. Padmavathi and Others

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0449

Hon'ble Judges : S. Ramanathan, J

Bench : Single Bench

Advocate : D. Venkateswarulu, for the Appellant; T. Sundar Raja, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

S. Ramanathan, J.—The Defendants 1 and 2 in O.S. No. 3967 of 2003 on the file of the XIII Assistant Judge, City Civil Court, Chennai, are the Appellants.

2. The Respondents 1 and 2/ Plaintiffs filed the suit for declaration that the 2nd Respondent is entitled to claim the sale deed in respect of the suit property from the 3rd Defendant/ 3rd Respondent herein, for surrender of vacant possession of the suit property and for mesne profits and for mandatory injunction directing the 4th and 5th Respondents to remove the electric connection. The case of the Respondents 1 and 2 was that the 1st Appellant was the mother and the 2nd Appellant was the daughter and they executed a mortgage in respect of the suit property in favour of Krishnaveni Ammal on 22.8.1988 and also executed a demand promissory note in favour of Krishnaveni Ammal for a sum of Rs. 2,000/-. Thereafter, to discharge the loans and for other family needs, the Appellants along with other children of the 1st Appellant sold the leasehold rights of the suit property along with a hut in favour of the 1st Respondent by executing an un-registered sale deed dated 16.12.1988 and also put the 1st Plaintiff/ 1st Respondent in possession and ever since the date of unregistered sale deed the Respondents 1 and 2 are in possession of the property and the Appellants promised to execute the registered sale deed after the allotment of

plot in their favour by the 3rd Respondent and the 1st Respondent also allotted the suit property in favour of the 2nd Respondent who is her daughter under a memorandum of understanding dated 14.1.1989 and they have put up construction in the suit property and let out the properties to various tenants and in September 2002, the Appellants trespassed into the property by break opening the lock and started residing in the property and also questioned the right of the Respondents 1 and 2. The Appellants also filed O.S. No. 6591 of 2002 on the file of the XIII Assistant Judge, City Civil Court, Chennai for injunction against the Respondents 1 and 2 and therefore the suit was filed by the Respondents 1 and 2 for the relief as stated above.

3. The Appellants contested the suit stating that the Plot No. 293 was allotted to the 1st Appellant/ 1st Defendant and Plot No. 294 was allotted to Jagathambal the mother of the 1st Respondent and both plots are having the same Door Number 20 and Plot No. 293 is situate on the backyard and Plot No. 294 was given by Jagathambal to her daughter namely the 1st Respondent and the 1st Respondent also transferred the Plot No. 294 in favour of the 2nd Respondent and the Respondents 1 and 2 have no right in Plot No. 293 and the Appellants never executed the unregistered sale deed as alleged by the Respondents 1 and 2 after receiving consideration and construction in Plot No. 293 was done by the 1st Appellant and the 1st Appellant was in possession of the property in her own right and her possession was attempted to be interfered by the Respondents 1 and 2 and therefore she filed a suit for injunction and therefore the Respondents 1 and 2 are not entitled to the relief as prayed for.

4. Both the suits O.S. No. 6591 of 2002 filed by the deceased 1st Appellant and O.S. No. 3967 of 2003 filed by the Respondents 1 and 2 were tried together and the trial Judge decreed the suit filed by the deceased 1st Appellant namely O.S. No. 6591 of 2002 and dismissed the suit O.S. No. 3967 of 2003, by a common Judgment. Aggrieved by the same, the Respondents 1 and 2 filed A.S. No. 61 of 2007 against the judgment and Decree in O.S. No. 3967 of 2003 and A.S. No. 67 of 2007 against the suit filed by the deceased 1st Appellant in O.S. No. 6591 of 2002. The learned appellate Judge allowed both the appeals and decreed the suit filed by the Respondents 1 and 2 in O.S. No. 3967 of 2003 and dismissed the suit in O.S. No. 6591 of 2003 filed by the deceased 1st Appellant by a common Judgment. Aggrieved by the same, the present Second Appeal is filed by the Appellants against the judgment and Decree made in O.S. No. 3967 of 2003 reversed by the first appellate Court in A.S. No. 61 of 2007.

5. The learned Counsel for the Appellants submitted that the trial Court has rightly dismissed the suit filed by the Respondents 1 and 2 holding that the sale deed relied upon by the Respondents 1 and 2 dated 16.12.1988 cannot be looked into for claiming title as it is an unregistered sale deed and except the same, the Respondents 1 and 2 do not have any document to prove their title and rightly decreed the suit filed by the deceased 1st Appellant and the first appellate Court without properly appreciating the admissibility of the sale deed dated

16.12.1988, relied upon the same, allowed the appeal filed by the Respondents 1 and 2 and decreed the suit O.S. No. 3967 of 2003 and dismissed the suit filed by the deceased 1st Appellant in O.S. No. 6591 of 2002 and therefore the judgment and Decree of the lower appellate Court is liable to be set aside. The learned Counsel for the Appellants submitted that the substantial question of law that arises for consideration in the Second Appeal is whether the lower appellate Court is right in decreeing the suit O.S. No. 3967 of 2003 on the basis of Ex.B7, the unregistered sale deed.

6. The learned Counsel for the Respondents 1 and 2 submitted that the present appeal filed by the Appellants is barred by Res judicata and admittedly no Second Appeal has been filed against the judgment and Decree in O.S. No. 6591 of 2002 and that has become final and both the suits O.S. No. 6591 of 2002 and O.S. No. 3967 of 2003 were tried together and a common judgment was pronounced and against the common judgment and separate Decrees two appeals were filed by the Respondents 1 and 2 in A.S. No. 61 of 2007 and A.S. No. 67 of 2007 and the lower appellate Court allowed both the appeals holding that the Respondents 1 and 2 are entitled to the relief prayed for in the suit filed by them except the relief of mandatory injunction and against the common judgment and separate Decrees the Appellant has filed only one appeal and therefore, the judgment rendered in A.S. No. 67 of 2007 reversing the decree passed in O.S. No. 6591 of 2002 operates as Res judicata. Inasmuch as in both the suits it was held by the lower appellate Court that the Respondents 1 and 2 have got right over the property and without challenging the same, the present appeal is not maintainable.

7. Having regard to the submissions made by the Respondents 1 and 2, the following substantial question of law is framed:

Whether the present appeal is maintainable and whether the judgment in O.S. No. 6591 of 2002 reversed by A.S. No. 67 of 2007 will operate as Res judicata ?

8. Having regard to the above substantial question of law, I do not want to go into the merits of the case. As rightly submitted by the learned Counsel for the Respondents 1 and 2, admittedly both the suits O.S. No. 6591 of 2002 and O.S. No. 3967 of 2003 were tried together and a common judgment was pronounced dismissing the suit O.S. No. 3967 of 2003 filed by the Respondents 1 and 2 and decreeing the suit filed by the deceased 1st Appellant in O.S. No. 6591 of 2002. Against that two first appeals namely A.S. No. 61 of 2007 and 67 of 2007 were filed and both the appeals were allowed by the lower appellate Court by a common judgment and against the same only one Second Appeal is filed. Therefore, as per the law laid down by the Hon'ble Supreme Court and our High Court in the following Judgments reported in 1988 (2) Law Weekly Page 14 (Thangavelu Kounder v. Venkatarama Kounder), Premier Tyres Limited Vs. Kerala State Road Transport Corporation, , 2001 I CTC 222 (Renganayaki v. K.R. Renganatha Mudaliar), 2001 IV CTC 297 (K.A. Perumalsamy v. A. Kandasamy), Ram Prakash Vs. Smt. Charan Kaur and Another, and AIR 1992 Mad 280

(Arumugha Nainar v. Lakshmana Perumal), the judgment in A.S. No. 67 of 2007 on the file of the XIII Assistant City Civil Court, Chennai operates as Res Judicata for the present Second Appeal and hence the Second Appeal is not maintainable and is liable to be dismissed. Hence, the substantial question of law is answered against the Appellants and in favour of the 1st Respondent. As the appeal is disposed of on the ground of Res Judicata, as stated supra, there is no need to go into the merits of the case.

9. In the result, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.