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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)NO.589 OF 2023
and
C.M.P(MD)No.13668 of 2023

1.Murugan

2.Shanthi

3.Kavitha :Appellants/Appellants 3 to 5/
LRs of the Plaintiff

.VS.

1.Masilamani

2.Raja

3.Muthuramalingam

4.Lakshmi

5.Latcham

6.Kanimuthu

7.Kayalvizhi

8.Muthupandi @Kaliyaperumal : Respondents 1 to 8/Respondents/
Defendants 2 to 9

Rajeshwari

9.Rajamani :9th Respondent/2nd Respondent/
LRS of the plaintiff.

PRAYER: Second Appeal filed under Section 100 of the Civil



Procedure Code against the Judgment and decree made in A.S.No. 67 of 2017, dated 31.1.2023, on the file of the Principal Sub-Court, Dindigul confirming the judgment and decree made in O.S.No.155 of 2009, dated 1.6.2017, on the file of Principal District Munsif, Dindigul.

For Appellants :Mr.K.Guhan

JUDGMENT

This Second Appeal is filed challenging the judgment of the Principal Sub-Court, Dindigul in A.S.No.67 of 2017, confirming the judgment of the Principal District Munsif, Dindigul in O.S.No.155 of 2019.

2.One Rajeshwari filed the suit in O.S.No.155 of 2019 against Kathammal seeking the relief of declaration of title, recovery of possession and mesne profits in respect of the suit property.

3.The averments in the plaint are as follows:

The suit property belongs to one Mayandi Thevar and Veerammal.Plaintiff's grand-father Karuppathevar and Mayandi Thevar are brothers. Thus the plaintiff is the Mayandi Thevar's brothers grand-daughter. Mayandi Thevar and Veerammal has no



legal heirs. The plaintiff's father and mother died when the plaintiff was very young. Therefore, the plaintiff was taken care of and was in the care and custody of Mayandi Thevar and Veerammal. They had alone arranged for the marriage of the plaintiff with one Rajamani. To support the plaintiff, Mayandi Thevar and Veerammal had executed a settlement deed on 6.9.1969. Thereafter they died in the year 1970 and 1979 respectively. The defendant Kathammal is plaintiff's relative. The plaintiff is alone entitled for right, title and possession of the suit property. However, when the defendant requested the plaintiff to permit the defendant to reside in the suit property, the suit property was given to the defendant on oral lease in the year 1975 for Rs.6000/-. Even after terminating the lease and several requests made by the plaintiff, the defendant has not handed over the possession of the suit property, leading to the filing of this Suit.

4. During the pendency of the suit, the defendant Kathammal died and her legal representatives were impleaded as defendants.

5. The case of the plaintiff was resisted by the defendants stating that it is true that a settlement deed was executed in favour of the plaintiff in the year 1960 by Mayandi Thevar and Veerammal.



Thereafter, on 15.3.1975, the plaintiff along with legal heirs had executed a sale deed in respect of the suit property in favour of the first defendant husband Nallaperumal Thevar. Since the date of purchase, Nallaperumal Thevar and his family members were in possession and enjoyment of the suit property. After his death, the defendants are in possession and enjoyment of the suit properties on the basis of the aforesaid sale deed.

6. On the basis of the above said pleadings, the Trial Court has framed the following issues:

Issues:

1. Whether the plaintiff is entitled for the relief of declaration of title as prayed for?
2. Whether the plaintiff is entitled for the relief of rejection of Settlement Deed?
3. Whether the plaintiff is entitled for the mesne profits?
4. To what other relief, if any, the plaintiff is entitled to?

**Additional Issues:**

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1. Whether the plaintiff is entitled for recovery of possession from the defendants?

7. During the course of trial, P.W.1 and P.W.2 were examined. Ex.A1 and Ex.A2 were marked on the side of the plaintiff. D.W.1 was examined and Ex.B1 to Ex.B11 were marked. Ex.C1 and Ex.C2 were also marked.

8. Considering the oral and documentary evidence, the trial Judge found that the suit property was sold by the plaintiff to the first defendant's husband and therefore, the plaintiff is not entitled to seek for the relief of claiming title. Thus the suit was dismissed. The First Appellate Court had also concurred with the stand taken by the trial Court and dismissed the appeal. Challenging the judgments of the Courts below, this appeal is filed.

9. After the disposal of the appeal, sole plaintiff died. Therefore her legal heirs filed the second appeal.

10. The learned counsel for the appellants submitted that



through Ex.B1, the plaintiff had not sold the property to the husband of the first defendant Kathammal. There are discrepancies in the description of the property as found from Ex.B1 and in the recital in the plaint with regard to the nature of the building found in the property, the defendants have not produced any records to show that they have mutated the revenue records .There is a finding of the trial Court that Ex.B3 to Ex.B5 do not relate to the suit property. In such circumstances, the learned counsel submitted that the dismissal of the suit by the Courts below cannot be sustained.

11.This Court considered the rival submissions made on either side and perused the records.

12.From the case projected by the parties, it is not in dispute that the suit property was originally belonged to Mayandi Thevar and Veerammal. The fact that the said Mayandi Thevar had executed a settlement deed, dated 6.9.1967 in favour of the plaintiff Rajeshwari, is also not disputed. Rather the defendants have admitted the execution of the settlement deed in the Written Statement. The settlement deed, dated 6.9.1969 is marked as Ex.B2. It is the case of the plaintiff that the suit property was leased



out to the husband of the first defendant Kathammal by oral lease for a sum of Rs.6000/- in the year 1975.

13.On the other hand, the case of the defendants is that the suit property was sold to Kathammal's husband Nallaperumal Thevar by the plaintiff and the legal heirs on 15.3.1975.The Sale deed is marked as Ex.B1. It appears from the documents produced that the plaintiff has not produced any documents in support of the oral lease alleged in the plaint.

14.It is submitted that the property sold under Ex.B1 is not the suit property. It is imperative to find out the truth or falsity of this statement. For this purpose, it is necessary to compare the description of the property given in the plaint and in the sale deed Ex.B1. In the plaint schedule suit property is described as follows:

“ சொத்து விபரம்

திண்டுக்கல் ரீடி, ஆத்தூர் சப்டி கலிக்கம்பட்டி கிராமம், சின்னக்கலிக்கம்பட்டியில் சின்னாளப்பட்டி 5 வது வார்டு மாரிமுத்து ஆசாரி பிரிவில் இருக்கும் பழைய கதவு எண்.36,37 கொண்ட வீட்டிற்கு நான்குமால்.

பழனியாயி வீட்டிற்கும், பொது சந்திற்கும் - கிழக்கு

கிழமேல் வீதிக்கும் - வடக்கு

நோட்டை காமாட்சி ஆசாரி மனைக்கும் - தெற்கு



பிரதிவாதி இடத்திற்கும்

- மேற்கு

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இதற்குள் பொது சுவர் உட்பட கிழமேல் ஜாதி அடி 20 தென்வடல் ஜாதி அடி 36 உள்ள மனையிடமும் அதில் கட்டியிருக்கிற தெற்குபார்த்த கெட்டி லாகட மனை கதவு நிலை ஜன்னல் மேல்கோப்பு கொல்லை காலியிடம் வகையறாவும் சேர்ந்து கட்டுப்பட்டது.

15.In Ex.B1 Sale Deed, the property sold was described as follows:

சொத்து விபரம்

திண்டுக்கல் ரீடி சின்னாளப்பட்டி சப்டி, கலிங்கம்பட்டி கிராமம், சின்னக்கலிக்கம்பட்டியில் எங்களுக்கு சொந்தமான சின்னாளப்பட்டி பேரூராட்சி 12 / 3 □ 7 மேற்படி மனைக்கு மால்.

பழனியாயி வீட்டிற்கும், பொது சந்திற்கும்	- கிழக்கு
கிழமேல் வீதிக்கும்	- வடக்கு
நோட்டை காமாட்சி ஆசாரி மனைக்கும்	- தெற்கு
பிரதிவாதி இடத்திற்கும்	- மேற்கு

இதற்குள் கிழமேல் அடி 20 தென்வடல் அடி 36 உள்ளதுமான இடமும் இதில் 50 வருஷங்களுக்கு முன் மண்சாந்து மண்சுவர் வேப்பமரம் கள்ளிக்கோட்டை ஓடு இவைகளால் கட்டப்பட்டதுமான மேல் மேற்கோப்பு கதவு வரி □ 1ல் செங்கல் அடித்தல் மண்சுவர் வரி பிளப்பு நிலை மேற்கோப்பு வகையறாக்களும்.

16.A comparison of the description of the property given in the plaint and in Ex.B1 sale deed shows that the four boundaries



and extent of both properties exactly tally with each other. In the plaint, it is mentioned as D.No.36-37 and in the sale deed it is mentioned as D.No.12/37. In the plaint it is described as □□அதில் கட்டியிருக்கிற தெற்குபார்த்த கெட்டி லாகட மனை கதவு நிலை ஜன்னல் மேல்கோப்பு கொல்லை காலியிடம் வகையறாவும் சேர்ந்து கட்டுப்பட்டது. whereas in the sale deed, it is stated as tiled house constructed with mud 50 years back, was in existence.

17. When four boundaries, extent and location of the property tally in both the plaint and Ex.B1 sale deed, merely because the nature of the building exist changes, we cannot come to the conclusion that both properties are different properties. Probably the tiled mud house might have been demolished and a new house would have been constructed in the place of old mud house. In other respects, there is absolutely no iota of doubt that the plaintiff along with legal heirs had sold the suit property to the first defendant's husband through Ex.B2 Sale deed. Therefore, this Court is of the view that when the property was already sold by the plaintiff Rajeshwari, seeking the relief of declaration of title, recovery of possession and mesne profits, cannot be maintained. Thus this Court is of the view that both the Courts below considered the evidence in proper perspective and had rightly dismissed the



suit. Hence, the Second Appeal is liable to be dismissed.

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18. In this view of the matter,, the Second Appeal is dismissed confirming the judgments of the Courts below, as there is no substantial questions of law arises for consideration in this Second Appeal. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

13.10.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1. The Principal Sub-Judge,
Dindigul.
2. The Principal District Munsif,
Dindigul.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
S.A(MD)NO.589 OF 2023
and
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13.10.2023