



Second Appeal Nos.83 and 84 of 2013

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 09.02.2024**

**CORAM :**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**Second Appeal Nos.83 and 84 of 2013**  
**and M.P.Nos.1 and 1 of 2013**

Vediammal .... Appellant in both  
the appeals

-Vs-

Palani .... Respondent in both  
the appeals

Prayer : Second Appeals under Section 100 of C.P.C., against the judgment and decree dated 11.04.2012 made in A.S.Nos.43 and 44 of 2011 on the file of the learned Subordinate Judge at Harur reversing the judgment and decree dated 28.09.2011 made in O.S.No.136 and 235 of 2008 on the file of the learned District Munsif Court, Pappireddypatti.

For Appellant : Mr.S.Kanniah  
For Respondent : Mr.Karthikeyan  
for Mr.V.Nicholas

**J U D G M E N T**

These two Second Appeals arise out of the common judgment and decree in A.S.Nos.43 and 44 of 2011 dated 11.04.2012. For the sake of convenience, the parties are referred to as per their rank in the suit.



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**2.** A.S.Nos.43 and 44 of 2011 had been presented against the judgment and decree in O.S.Nos.235 of 2008 and O.S.No.136 of 2008 on the file of the learned District Munsif-cum-Judicial Magistrate at Pappireddipatti. O.S.No.136 of 2008 was originally presented as O.S.No.264 of 2005 on the file of the learned District Munsif Court at Harur. Similarly, O.S.No.236 of 2008 was filed as O.S.No.222 of 2006 on the file of the District Munsif Court, Harur.

**3.** The relief that was sought for in O.S.No.136 of 2008 was for declaration of the plaintiff's title and for consequential relief of injunction as against the defendants viz., Palani and Govindammal. It is the case of the plaintiff Vediammal that her husband Mari had executed a settlement deed in her favour on 06.11.1991 and on that very day had handed over possession of the property. According to her, her husband developed illicit relationship with Govindammal and since they were threatening to interfere with her possession, she came forward with a suit for declaration of title and for injunction.

**4.** O.S.No.235 of 2008 was presented by the same Vediammal as against Palani, the first defendant in O.S.No.136 of 2008 and her husband being arrayed as the second defendant. In that suit, she sought for a declaration that the sale deed executed by her husband, the second defendant in favour of the first defendant Palani as null and void and for costs in the suit.



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**5.** The issues that had been raised in the suit being common, the learned trial Judge clubbed both the suits in O.S.Nos.136 of 2008 and 235 of 2008 together. The issues were framed separately and the following are the issues:

- "1. வாதி தான செட்டில்மெண்ட் பத்திரப்படி தாவா சொத்தை அனுபவிக்க உரிமையுடையவரா? இல்லையா?
2. வாதி கோரும் விளம்புகைப் பரிகாரம் அவருக்கு கிடைக்கத்தக்கதா?
3. வாதி கோரும் நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் அவருக்கு கிடைக்கத்தக்கதா?"

Both the parties agreed for joint trial and filed a memo seeking the Court to record the evidence in the first suit viz., O.S.No.136 of 2008.

**6.** The plaintiff VEDIAMMAL examined herself and two other witnesses and marked Exs.A1 to A10. The defendants examined D.W.1 to D.W.5 and marked Exs.B1 to B11. Ex.X1 was marked on the side of the Court.

**7.** On the basis of the evidence that had been tendered as well as the oral evidence, the trial Court came to a conclusion that the settlement deed dated 06.11.1991 as true and genuine. Consequently, it decreed both the suits.



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**8.** Aggrieved by the same, the first defendant filed A.S.No.43 of 2011 and A.S.No.44 of 2011 along with his wife as the second appellant. Pending the appeal before the learned Subordinate Judge at Harur, the husband of VEDIAMMAL passed away and the same was recorded. The learned Subordinate Judge at Harur came to the conclusion that the settlement deed that had been executed by Mari in favour of VEDIAMMAL is true and genuine and confirmed the findings of the learned District Munsif-cum-Judicial Magistrate at Pappireddipatti. However, he came to the conclusion that the revenue records filed by the defendants point out that they are in possession of the property and therefore allowed the first appeals, denying the relief of permanent injunction. In other words, he upheld the settlement deed and the contents thereof, but denied the relief of injunction on the ground that the revenue records filed by the defendants show that they are in possession of the property. Aggrieved by the same, the present Second Appeals came to be presented before this Court.

**9.** On 22.02.2013, notice regarding admission was ordered and Mr.V.Nicholas entered appearance for the respondent.

**10.** On 26.04.2022, the Second Appeals were admitted on the following substantial questions of law:



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*" a) Whether the lower Appellate Court erred in dismissing the suit after finding that the Settlement Deed executed in favour of the plaintiff is valid and that the plaintiff is not entitled for the relief, since she has not sought for the relief of delivery of possession of the suit property?*

*b) Whether the lower Appellate Court failed to note the fact that the suit property was a vacant property and therefore, the possession will always follow title and the title of the plaintiff having been traced to the Settlement Deed, she will be deemed to be in possession of the property and consequently will be entitled for the relief of permanent injunction?*

*c) Whether the lower appellate Court failed to recognize the fact that the 2nd defendant was the husband of the plaintiff and therefore, considering the relationship between the parties, the 2nd defendant continuing to be in possession of the property does not necessarily mean that the settlement deed has not been acted upon and the same will confer a valid title in favour of the plaintiff?*

*d) Whether the lower appellate court while reversing the findings of the trial court had assigned cogent reasons while differing with the findings of the trial court as mandated under Order XLI Rule 31 of CPC?"*



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**11.** Heard Mr.Kannian, learned counsel for the appellant and Mr.Karthikeyan for Mr.V.Nicholas, learned counsel for the respondent. I have gone through the records and perused the judgments of the courts below.

**12.** The facts stated above would make it clear that out of the natural love and affection, Mari had executed a settlement deed in favour of appellant Vediammal on 06.11.1991. The said document has been marked as Ex.A1. The contents of the document are relevant for the disposal of the appeals, which reads as follows:

"நீ என் மனைவி. உன் பெயரில் எந்தவித சொத்துக்களும் இல்லை என்பதாலும், உனக்கு ஒரு சொத்து கொடுத்து ஆதரிக்க வேண்டும் என்பதாலும், உன் பேரில் எனக்குள்ள பாசத்தாலும், பிரியத்தாலும், எனக்கு பாகம் மூலம் பாத்தியப்பட்டு என்பேரில் பட்டாவாய் என் சுவாதீன அனுபவத்தில் இருந்து வரும் நிலத்தை நான் உனக்கு இந்த தான செட்டில்மெண்ட் மூலம் எழுதிக் கொடுத்து இன்றே உன் சுவாதீனமும் செய்துவிட்டேன். இனி எனக்கும், என் குடும்ப வாரிசுகளுக்கும் எவ்வித பாத்தியமும், சம்மந்தமும் இல்லை. இனி சகல சுதந்திரத்துடன் புத்திர பௌத்திர பாரம்பரியமாய் தானாதி விக் கிரயங்களுக்குமாய் ஆண்டனுபவித்துக் கொள்ள வேண்டியது. இதன்பேரில் தானாதி விக் கிரயங்களுக்குமாய் ஆண்டனுபவித்துக்கொள்ள வேண்டியது. இதன்பேரில் எவ்வித வில்லங்கமும் இல்லை. இந்த தான



செட்டில்மெண்டை நான் எக்காலத்திலும் எக்காரணம் கொண்டும் ரத்து  
செய்வதில்லை. அப்படி ரத்து செய்தாலும் அது செல்லத்தக்கதல்ல,"

**13.** The trial Court as well as the lower appellate Court have found that the settlement deed that had been executed by Mari in favour of his wife Vediammal to be correct. It is pertinent to point out that a perusal of Ex.A1 shows that Mari did not retain the right in himself to cancel the settlement deed. Apart from that, a reading of the settlement deed goes to show that Mari had transferred possession of the property on the very same day in favour of the plaintiff. He had also made it clear that he does not retain the power of cancellation and goes on to add that even if he executes such a document for cancellation, the same would be null and void.

**14.** It is surprising to note that nearly after a period of ten years ie., on 20.11.2001 he executed a deed of cancellation of the sale deed under Ex.A1. I have to take note of the fact that the defendant himself having cancelled the deed shows that he had admitted to the execution of the same. I concur with the findings of the trial court and lower appellate court that the cancellation of settlement deed is impermissible in law unless the donor and donee together execute the deed of cancellation. On the execution of the settlement deed and handing over of possession of the property as evidenced by the document itself,



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title passes to the donee. That title cannot be de-vested by the unilateral act of the donor in cancelling the settlement deed nearly a decade after the execution of the same. The findings of the trial Court as approved by the lower appellate court that the plaintiff had proved the settlement deed and that the cancellation is not valid in law only have to be endorsed by me and accordingly I endorse the same.

**15.** This takes me to the second point viz., whether the plaintiff could be non-suited on the ground that she had not proved possession of the property on the basis of Ex.B1 to B11. It is here I recall the judgment of the Supreme Court of India in the case of **Reniguntla Rajamma -vs- K.Sarwanamma 2014 (4) CTC 572**, the three judges of the Supreme Court in that case approved the view of five judges of the Allahabad High Court in **Lallu Singh vs. Gur Narain and Others AIR 1922 All.467**. After approving the said judgment, the Supreme Court was pleased to hold as follows,

*" The decisions of the High Courts have consistently taken the view that Section 123 supersedes the rules of Hindu law which may have required delivery of possession as an essential condition for the completion of a gift. The correctness of that statement of law cannot be questioned. The language employed in Section 129 before its amendment was clear enough to give Section 123 an overriding effect vis-a-vis rules of Hindu Law."*



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The Supreme Court went on to hold that,

*"The recitals in the gift deed also prove transfer of absolute title in the gifted property from the donor to the donee. Even if a limited right is retained by the donor that does not in any way affect the transfer of title."*

**16.** Apart from that, the logic that flows out of the said judgment is that once document states that possession has been handed by the donor to the donee, it does not lie in the mouth of the donor to plead otherwise. The lower appellate court had non-suited the plaintiff on the ground that she has to sue for recovery of possession of the property. In order to come to this conclusion as pointed out above, the lower appellate court relied upon revenue documents which have come into existence after the litigation had commenced. The defendants in that case, if wanted to prove possession of the property, they ought to have proved on the date of the filing of the suit or before they had revenue records mutated in their favour. Unfortunately, the lower appellate court has relied upon all the documents which have come into existence after the presentation of the plaint ie., after 20.06.2005. In other words, post litigation documents alone have been utilized for the purpose of non-suited the plaintiff.



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**17.** Once the settlement deed was executed on 06.11.1991 and possession had been handed over to the plaintiff, title automatically stood transferred in her favour. Being a vacant land, principle of law that applies with respect to possession is, 'possession follows title'. Once possession follows title, in order to dislodge that settled principle, the defendants should have brought forth before the court that they were in possession of the property continuously even before the presentation of the plaint.

**18.** I have gone through the original records. The documents commence from 2006 and end with 2011. Therefore, none of these documents would help the defendants to prove that they were in possession of the property on the date of presentation of the plaint. On the contra, since I have found that the plaintiff had become the owner of the property by virtue of the execution of the settlement deed dated 06.11.1991, I have to deem her to be in possession. Consequently, the substantial questions of law which have been framed by this court are answered in favour of the appellant. The judgement and decree of the learned Subordinate Judge at Harur in A.S. Nos. 43 and 44 of 2011 dated 11.04.2012 is set aside and the judgement in decree of the court of the learned District Munsif, Pappireddypatti in O.S. Nos. 136 and 235 of 2008 is restored.



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The second Appeals stand allowed. Costs throughout. Consequently, connected miscellaneous petitions are closed.

**09.02.2024**

Index : Yes/No  
Neutral Citation : Yes/No  
Speaking Order / Non-speaking order  
KST

To

- 1.The Subordinate Judge, Harur.
- 2.The District Munsif, Pappireddypatti.



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**V.LAKSHMINARAYANAN, J.**

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