



S.A.No.611 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.611 of 2024
and
CMP.No.19462 of 2024

Senthilnathan

.. Appellant

Vs.

Karunakaran

.. Respondent

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed to set aside the Judgment and Decree dated 08.07.2024 passed in A.S.No.88 of 2022, on the file of XIX Additional City Civil Court, Chennai, allowing the appeal by reversing the decree and judgment dated 25.08.2022 made in O.S.No.3879 of 2019, on the file of XV Assistant City Civil Court, Chennai.

For Appellant : Mr.S.Udhaya Kumar

For Respondent : Mr.P.N.V.Gopalakrishnan



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JUDGMENT

The appellant has filed this Second Appeal against the Judgment and Decree passed by the learned XIX Additional City Civil Court, Chennai, in A.S.No. 88 of 2022, dated 08.07.2024, allowing the appeal by reversing the decree and judgment dated 25.08.2022 made in O.S.No.3879 of 2019, on the file of XV Assistant City Civil Court, Chennai.

2. Heard, Mr.S.Udhaya Kumar learned counsel for the appellant and Mr.P.N.V.Gopalakrishnan, learned counsel for the respondent and perused the materials available on record.

3. When the matter was taken up, the learned counsel for the appellant submitted that during the pending appeal proceedings, he filed EP No. 5103 of 2022, wherein an order of delivery was passed. Accordingly, a warrant was executed through the Court Amin. The respondent vacated the premises in the presence of witnesses and with the assistance of the Inspector of Police. The delivery was effected as per the possession warrant dated 02-04-2024, which was produced by the appellant and perused by the Court. As on date, the



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decree granted in favour of the plaintiff / appellant has been executed.

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4. Upon perusal of the delivery warrant, it is evident that the respondent signed in the presence of two witnesses. As directed by the Court, the delivery warrant was executed with the assistance of the Inspector of Police. In the suit, the appellant sought a mandatory injunction directing the defendant to vacate the suit premises, specifically the B-scheduled property measuring 945 square feet on the first floor, located at New No. 147, Old No. 52, Old Mambalam Street, Saidapet, Chennai 600 015. The trial court decreed the suit. However, the first appellate Court did not grant the relief of declaration but confirmed the other reliefs. The learned counsel for the appellant / plaintiff challenged these findings, arguing that the first appellate court erred in failing to appreciate the legal principle that title follows possession, which the trial court rightly acknowledged.

5. Based on the settlement deed executed by the mother of the appellant / plaintiff, he approached the Court seeking a mandatory injunction to vacate the defendant from the property. The respondent, who is the brother of the plaintiff, was issued a notice on 08-04-2019 to vacate the premises.



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However, over the years, the respondent contested the case, claiming that the property was ancestral. As per Ex.A-1, Settlement Deed dated 10-09-2009, the plaintiff's mother executed the settlement deed in favour of the plaintiff, who is one of her sons. The said settlement deed remains valid to date.

6. In fact, the settlor, Sarojammal (the plaintiff's mother), executed three settlement deeds on 10.09.2009 in favour of her three children, namely Kalavathi, Malarvizhi, and Senthilnathan (the plaintiff). When the respondent disputed this, he filed WP. No. 6621 of 2013, wherein this Court directed him to approach the District Revenue Officer (DRO). The DRO conducted an enquiry and dismissed the respondent's objections, declaring the claims illegal. Thus, the settlement deed dated 10-09-2009 in the appellant's name stands valid as on date.

7. The first appellate judge erroneously failed to appreciate this legal proposition and reversed the findings, despite granting other reliefs. However, during the pendency of proceedings, the property was delivered, and the respondent vacated the premises. The respondent did not raise any objections at the time of delivery. However, the learned counsel for the



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respondent later alleged that the eviction was forcible. As on date, there is no pending enquiry on this matter. The eviction was executed with police assistance as per the Court order. Therefore, the mandatory relief sought by the appellant has been executed through the court of law, and the decree has been carried out.

8. The appellant's counsel relied on the legal ratio established in relevant precedents, reported in ***AIR 1978 Calcutta 559***, in which, it was stated as follows:

" The plaintiff's version that the original draft conveyance could not be prepared in the absence of the original probated will is unacceptable by me. From the copy of the will submitted by the defendants' solicitors the name of the executor that is the defendant No. 4, transpired, as such it was possible for the plaintiff's solicitor to have a draft conveyance prepared in the name of the executor. The grant of the probate could not be a very important factor for the preparation of the draft conveyance deed, otherwise the plaintiff himself would have made out a point in the plaint itself. There is no whisper in the plaint that because of non-production of the original Probated will the plaintiff could not complete the sale. The absence of the probate of the will could not prevent the vendee from preparing the draft conveyance having it approved, executed and even registered because under the law there is no bar in doing the same.

7. Under Ss. 211 and 307 of the Indian Succession Act an executor obtains a title by virtue of the will and not from the



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date when the will is probated. Under S. 211 of the Indian Succession Act "the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes and all the properties of the deceased person vest in him as such. "The executor derives his title from the will and immediately after the testator's death, his property vests in the executor as the law knows no interval between the testator's death and the vesting of the property. An executor by virtue of his office, that is in the character of executor takes an estate in the property of the deceased and a legal character is vested in him. In the present case, the will also empowers the executor, the defendant No. 4 herein to sell the property. The executor represents the estate even before he has taken the probate. As such the probate is not necessary to make an executor entitled to the properties as his title is derived under the will. There is nothing in the law to prevent the executor from acting as an executor and exercise a power given to him without obtaining probate.

8. In a case reported in AIR 1932 PC 92 (Kadiyala Venkata Subamma v. Ramayya) it, has been held "probate and administration refers to proof and not vesting of title on executor. The provisions of S. 12 of the Probate and Administration Act do not suggest that before probate the executor has no title but are only intended to simplify the proof of his title as dating from the testator's death. The object is to get rid of the multiplicity of proof in every case where either the will itself, or anything done under it by the executor is challenged. Probate once granted authenticates the will against all the world; it affords the ready means of proof of the contents of the will; and it is a complete answer by the executor to any challenge of his authority as such. Probate is no part of the executor's title. Executor is only the person to whom the testator has confided the carrying out of his disposition and it is not necessary that before the executor can dispose of the property he must be clothed with probate, and the power of disposal is not dependent upon the the grant of the probate."



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So in this case when the advocate for the plaintiff received a letter from the defendants stating the name of the executor and giving a copy of the will what prevented the vendee from having the draft conveyance prepared and having it approved by the defendants. Probate mainly gives an adequate protection and nothing further."

9. It is noted that, despite nearly ten years passed since the execution of the settlement deed, it has not been cancelled. The learned first appellate judge failed to appreciate this legal position and erroneously reversed the relief, which warrants interference by this court. The findings rendered by the first appellate Judge is set aside. The decree has been executed as on date. The execution of the decree through EP is recorded.

10. Accordingly, this second appeal is allowed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

09.12.2024

Index : Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No
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T.V.THAMILSELVI, J.

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To

- 1.The XIX Additional City Civil Court, Chennai.
- 2.The XV Assistant City Civil Court, Chennai.
- 3.The Section Officer, VR Section,
High Court of Madras.

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and

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