

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A.No.1530 of 2010

V.Babukumar

... Appellant/Respondents/Plaintiff

vs.

1.P.Madeswaran

2.Saraswathi

... Respondents/Appellants/Defendants

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 5.7.2010 made in AS.No.109 of 2009 on the file of the II Additional Subordinate Judge, Salem reversing the judgment and decree dated 6.11.2009 made in O.S.No.2305 of 2004 on the file of the II Additional District Munsif Court, Salem.

For Appellant : Mr.N.Damodaran
For Respondents : Mr.S.Kumaran

J U D G M E N T

The plaintiff is the appellant herein. The suit property originally belongs to one Annadurai @ Periasamy. The suit property described as 'C' schedule property in partition deed dated 14.6.1989 was allotted to Annadurai @ Periyasamy in the family partition. The said Annadurai @ Periyasamy died intestate on 16.05.1996 as bachelor leaving behind his mother Pavayee Ammal as his legal heir to succeed to his estate. After his death, Pavayee Ammal became the absolute owner of the property and she executed a registered gift settlement deed dated 04.04.2003 in favour of her daughter V.Selvam w/o. R.Venkatachalam and Pavayee Ammal in the said gift deed, reserved the right to enjoy the income derived from the property till her life time. The settlee V.Selvam and Pavayee Ammal entered into a sale agreement with the plaintiff, who is none else than their son and grand son respectively on 19.5.2004 and paid advance and thereafter, paid the balance sale price on 10.11.2004 and got the sale deed executed in his favour. While so, Pavayee Ammal executed a cancellation deed on 28.10.2004, thereby cancelling the gift settlement deed dated 4.4.2003 and executed a registered power of attorney in favour of the first defendant on 28.10.2004 and on the strength of such power of attorney, the first defendant executed a registered sale deed in favour of the second defendant on 29.10.2004, which led to dispute between the parties regarding title, possession and enjoyment of the suit property and the same compelled the plaintiff to approach the civil court and he filed a suit for

permanent injunction restraining the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

2. According to the plaintiff, Pavayee Ammal having executed the registered gift settlement deed in favour of her daughter and the registered gift settlement deed having been acted upon, the settlee became the absolute owner of the property and the settlee, having executed the registered sale deed in favour of the plaintiff and the plaintiff having been in continuous possession and enjoyment of the property since the date of sale deed is entitled to seek protection of such possession from the defendants, who attempted to trespass into the suit property without any right to do so.

3. Whereas the suit relief is seriously opposed by the defendants on the strength of the cancellation deed executed by Pavayee Ammal and registered power of attorney in favour of the first defendant and registered sale deed in favour of the second defendant. According to the contesting defendants, the settlement deed was sham and nominal and was executed without any intention to give effect to the same and possession of the property was not handed over to the settlee and the settlee continued to enjoy the property as owner of the same and such sham and nominal document was subsequently cancelled by the settlor and the settlor/owner thereafter dealt with the property on its absolute owner and executed power of attorney in favour of the first defendant etc.

4. The trial court on the basis of the available evidence, arrived at the conclusion that Ex.A4 gift settlement executed by Pavayee Ammal in favour of her daughter Selvam was true and valid one and was duly acted upon and the cancellation of the same was not legally valid and the power of attorney dated 28.10.2004 was denied by the original owner Pavayee Ammal and even otherwise the document was not truly executed in favour of the first defendant and consequently the sale deed executed by the first defendant in favour of the second defendant on the strength of Ex.B5 power of attorney was also not valid and the suit property has been in possession and enjoyment of the plaintiff and the plaintiff is hence entitled to the relief of permanent injunction as sought for in the suit. Aggrieved against the same, the defendants preferred AS.109/2009. The lower appellate court reversed the findings of the trial court mainly on the ground that when the claim for possession is purely on title and when the title is disputed, the same cannot be gone into in the suit for permanent injunction simplicitor and the plaintiff has failed to prove his possession and accordingly, allowed the appeal thereby dismissing the suit relief. Hence, this second appeal by the plaintiff before this court.

5. The second appeal is admitted on the following substantial questions of law:

1. Whether the Lower Appellate Court erred in law and misdirected itself in non-suiting the appellant/plaintiff on

the ground that the suit as initiated seeking the relief of injunction alone without seeking declaratory relief is not maintainable, when the parties to the suit proceeded on the basis that title was at issue by making necessary pleadings, framing necessary issues and letting in necessary evidence?

2. Whether the Lower Appellate Court is correct in law in relegating the appellant/plaintiff to seek the remedy of declaration and consequential injunction without construing the fact that the parties has proceeded on the basis that title was at issue and what was required was a mere amendment of the prayer portion which could be made at any stage of the proceedings for rendering real justice between the parties?

3. Whether the Lower Appellate Court erred in law and misdirected itself in not framing necessary points for determination for its consideration for deciding the lis as contemplated under Order 41 Rule 31(a) of C.P.C?

6. Heard the rival submissions made on both sides and perused the records.

7. It is true that the suit relief is based on possession and enjoyment of the suit property by the plaintiff and the same intun is based on title on the strength of Ex.A4 gift settlement dated 4.4.2003 and Ex.A6 sale deed dated 10.11.2004. While the trial court upheld the claim of title and possession in favour of the plaintiff on the strength of the oral and documentary evidence made available before the same, the lower appellate court reversed the findings so rendered by the trial court on facts and circumstances of the case and allowed the appeal by shortcut method that the title of the property cannot be gone into in the suit for injunction simpliciter without seeking the relief of declaration.

8. It is now well settled legal principle that if the issue regarding title is simple and not complicated, the same can be decided in the suit for injunction itself and on the other hand, if the Court is of the view that the issue is so complicated and it cannot be conveniently dealt with in the suit for injunction and a detailed and elaborate enquiry is needed, then the Court could relegate the parties to a regular suit for declaration to establish title and consequential relief of injunction, as held in the decision reported in 2008 (6) CTC 237 (SC) (Anathula Sudhakar v. P.Buchi Reddy (Dead) by LRs and others.

9. When that being so, the lower appellate court before disagreeing with the findings of the trial court on the issue of plaintiff's title on the strength of Ex.A4 gift settlement deed and Ex.A6 sale deed, ought to have ascertained as to what is the actual controversy and whether there are necessary pleadings; whether the parties to the suit are aware of the real dispute involved in the suit; and whether there were sufficient and relevant materials to go into the dispute relating to title and possession of the property.

10. In the present case, the plaintiff has in his plaint raised necessary pleadings to entertain the dispute regarding title and the claim was denied in the written statement by setting up title upon themselves and with such rival claim the parties entered into trial. The trial court, considering the respective pleadings and also knowing fully well about the dispute between the parties, framed necessary issues on the validity of the gift settlement deed dated 4.4.2003 and cancellation of the same and power of attorney dated 28.10.2004 and sale deed dated 29.10.2004 and 10.11.2004, which are the basis for title dispute and also framed other issues relating to possession and discussed all the issues in the light of the available oral and documentary evidence and arrived at the conclusion in respect of all the issues in one way or other and based on the findings so rendered, decided the suit in favour of the plaintiff. Such a course adopted by the trial court is in accordance with the principles laid down by the Apex Court in the judgment reported in 2008(6) CTC 227 (Anathula Sudharkar v. P. Buchi Reddy (Dead) by LRs & others) followed by the learned brother Judge of this court in the decision reported in 2012 (6) CTC 892 (Syed Dhasthakeer v. Navab John).

11. The Hon'ble Apex Court in the judgment first cited above as followed by the learned single judge in the authority second cited above would only lay down that there cannot be blanket principle that when title is denied, the suit for bare injunction without a prayer for declaration shall be dismissed as not maintainable. The Hon'ble Supreme Court has in clear terms held that when the title of the plaintiff in a suit for bare injunction is disputed, the court can go into the matter and if the issue regarding the title is simple and not complicated, the same can be decided in the suit for injunction itself and if the issue is so complicated, it cannot be conveniently dealt with in the suit for injunction and a detailed and elaborate enquiry is needed, then the Court could relegate the parties to a regular suit for declaration to establish title and consequential relief of injunction.

12. In the present case, the issue relating to title is whether Ex.A4 gift settlement deed is validly executed and is acted upon and whether the original owner/settlor had any right to unilaterally cancel the same and whether the power of attorney executed by the original owner in favour of the first defendant and the sale deed executed by the first defendant in favour of the second defendant on the strength of such power are true and valid. There are material documents to throw light on these factors and the trial Court on the basis of such documentary evidence and without much probe was able to go into and decide the issues and decided the same rightly and the same does not involve complicated question of law and facts to drive the parties to go and seek the relief of declaration for the following reason. The execution of Ex.A4 is not denied. Whereas, the defendants would contend that Ex.A4 is only sham and nominal document and is not acted upon. It is contended so by solely relying on the

recital in the document that the income derived from the property shall be enjoyed by the settlor till her life time. Whereas, the reading of the entire recitals in the document would show that the same was duly executed and possession was duly handed over to the settlee and the settlor only retained her right to enjoy the income derived from the property and nothing more and in pursuance of the same, patta was also transferred in favour of the settlee.

13.The learned counsel for the appellant has, at this juncture, drawn the attention of this court to the authority reported in 2014 (4) CTC 572 (Renikuntla Rajamma (D) by LRs v. K.Sarwanamma) wherein, the Hon'ble Apex court, has gone to the extent of saying that transfer of possession of property covered by registered instrument of gift duly signed by donar and attesting Witness is not sine qua non for making of valid gift and delivery of possession of gifted property is not essential condition for completion of valid gift. The Apex Court has categorically held that mere retention of right to use property during lifetime of the donor does not in any way affect transfer of ownership in favour of Donee. The Hon'ble Supreme Court held so, by following its earlier judgment reported in 2004 (1) CTC 146 (SC) (K.Balakrishnan v. K.Kamalam).

14.As far as the judgment reported in 2001 (2) CTC 277 (R.Jamuna Bai v. M.A.Anusuya and 3 others) cited on the side of the respondents is concerned, the same is factually distinguishable. Unlike in the present case, there was no pleading and proof for acceptance of gift by the donee in the other case which compelled the High court to hold that the settlement deed was not valid.

15.In view of the above stated legal and factual position, the defendants cannot be permitted to deny that Ex.A4 is sham and nominal document and not acted upon. It is rightly found by the trial court that it is true and validly executed and acted upon. In that event, the cancellation of settlement deed executed by the settlor, under section 126 of the Transfer of Property Act is not only contrary to the relevant provisions of law, but also legal principles laid down by the High court in the decisions reported in 2014 (3) CTC 113 (D.V.Loganathan v. The Sub Registrar, Pallavaram and another) by the learned brother Judge, S.Rajeswaran, J. and 2012-1-LW.432 (Santharaju and another v. Chinamma) delivered by me, wherein, it is clearly laid down that validly executed settlement which was validly accepted by settlee is not unilaterally revocable and the parties have to approach the civil court for setting it aside. After the settlement deed is executed and acted upon, no right is retained by Pavayee Ammal to revoke the settlement deed and no right is available to Pavayee Ammal to deal with the property as owner of the same.

16.That being the legal position the cancellation deed being invalid and without any right to do so, the same renders the power of attorney executed in favour of the first defendant and sale deed executed by the first defendant in favour of the second defendant to be invalid and without right to do so. The findings so rendered by

the trial court are based on sufficient materials and supported by proper reasoning. Further, the trial court, after detailed discussion about the validity of the documents and other factors surrounding the same, has rightly upheld the claim of the plaintiff. Whereas the lower appellate court without dealing with the findings and without setting it aside on merits, simply reversed the judgment and decree of the trial court on different ground and such course adopted by the lower appellate court is perverse and legally unsustainable and the judgment and decree passed by the lower appellate court is liable to be set aside.

17.Regarding possession, the trial court, on the basis of the oral and documentary evidence, rightly found the same to be with the plaintiff. Such factual finding rendered by the trial court is reversed by the lower appellate court without duly appreciating the nature of the evidence available before the same, as such, the finding regarding possession by the lower appellate court is set aside and the finding rendered by the trial court in this regard gets restored and the substantial questions of law are hence answered in favour of the plaintiff.

18.In the result, the second appeal is allowed by setting aside the judgement and decree of the lower appellate court and by restoring the judgment and decree of the trial court. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional Subordinate Judge,
Salem.

2.The II Additional District Munsif Court,
Salem.

Copy To

The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.S.Kumaran, Advocate, S.R.No.15333

+1cc to Mr.N.Damodaran, Advocate, S.R.No.15496

S.A.No.1530 OF 2010

CNR(CO)

CA(13/07/2015)