

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.04.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.297 of 2009

and

M.P.No.1 of 2009

A.Marappan

... Appellant/Plaintiff

Vs.

1. T.K.Ramasamy

2. Sekar

... Respondents/Defendant

Prayer:- Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 15.11.2008 made in A.S.No.13 of 2008 on the file of the Sub-Court, Bhavani confirming the judgment and decree dated 26.9.2007 made in O.S.No.230 of 2006 on the file of the Principal District Munsif Court, Bhavani.

For Appellant : Mr.N.Manokaran

For Respondents : No Appearance

J U D G M E N T

The plaintiff, who had filed the suit for declaration of title and injunction and lost before the Courts below, has filed the above Second Appeal.

2. The plaintiff is the brother-in-law of the first defendant and the second defendant is the son of the first defendant. The suit property originally belonged to one Muthayammal, mother of the first defendant, who made a bequest of the suit property under a Will dated 02.07.1937. According to the plaintiff, a lease agreement was entered between the said Muthayammal and himself with respect to the suit property and the plaintiff has been in possession of the same. In fact, the plaintiff also has filed O.S.No.386 of 2004 on the file of the District Munsif Court, Bhavani for a relief of damages against the said Muthayammal. The said suit was dismissed and the same was confirmed in S.A.No.317 of 2007. It was further contended by the plaintiff that the said Muthayammal also had executed a Will in his favour on 07.05.2004. The said Muthayammal died on 28.11.2005. As the plaintiff is in possession of the suit property as a lessee, the defendants were trying to disturb his possession. Hence, the suit came to be filed.

3. The suit was resisted by the first defendant by filing the written statement, which was adopted by the second defendant, denying the allegations made in the plaint. The suit property belong to Muthayammal as per Will dated 02.07.1937 and that she

died on 28.11.2005 are admitted by both parties. The defendants claimed that the said Muthayammal had executed a settlement deed on 26.07.1979 in favour of the first defendant. In such circumstances, the claim of the plaintiff cannot be correct and that the said Muthayammal could not have executed the Will in favour of the plaintiff and hence prayed for dismissal of the suit.

4. Before the Trial Court, the plaintiff examined himself as PW-1 and two more witnesses were examined as PW-2 and PW-3 and Exhibits A1 to A6 were marked. On the side of the defendants, the first defendant examined himself as DW-1 and Exhibit B1 to B5 were marked.

5. The Courts below, after elaborate consideration of the facts and evidence, had dismissed the suit. Aggrieved by the same, the above appeal has been filed.

6. When the second appeal came up for admission, this Court had only ordered notice to the respondents and though notice was served on the respondents, they have not chosen to appear either in person or through counsel.

7. The contention of the learned counsel for the appellant is that the settlement deed is not correct in view of the recitals in the same, as there was no transfer of interest in praesenti under Exhibit B-1.

8. In this regard, the learned counsel himself had produced the decision reported in MARAPPAN v. T.K.RAMASAMY (2013 (1) MWN (Civil) 98. The said case is between the same parties, wherein this court had occasion to deal with the validity of the settlement deed dated 26.07.1979 in the second appeal in S.A.No.317 of 2007.

9. For easy understanding, the relevant passage as found in para 11 of the judgment is extracted hereunder:

"Admittedly, Muthayammal was the original owner of the suit land. It is also not in dispute that under a Settlement Deed dated 26.7.1979, a certified copy of which has been produced and marked as Ex.A1, the said Muthayammal settled the said property on the Plaintiff, reserving a life estate for her to enjoy the property without the power of alienation till her death. Though the execution of the said Settlement Deed registered as document No.3504/1979 in the office of the District Registrar, Erode is not disputed by the Defendants, they made an attempt to contend that since possession of the suit property was not delivered immediately to settlee under the said document and the settlor had retained a right to enjoy the property till her life time, the said document should be deemed to be a Will and not a gift settlement. Both the Courts below, on proper interpretation of the said document, rejected the said contention of the Defendants and held that the vesting of title under the said document had not been

postponed and on the other hand the enjoyment of the property alone was postponed till the death of Muthayammal, who retained a life interest imposing a restriction on her right that she would not have any right of alienation. The Courts below have rightly held that if at all a document is to be construed to be a Will, it should contain a recital that the same would take effect only on the date of the person executing that document and it would also invariably contain a recital that the person executing the document could at any time cancel or revoke the same during his lifetime. It is also pertinent to note that in the said document clear recitals have been made to the effect that the executor of the document did not retain the power of revoking or modifying the same. It is also pertinent to note that an earlier Will executed by Muthayammal had been cancelled under the original of Ex.A1 and the said Settlement Deed was executed knowing fully well the nature of a Will and the nature of a gift Settlement Deed. Therefore, the attempt made by the Defendants to contend that the document dated 26.7.1979 under which the Plaintiff claims title is only a Will and is not a settlement must necessarily fail. Both the Courts below have arrived at a correct conclusion in this regard".

10. Firstly, as per the above discussions by this Court, the settlement deed was held to be valid and hence, this Court need not go into the same question. Secondly, it is the specific case of the plaintiff that the said Muthaiyammal had executed a Will under Exhibit A3 dated 07.05.2004. Admittedly the said Will is not a registered one. The injunction suit filed by the appellant against the said Muthaiyammal in O.S.No.686 of 2004 was decided on 01.10.2004. Ex A-3 Will is said to have been executed on 07.05.2004. When the plaintiff, who is the son in law of the said Muthaiyammal, had filed the suit against her mother in law, pending such suit, the said Muthaiyammal is said to have executed the Will in favour of the plaintiff. There is no reason why Muthaiyammal executed the Will in favour of the plaintiff when her sons or grand sons were very much available. Besides that, it is unbelievable that pending suit, Muthaiyammal had executed a Will in favour of the plaintiff. Presuming that the Will was executed pending suit, it was open to the plaintiff to mention about the same in the suit. In the above circumstances, the Courts below had held that the execution of the Will could not be true besides the same having not been proved in the manner known to law.

11. The settlement deed in favour of the first defendant has been proved and acted upon and hence, the claim of the appellant under the Will, subsequent to the same is unsustainable. So far as the possession of the plaintiff is concerned, admittedly he was inducted as a cultivating tenant. Subsequently, he claimed ownership under the Will executed by the landlady. Even presuming that the said lease is true and valid, the same came to an end with

the death of the landlady. When the settlement deed under Ex-B1 is held to be valid, the plaintiff cannot seek an order of injunction as against the true owner.

12. In the result, there is no substantial question of law arising for consideration and the Second Appeal is dismissed, confirming the judgment and decree dt.26.09.2007 passed by the learned Principal District Munsif, Bhavani, as affirmed by the learned Sub Judge, Bhavani, Erode, by judgment and decree dt.15.11.2008 in A.S.No.13 of 2008. However, there will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Subordinate Judge,  
Bhavani.
  2. The Principal District Munsif  
Bhavani.
  3. The Record Keeper,  
V.R.Section,  
High Court,  
Madras
- +1 cc to Mr.N.Manokaran, Advocate, SR.23618.

jsv(co)  
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Judgment  
made in

S.A.No.297 of 2009  
and  
M.P.No.1 of 2009

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