

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal Nos.356 and 357 of 2013
and
M.P.No.1 of 2013

Sathishkumar .. Appellant in both the SAs/Plaintiff
- Vs -

M.Gopalakrishnan .. Respondent in both the SAs/defendant

Prayer in both the SAs:- Second Appeals filed under Section 100 of C.P.C., against the Common Judgment and Decree dated 21.09.2012, made in A.S.Nos.5 & 6 of 2012 on the file of the learned Principal District Judge, Cuddalore confirming the common Judgment and Decree dated 25.11.2011, made in O.S.Nos.93 & 94 of 2010 on the file of the learned II Additional Subordinate Judge, Cuddalore.

For Appellant : Mr.R.Gururaj

For Respondent : Mr.S.K.Raghunathan (Caveator)

C O M M O N J U D G M E N T

The appellant (Mr.Sathishkumar) in both the appeals are one and the same person. The respondent (Mr.M.Gopalakrishnan) in both the appeals is also one and the same person. The respondent Mr.M.Gopalakrishnan originally filed a suit in O.S.No.45 of 2008 on the file of the learned Principal District Judge, Cuddalore for declaration of title, recovery of possession, means profit and for costs. The first defendant in the suit was one Mr.Vaithilinga Reddiar. The appellant was the second defendant in the suit.

2. Later on, the appellant Mr.Sathishkumar filed a suit in O.S.No.163 of 2008, before the learned Principal District Munsif, Cuddalore for permanent injunction to restrain the respondent herein, from in any manner interfere with his peaceful possession and enjoyment of the suit property. Both the suits were transferred to the learned II Additional Subordinate Judge, Cuddalore and renumbered as O.S.Nos.93 of 2010 and 94 of 2010 respectively.

3. The trial Court by a common judgment dated 25.11.2011, decreed the suit in O.S.No.93 of 2010 in part thereby granting decree declaring the title of Mr.M.Gopalakrishnan and for grant of subsequent relief of recovery of possession. However, the trial Court dismissed the request for means profits and also declined to order any costs. So far as O.S.No.94 of 2010 is concerned, the trial Court dismissed the suit.

4. As against the decree and judgment in O.S.No.93 of 2010, Mr.Sathishkumar filed an appeal in A.S.No.5 of 2012 before the learned Principal District Judge, Cuddalore and as against the decree and judgment in O.S.No.94 of 2010, he filed another appeal in A.S.No.6 of 2012. On service of summons, Mr.M.Gopalakrishnan filed two cross appeals in A.S.Nos.5 of 2012 and 6 of 2012 as against the denial of means profits and costs.

5. The learned Principal District Judge, Cuddalore heard the appeals in A.S.Nos.5 of 2012 and 6 of 2012 as well as the cross appeals and by common judgment dated 21.09.2012, dismissed the appeals as well as the cross appeals, thereby confirming the decrees and common judgment of the trial Court.

6. Now, as against the decree and judgment in A.S.No.5 of 2012, the appellant has come up with the second appeal in S.A.No.356 of 2013 and as against the decree and judgment in A.S.No.6 of 2012, the appellant has come up with the second appeal in S.A.No.357 of 2013, that is how both the appeals are before me.

7. These appeals came up today for admission before me and I have heard the learned counsel for the appellant as well as perused the records carefully.

8. The case of the appellant is that one Mrs.Subbulakshmi wanted to purchase the suit property for the benefit of the appellant herein. It is further stated that the appellant is the foster son of Mrs.Subbulakshmi. Mrs.Subbulakshmi however did not have enough funds to purchase the suit property. The respondent therefore came forward to provide the funds. The respondent is none other than the brother of Mrs.Subbulakshmi. The property was therefore purchased in the name of the respondent out of the funds provided by him. But the understanding was that as and when the amount is paid by Mrs.Subbulakshmi to the respondent, the respondent should transfer the title of the property in the name of the appellant. This was the understanding between the parties and the same was not evidenced by any document out of mutual trust as the parties are closely related to each other. Though the property was purchased in the name of the defendant, he was not in possession of the property. Mrs.Subbulakshmi occupied the house from the date of purchase dated 09.07.1998. Further, since she was in possession and the appellant was with her residing in the same house. Mr.Vaithilinga Reddiar the deceased first defendant in O.S.No.93 of 2010 is the foster father of the appellant.

Mrs.Subbulakshmi died some time before. Since the appellant is the foster son, according to him, he has inherited the suit property. Since the respondent made attempt to disturb the possession, he was forced to file the suit.

9. The case of the respondent is that the property was purchased by him out of his own funds. It was never agreed that the property should be transferred in the name of the appellant in the event of the sale consideration is paid to the respondent. It is further stated that after the purchase, patta was transferred in the name of the respondent, house tax and electricity bill also stand in the name of the respondent. Initially the possession was with the respondent and after some time Mrs.Subbulakshmi wanted to reside in the said house as it was kept vacant and considering the close relationship and sickness, the respondent permitted her and her husband Mr.Vaithilinga Reddiar to reside in the house as permissive occupants. Mrs.Subbulakshmi died during April, 2006. Thereafter, when the respondent wanted Mr.Vaithilinga Reddiar to vacate the house, he was evasive. The respondent issued a legal notice. Thereafter, the respondent never gave the property by means of gift to anybody. The appellant is not the foster son of Mrs.Subbulakshmi and further he is in illegal occupation of the house after the demise of Mrs.Subbulakshmi as well as Mr.Vaithilinga Reddiar. Therefore, he has filed the suit for recovery of possession and for other reliefs.

10. Based on the above pleadings, the trial Court framed appropriate issues in both the suits. The parties were called upon to let in evidence. Evidence was recorded in O.S.No.93 of 2010. Mr.M.Gopalakrishnan was examined as P.W.1 and on the side of the appellant herein three witnesses were examined including the appellant herein. On the side of the respondent as many as 20 documents were exhibited and on the side of the appellant 29 documents were exhibited. After considering all the above, the trial Court dismissed the claim of the appellant and accepted the claim of the respondent. The trial Court declared that the respondent has got title and therefore he is entitled for recovery of possession. The lower appellate Court has confirmed the common judgment and decree of the trial Court.

11. In this appeal, the learned counsel for the appellant would submit that the Courts below have not appreciated the oral as well as the documentary evidence in their proper perspective.

12. The learned counsel for the appellant would mainly contend that the trial Court had failed to frame the issue as to whether the appellant is the foster son of Mr.Vaithilinga Reddiar. He would further submit that the unregistered gift deed executed by the respondent in favour of the appellant herein (Ex.B29) is a valid document and the same has not been considered by the Courts

below. The learned counsel would further submit that though there was no objection in respect of Ex.B29, the Courts below failed to give weightage to Ex.B29.

13. In my considered opinion, I should say that there is no substantial questions of law at all in this matter. Admittedly, the property was purchased in the name of the respondent. It is not in the pleadings that the fund was provided either by Mrs.Subbulakshmi or by the appellant herein. It is stated that it was agreed upon by the parties at the time of purchase that the respondent should transfer the title in favour of the appellant. At the most, even if this contention is agreed to be true, it creates only an agreement. But no suit has been filed for enforcement of the agreement and absolutely there is no acceptable evidence on this and the Courts below have on facts found that the said plea taken by the appellant is not true. This is essentially a question of fact which has been found against the appellant by the two courts below, in which, I do not find any infirmity.

14. It is the further case of the appellant that the respondent executed an unregistered gift deed thereby gifting the suit property to him on 25.01.1998. But it is denied by the respondent. According to him the said deed was never executed by him. But, the appellant claims that Ex.B29 was executed by the respondent in favour of him. There are two aspects in respect of the said argument. Firstly, this document should be proved in accordance with law. The Courts below have held that the execution of the said document has not been proved. This is again a question of fact which has been resolved by two Courts below in its concurrent findings. Therefore, I do not find any infirmity warranting interference.

15. Secondly, assuming that Ex.B29 has been proved to have been executed by the respondent, that would not convey any title for want of registration. The learned counsel for the appellant would make strong arguments that the said document should be relied on. He would further submit that when the said document was marked, there was no objection raised by the respondent. In my considered opinion, it is immaterial whether any objection was raised or not. By operation of law, the document has been declared to be invalid for want of registration. Thus, there is no substantial question of law at all in respect of Ex.B29 also.

16. In my considered opinion, these two appeals are only vexatious, wasting the valuable time of the Court. I do not find any substantial question of law warranting admission of these two appeals and neither there is any infirmity in the factual findings recorded by the two Courts below. Therefore, both the appeals deserve only to be dismissed at the admission stage itself.

17. In the result, both the appeals are dismissed, however without costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kk
To

1. The Principal District Judge,
Cuddalore.
2. The II Additional Subordinate Judge,
Cuddalore .
3. The Section Officer,
V.R. Section,
High Court, Madras.

1 cc to Mr.R.Gururaj ,Advocate, SR.No.3585

1 cc to Mr.S.K.Raghunathan ,Advocate, SR.No.3595

S.A.Nos.356 & 357 of 2013
and M.P.No.1 of 2013

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