

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.359 of 2013

N.Dhanasekaran

... Appellant/2nd  
Defendant in Trial Court

Vs.

1.A.Vinoba  
2.M.Arumugham

... Respondents/Plaintiff &  
First Defendant in Trial Court.

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree of the learned Subordinate Judge, Kanchipuram made in A.S.No.36 of 2010 dated 21.04.2011 confirming the judgement and decree of the learned District Munsif cum Judicial Magistrate, Uthiramerur made in O.S.No.112 of 2006 dated 11.03.2010.

For Appellant : Mr.J.Ramakrishnan  
For Respondents : Mr.Y.Jyothish Chandran

JUDGEMENT

The second defendant in O.S.No.112 of 1996 on the file of the learned District Munsif cum Judicial Magistrate, Uthiramerur is the appellant herein. The first respondent herein is the plaintiff. The second respondent is the first defendant in the suit. The plaintiff filed the said suit for declaration of title and for recovery of possession of the suit property from the defendants and also for payment of a sum of Rs.5,000/- as damages for wrongful use and occupation of the suit property by the defendant from 07.02.2006 till the date of plaint and for future mesne profits. The suit was decreed in part thereby declaring that the plaintiff is the absolute owner of the suit property and also granting decree for recovery of possession of the property from the defendants. So far as the claim of Rs.5,000/- towards damages for use and occupation, the suit was dismissed. Similarly, so far as the claim for future mesne profits, the suit was dismissed. As against the same, the appellant herein/second defendant filed an appeal in A.S.No.36 of 2010 on the file of the learned Subordinate Judge, Kanchipuram. Similarly, the first defendant filed an appeal in A.S.No.33 of 2010 before the same Court. Both the appeals were heard together by the learned Subordinate Judge and by way of common judgement dated 21.04.2011, dismissed both the appeals. As against the said dismissal of the suit, the appellant is before this Court with this second appeal.

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2.This second appeal has come up today for admission. The respondents have made appearance through learned counsel. I have

heard the learned counsel for the appellant and the learned counsel for the respondents and I have also perused the records carefully.

3.The case of the plaintiff in brief is as follows:-

The plaintiff is the wife of the first defendant. The first defendant had executed a registered settlement deed dated 02.02.1987 in favour of the plaintiff thereby settling the suit property in favour of her. Thus, according to the said settlement deed, the plaintiff claims that she is the absolute owner of the suit property. The patta was also transferred in her name. But, the defendants trespassed into the suit property in connivance with each other on 07.02.2006. Therefore, the defendants are liable to vacate and hand over possession to the plaintiff and they are also bound to pay damages to the plaintiff. Since, the title is disputed by the defendants, the declaratory decree was also sought for.

4.In the written statement filed by the first defendant, it is stated that the settlement deed dated 02.02.1987 is not true and genuine. As a matter of fact, there was some matrimonial dispute between the first defendant and the plaintiff. On 02.02.1987, the relatives of the plaintiff came to the house of the first defendant, abducted him by force and obtained the said settlement deed dated 02.02.1987. Thereafter, on 16.02.1987, the first defendant has cancelled the said settlement deed. Thus, according to the first defendant, the settlement deed dated 02.02.1987 was not acted upon and the same has not conveyed title to the plaintiff. It is also contended that the suit property was thereafter, sold away to the second defendant by means of registered sale deed dated 30.09.2005 under Ex.B.7 for a valuable consideration. Thus, the second defendant has been in possession and enjoyment of the suit property and he has got absolute title for the same. The second defendant has also taken the same stand.

5.Based on the above materials, the trial Court framed appropriate issues and called upon the parties to let in evidence. On the side of the plaintiff one witness was examined and 10 documents were exhibited. On the side of the defendants, two witnesses were examined and 9 documents were exhibited.

6.Having considered the above, the trial Court decreed the suit in part as narrated above and accordingly, the same was confirmed by the First Appellate Court also. That is how the appellant/second defendant is before this Court with this second appeal.

7.In this second appeal, it is contended by the learned counsel for the appellant that the settlement deed dated 02.02.1987 under Ex.A.1 was not at all acted upon. It is further contended that the said settlement deed did not convey title to the plaintiff. It is also contended that the said settlement deed was cancelled subsequently on 16.02.1977 and thus, the plaintiff never acquired title for the suit property and she was never in possession of the same.

8. In my considered opinion, all these issues are factual in nature. There is no question of law more particularly, substantial question of law involved at all in this matter. The execution of the settlement deed dated 02.02.1987 has been duly proved and the same has been appreciated by the Courts below to hold that the settlement deed dated 02.02.1987 (Ex.A.1) is a genuine document, by which, the plaintiff has acquired title. The patta also has been transferred in the name of the plaintiff. Assuming that the cancellation deed dated 16.02.1987 has been produced in evidence and even assuming that such cancellation deed was really executed, that is void in view of the law laid down by the Hon'ble Supreme Court in *Latif Estate Line India Ltd., v. Hadeeja Ammal* (2011 (2) CTC 1). Thus, the cancellation deed cannot be held to be valid. Therefore, the settlement deed dated 30.09.2005 (Ex.B.7) would not have conveyed title to the second defendant. Thus, in my considered opinion, both the Courts below on appreciating evidence have held that the plaintiff is the absolute owner of the suit property and have granted the relief for possession to the plaintiff. I do not find any infirmity in the said findings of the Courts below. In short, I find that there is no substantial question of law at all involved in this second appeal warranting admission.

9. In the result, the second appeal fails and accordingly, the same is dismissed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Subordinate Judge,  
Kanchipuram.

2. The District Musnif cum Judicial Magistrate,  
Uthiramerur.

1 cc to Mr. Y.Jyothish Chandran, Advocate, SR.No.6683

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