

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2016

PRONOUNCED ON : 24.11.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1041 of 1998 and
C.M.P.No.10095 of 1998

1.Pakkirisamy (died)
2.Chandra
3.Sugumar
4.Jaya
5.Radha

...Appellants

(Appellants 3 to 5 brought
on record as LRs of the deceased
1st Appellant vide order of court
dated 04.03.2014 in CMP.38/14 in
SA.No.1041/98

Vs

1.Thirunavukkarasu
2.Neelamegam

... Respondents

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 25.11.1997 made in A.S.No.99 of 1997 on the file of the Principal Subordinate Court, Nagapattinam reversing the judgment and decree dated 24.12.1996 made in O.S.No.319 of 1994 on the file of the District Munsif, Thiruthuraipoondi.

For Appellants : Ms.G.Sumitha for
for R.Subramanian

For Respondents : Mr.A.Elango

JUDGMENT

The plaintiffs are the appellants in this Second Appeal. The suit is in respect of two items of properties morefully described under 'A' and 'B' schedule. The relief sought by the

plaintiffs are for possession in respect of the first item property and declaration and recovery of possession in respect of second item property,

2.The appellants and respondents herein are referred as plaintiffs and defendants as per their status in the plaint.

3.The gist of the case:-

The plaintiffs are husband and wife. The defendants are the second wife son's of the first plaintiff's father. The first plaintiff is the title holder of 'A' schedule property which he got through settlement by his mother Mrs.Ammakannu vide Ex A-1 dated 14.05.1986. The second plaintiff is the title holder of the 'B' schedule property by purchase from one Ms.Vasantha vide Ex A-10 dated 20.08.1993. During the year 1988, in the absence of the plaintiffs, the defendants trespassed into the 'A' schedule property and had put up construction. When it was objected by the plaintiffs, the defendants assaulted them. The village elders intervened and advised them to settled the matter. Even after lapse of 5 to 6 years, no settlement arrived. While so, when the first plaintiff's mother died, the defendants along with the others threatened the plaintiffs that they will not allow him to conduct the funeral of his mother unless, he entrust the portion of the land encroached by the defendants. Therefore, suit for possession in respect of A schedule property and apprehending threat of trespass into the 'B' schedule property which is adjacent to 'A' Schedule property and the relief of permanent injunction was prayed. Pending suit, alleging that the defendants have encroached 'B' schedule property, the plaint was amended. Relief of declaration and recovery of possession in respect of B schedule property was substituted.

4.The defendants contented that Mrs.Ammakannu, the first wife of their father was only a name lender. The entire suit properties were held by their father Mr.Ganapathy. In the panchayat, held in the presence of village elders on 18.06.1986, in the plaintiffs agreed to release their right in favour of the defendants over the properties which were held by the defendants for years. As per the terms of the panchayat, in lieu of their rights, the plaintiffs totally received Rs 3,300/- towards the consideration and issued receipt ExB-2 dated 09.08.1989. Since, the plaintiffs do not honour their part of the panchayat, again panchayat was convened in the years 1993 and 1994 . In the panchayat held on 05.03.1994, the plaintiffs agreed to execute the sale deed in favour of the defendants. Though, the defendants were ready with sale deeds Ex B-33 and B-34, the plaintiffs did not turn up. The defendants being in continuous possession of the suit properties by putting up superstructure over it, the plaintiffs are not entitled for

the reliefs sought in the plaint.

5.The trial Court, held that in Exs.B-1 and B-47, before the panchayatars, the sons of Mr.Ganapathy have agreed that out of 24 ½ kuzhi's of land, they will take 5 kuzhi's of land each and leave the remaining 4 ½ to their sister. There is no division of properties by metes and bounds. Further, it is made clear in these documents that the first plaintiff has to execute sale deed in favour of Mr.Thirunavukarasu, the first defendant. Therefore, these documents cannot confer any title or right in favour of the defendants. They are trespasser, even though few tax receipts and Electricity bills stood in their names. For these reasons, the trial Court allowed the suit.

6.On appeal, the First Appellate Court reversed the finding of the trial Court, holding that, the plaintiffs are signatory to Ex B-47. PW-1, the second plaintiff has admitted the signature of the first plaintiff in Ex B-2 receipt. Since, Ex B-2 receipt is executed one and half months after Ex B-47, the First Appellate Court disbelieved the claim of the plaintiffs that their signatures under Ex B-47 were obtained under threat.

7.Aggrieved by the First Appellate Court Judgment, the plaintiffs have preferred the present Second Appeal and the same was admitted by this Court formulating the following substantial questions of law:

"1) Whether the defendants can claim title to the properties without filing a suit for specific performance ?

2) Whether Ex B-1 and B-47 are admissible in evidence ?"

8.The Learned counsel for the appellants referring to Ex B-47 minutes of the panchayathars dated 18.06.1986; Ex A-10 sale deed dated 20.08.1993 in favour of the second plaintiff; Ex B-1 minutes of the panchayatars dated 05.03.1994 and Ex B-2 receipt dated 09.08.1989 given by the first plaintiff, submitted that the second plaintiff is a signatory only to the first panchayat. The B schedule property was purchased by her subsequent to the first panchayat. While so, how the decision of the panchayat to which she is not party will bind her. The learned counsel submitted that the First Appellate Court after holding that the plaintiffs are the title holders of the suit properties ought not to have accepted the so called family settlement recorded in the village panchayatars minutes in Exs.B-47 and B-1. The defendants who are the children of Mr.Ganapathy born to his second wife, taking away the absolute property of the first wife and her daughter-in-law under the garb of family arrangement is

perse illegal. Even though law permits family arrangement between the members of the family, in respect of properties to which they have no right, the facts of this case does not fall under that category.

9. Per contra, the learned counsel for the respondents submitted that, the long possession of the defendants is admitted in the plaint. The first plaintiff have accepted the terms of panchayat and had received money. Therefore, he is estopped from retracting from his promise to execute the sale deeds in favour of the defendants. In pursuance to the promise made by the plaintiffs, the defendants also prepared sale deeds in Exs.B-33 and B-34. While so, the plaintiffs have gone back from their promise by refusing to execute and register the sale deeds as per the terms of settlement found in Ex B-1.

10. By this time, the well settled principle is that, family arrangement can be effected between the members of a family for any reason and not necessarily for the settlement of disputes between them regarding the family property. It is also not necessary that a dispute shall have actually arisen between the parties of the family, settlement being effected. Through catena of judgments, it is accepted that a memorandum or document the family arrangement already effected, need not be registered.

11. In this case, both Exs.B-1 and B-47 do not fall within the above two principles. It does not even carry the spirit of family arrangement. It cannot be admitted in evidence since, it creates right to the encroacher and extinguishes the right of the title holder, but not registered. Assuming that, though not Exs.B-1 and B-47 are admissible in evidence, as per the terms of the panchayatars, the parties should execute sale deed on a future date. Such an event, admittedly, never took place. These two exhibits deal with the property of both first and second plaintiffs. It is borne by record that the second plaintiff is not a party to Exs.B-1 and B-2. Therefore, the defendants cannot claim the rule of estoppel based on Exs.B-33 and B-34 (unregistered sale deeds marked by the defendants for collateral purpose) prepared in terms of Ex B-1.

12. For the above said reasons, this Court finds that the judgment of the First Appellate Court reversing the trial court judgment is legally erroneous.

13.In the result, the Second Appeal is allowed. The judgment of the First Appellate Court is set aside and the decree passed by the trial court is restored. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jbm

To

1.The Principal Subordinate Court,
Nagapattinam.

2.The District Munsif,
Thiruthuraipoondi.

copy to

The Section Officer
VR Section High Court Madras

+1 cc to Mr.A.Ilango Advocate sr 68668

+1 cc to Ms.G.Sumitha Advocate sr 68623

Second Appeal No.1041 of 1998

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