

In the High Court of Judicature at Madras

Dated: 09.06.2016

Coram

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.156 of 2015

N.T.Gobikrishnan

.... Appellant/Defendant

Vs.

Minor N.G.Abijith

son of N.T.Gobikrishnan

rep by his next friend mother

Parvathavardhini

W/o N.T.Gobikrishnan

No.93, Manikkavasagar Building,

Karumathampatti,

Avanashi Road,

Coimbatore District.

.... Respondent/Plaintiff

Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 06.06.2014 of Learned Subordinate Judge, Gobichettipalayam made in A.S.No.36 of 2012 confirming the judgment and decree dated 06.10.2012 made in O.S.No.164 of 2009 by the District Munsif Court, Gobichettipalayam.

For Appellant : Mr.A.Palaniappan

For Respondent : Mr.A.K.Kumarasamy

J U D G M E N T

The appellant is the defendant in a suit for declaration, delivery of possession and for mense profits. The plaintiff is the minor son of the defendant represented by his next friend, mother, who is the wife of the defendant. The case of the plaintiff is that the suit properties original belonged to the defendant and by way of Settlement deed dated 29.11.2002, the defendant settled the suit properties in favour of the plaintiff. It is the further case of the plaintiff that the settlement was acted upon by mutation of revenue records, thereby, reflecting the name of the plaintiff as the owner of the property. It is the further contention of the plaintiff that since he was a minor at

the time of execution of the Settlement Deed and the defendant being the natural guardian, he continued to be in possession of the property in the capacity of manager of the property of the plaintiff. It is further contended that when the said Settlement Deed is an irrevocable one, the defendant, unilaterally revoked the Settlement Deed on 06.10.2003 which is invalid. Therefore, the plaintiff has filed the suit seeking the relief as stated supra.

2. The defendant contested the said suit by stating that the settlement deed was executed as a sham and nominal document, not with an intention to be acted upon and in fact it was not acted upon. He further contended that he revoked the Settlement Deed and hence, the plaintiff cannot have any claim over the suit property. The trial Court, after considering the rival pleadings, submissions and the evidence let in by both sides, decreed the suit as prayed for. The appeal filed by the defendant came to be dismissed by confirming the judgment and decree of the trial Court. Hence, this Second Appeal is filed before this Court and is listed before me today under the adjourned admission caption.

3. Heard the learned counsel for the appellant and the learned counsel appearing for the respondent and perused the materials placed before this court.

4. Mr.A.Palaniappan, learned counsel appearing for the appellant contended that the settlement deed has not been acted upon, when admittedly possession has not been parted with by the defendant in favour of the plaintiff. He further contended that the very filing of the suit for recovery of possession would show that the suit properties are with the defendant's exclusive possession and therefore, the plaintiff cannot claim title to the property based on the so called settlement deed which was subsequently revoked by the defendant.

5. Per contra, learned counsel appearing for the respondent invited this Court's attention to the specific pleading of the plaintiff that the father who executed the Settlement Deed in favour of the minor son, being the natural guardian, was holding the property not in the capacity as its owner, but as the Manager of the same on behalf of the plaintiff and therefore, the question of contending that the settlement Deed has not been acted upon does not arise. He also submitted that the very fact that the revenue records were effected with mutation by granting patta in favour of the plaintiff pursuant to the settlement deed would show that the settlement deed was acted upon. Thus, he contended that the defendant is not having any case before this Court and no substantial question of law arises for

consideration upon the above stated facts and circumstances.

6. The unsuccessful defendant before the Courts below is the appellant herein. The parties are son and father. The defendant, who is the father is not disputing the execution of the settlement deed 29.11.2002 marked as Ex.A3. However, the defendant sought to contend that by virtue of the subsequent revocation made on 06.10.2003, the plaintiff cannot seek the relief. I fail to understand as to how the defendant is justified in raising such contention, when the settlement deed, admittedly, is an irrevocable one and therefore, cancellation of the same, cannot be done unilaterally by the defendant, except by resorting to other procedures known to law, more particularly, when the same has been acted upon. No doubt, the defendant sought to contend that possession of the suit property is still with him and therefore, it has to be presumed that the settlement deed has not at all been acted upon. Here again, I am not inclined to appreciate the said contention for the simple reason that the defendant being the father of the plaintiff and thus, being the natural guardian of the minor son, would be holding the property on behalf of the minor, even though, the property was settled by him in favour of the minor. Holding of such possession is quiet nature going by the relationship between the parties. However, such possession in the hands of the defendant cannot be construed in the capacity of the owner of the property. On the other hand, it goes without saying that such possession in the hands of the defendant is on behalf of the minor son, at any event, as the Manager of the property. Yet another fact, namely, mutation of revenue in the name of the plaintiff amply proves that the settlement deed has been acted upon. This aspect has been elaborately considered by the Courts below by referring to various case laws which I do not want to repeat or multiply.

7. When such being the factual aspects of the matter, I do not find that the defendant namely, the appellant herein has any case on merits, more particularly, in the absence of any question of law muchless substantial one that arises for consideration before this Court to entertain the Second Appeal. Accordingly, the Second Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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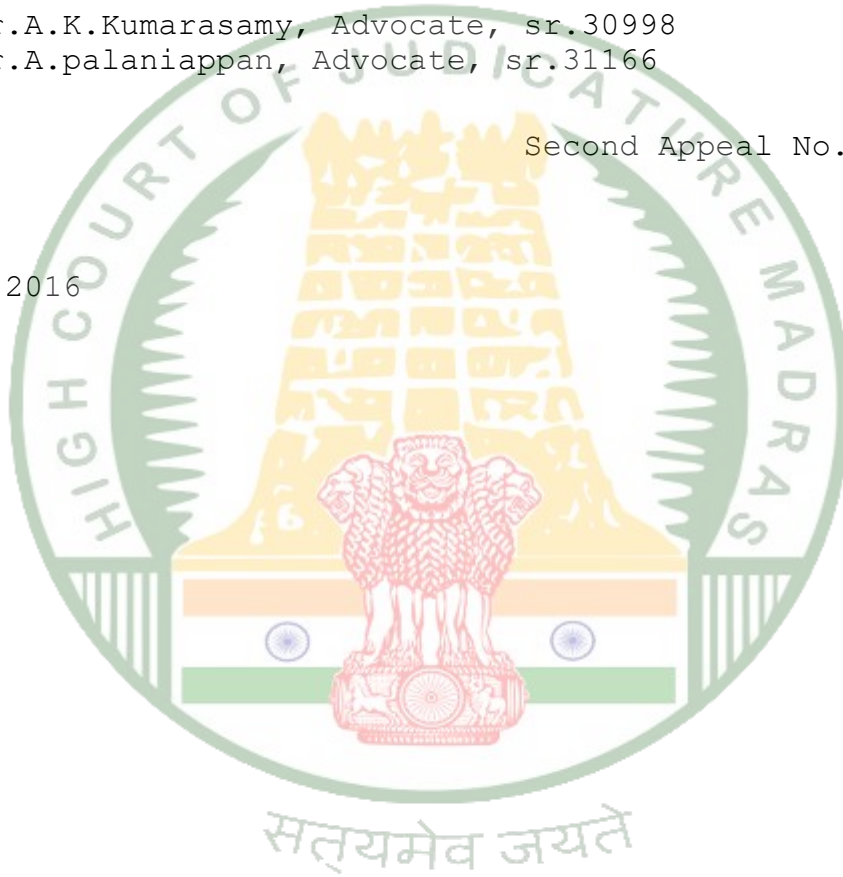
To

1. The Subordinate Judge,
Gobichettipalayam District.
2. The Munsif Court,
Gobichettipalayam.

1 CC to Mr.A.K.Kumarasamy, Advocate, sr.30998
1 cc to Mr.A.palaniappan, Advocate, sr.31166

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