

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.10.2016
PRONOUNCED ON : 25.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.233 of 2011
&
M.P.Nos.1 & 2 of 2011

G.Venkadesan ... Appellant/Defendant

Vs.

Rajathiammal ... Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 19.06.2009 made in A.S.No.92 of 2008 on the file of the Additional District Judge (Fast Track Court) Ariyalur, reversing the Judgment and Decree dated 30.11.2004 made in O.S.No.5 of 2000 on the file of the District Munsif Court, Jayangondum.

For Appellant : Mr.T.Chandrasekaran

For Respondent : Ms.N.Mala

JUDGMENT

Challenge in this second appeal is made by the defendant to the Judgment and Decree dated 19.06.2009 made in A.S.No.92 of 2008 on the file of the Additional District Judge(Fast Track Court) Ariyalur, reversing the Judgment and Decree dated 30.11.2004 made in O.S.No.5 of 2000 on the file of the District Munsif Court, Jayangondum.

2.Suit for declaration and permanent injunction.

3.The averments contained in the plaint are briefly stated as follows:

The suit property originally belonged to Panjalai Ammal under a registered Sale Deed dated 16.06.1971 and the plaintiff is the daughter of Panjalai Ammal. The plaintiff maintained her mother and also offered food and dress and out of love and affection Panjalai Ammal executed a registered Settlement Deed

in favour of the plaintiff on 19.02.1990 in respect of the suit property and the same was acted upon and the plaintiff took the possession of the suit property and thus the plaintiff is the owner of the suit property under the Settlement Deed dated 19.02.1990. The defendant is a relative of the plaintiff and there was enmity between the plaintiff and the defendant family. On the illadvice and the inducement by the daughter-in-law, Panjalai Ammal executed a Sale Deed on 26.03.1998 in favour of her grandson namely, the defendant and it is a fraudulent document executed benami to defeat the right of the plaintiff, neither the defendant nor his mother would have any right, title and interest over the suit property. In as much as the defendant through his mother had interfered with the plaintiff's possession and enjoyment of the suit property and also denied her title, the suit has been filed.

4.The averments contained in the written statement filed by the defendant are briefly stated as follows:

The suit is not maintainable either in law or in facts. It is false to state that the suit property originally belonged to Panjalai Ammal. The suit property belonged to Muthusamy, who is the grandfather of the defendant and the suit property has been purchased in the name of Panjalai Ammal, benami by Muthusamy and hence the suit property is the ancestral property of the Muthusamy Padayachi. It is false to state that Panjalai Ammal had executed a Settlement Deed dated 19.02.90 in favour of the plaintiff in respect of the suit property and the said Settlement Deed had been acted upon and that the plaintiff is the owner of the suit property, pursuant to the said Deed. The plaintiff's son had duped Panjalai Ammal and got her thumb impression illegally and created the Settlement Deed and the plaintiff also failed to maintain Panjalai Ammal and on coming to know that she had been duped, Panjalai Ammal cancelled the Settlement Deed on 25.10.2004 and hence the Settlement Deed dated 19.02.1990 is invalid. Panjalai Ammal had executed a registered Sale Deed for proper value and consideration in respect of the suit property in favour of the defendant and hence the suit property belongs to the defendant. There is no cause of action for the suit and the suit is liable to be dismissed.

5.In support of the plaintiff's case, PW1 has been examined and Ex.A1 to A4 were marked. On the side of the defendant, DW1 to 4 were examined and Ex.D1 to D14 were marked. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court proceeded to dismiss the suit as against which the plaintiff preferred the first appeal.

6.The first Appellate Court on a reappraisal of the evidence adduced, set aside the judgement and decree of the trial Court and consequently, decreed the suit in favour of the plaintiff as prayed for. Aggrieved over the judgment and decree of the first Appellate Court, the defendant has preferred this Second Appeal.

7.According to the plaintiff the suit property belonged to her mother Panjalai Ammal under a registered Sale Deed dated 16.06.1971. On the other hand, according to the defendant, the suit property had been purchased benami, in the name of Panjalai Ammal by his grandfather Muthusamy and therefore, it is contended that the suit property is the ancestral property of Muthusamy and Panjalai Ammal is not the exclusive owner of the suit property.

8.However, with reference to the above defence taken by the defendant, no material is forthcoming. To prove her plea and to show that it is only Panjalai Ammal, who is the owner of the suit property, plaintiff has marked Ex.A1/B2. From the above, it is seen that Panjalai Ammal was the original owner of the suit property.

9.According to the plaintiff, Panjalai Ammal out of love and affection had executed the Settlement Deed dated 19.02.1990 in her favour in respect of the suit property. The said Settlement Deed has been marked as Ex.A2. Further according to the plaintiff, the said Settlement Deed had been acted upon and pursuant to the same, the plaintiff had become the owner of the suit property.

10.Per contra, it is argued by the defendant that the plaintiff's son duped Panjalai Ammal and fraudulently obtained her thumb impression in blank stamp papers and created the Settlement Deed and therefore the Settlement Deed marked as Ex.A2 is invalid. Further according to the defendant, on coming to know of the above said fraudulent act of the plaintiff and her son, Panjalai Ammal had cancelled the Settlement Deed and executed the Sale Deed in respect of the suit property in favour of the defendant, who is her grandson for proper value and consideration and therefore, according to the defendant, it is he, who is the owner of the suit property and the plaintiff does not have any right, interest and title over the suit property.

11.According to the plaintiff, Panjalai Ammal having executed the Settlement Deed in her favour, do not have any right to revoke the same and further she has also not reserved any right to revoke the Settlement Deed. After the execution of the Settlement Deed, EX.A2, Panjalai Ammal ceases to have any right, title and interest over the suit property covered under Ex.A2 and therefore, she would not be competent to execute the

Sale Deed subsequently, in favour of the defendant, which has been marked as Ex.B1.

12.A perusal of the recitals found in the Settlement Deed would go to show that Panjalai Ammal had not reserved any right of revocation in the document and therefore, after the execution of the Settlement Deed, the plaintiff having become the owner of the suit property by taking possession of the suit property and as the Settlement Deed has been acted upon, Panjalai Ammal would have no right to revoke the same, consequently, with reference to the above fact, the lower Appellate Court has correctly appreciated the evidence adduced by the parties in the right perspective and come to the conclusion that Panjalai Ammal had no right to revoke the Settlement Deed. The case of the defendant that Ex.A2, Settlement Deed has been fraudulently obtained by the plaintiff's son has not been established with acceptable and reliable evidence.

13.In this connection, the lower Appellate Court has also taken into consideration the various authorities, with reference to the above position of law and has correctly come to the conclusion that the Deed of Cancellation executed by Panjalai Ammal against the Settlement Deed has no legal force and therefore, it can be seen that Ex.A2, Settlement Deed is valid and it is only the plaintiff who would be having absolute title over the suit property under the said document.

14.On finding that Panjalai Ammal had no right to revoke the Settlement Deed, it could be seen that after the execution of the Settlement Deed, Panjalai Ammal would cease to have any interest over the suit property and therefore, it can be seen resultantly, that Panjalai Ammal would not be competent to execute the Sale Deed subsequently, in favour of the defendant in respect of the suit property under Ex.B1. It is therefore, obvious that Ex.B1 is an invalid document and under the same the defendant cannot be conferred with any right, title and interest over the suit property.

15.It is argued by the learned counsel for the defendant that it is only the defendant, who is in possession and enjoyment of the suit property and accordingly, the defendant has produced various kist receipts to show his possession and enjoyment of the suit property.

16.Countering the same, it is argued by the learned counsel for the plaintiff that the defendant's mother is also owning 30 cents in the suit survey number and the Patta is joint and therefore according to her, the kist receipts pertain only to other 30 cents in the suit survey number and not relating to the suit property. The defendant has failed to establish the kist

receipts marked on his side pertain to the suit property in particular when it is not in dispute that his mother is owning 30 cents in the same survey number. Therefore, the kist receipts marked on the side of the defendant would not by itself lead to the conclusion that it is only the defendant or his mother who is in possession and enjoyment of the suit property.

17. It is also argued by the learned counsel for the defendant that original title Deed of Panjalai Ammal is only in the custody of the defendant and marked as Ex.B2 and therefore, on that basis, the first Appellate Court should have held that Panjalai Ammal had not conveyed the property to the plaintiff under Ex.A2. However, the above argument does not merit acceptance. Once it is found that Panjalai Ammal had executed the Settlement Deed in favour of the plaintiff and when it has not been established by the defendant that the above said Settlement Deed has been fraudulently obtained as put forth by him and it is also found that Panjalai Ammal had no right to revoke the Settlement Deed and when it is found the Settlement Deed has been acted upon, pursuant to the same, the plaintiff has become the owner of the suit property. It is also found that in respect of other extent of land in the same survey number, the defendant's mother is also owning certain extent. Merely because the original title Deed has been produced by the defendant, it would not lead to the conclusion that Ex.A2, Settlement Deed would not be the true document.

18. In the light of the above discussion, I find that lower appellate Court has correctly appreciated the evidence adduced by the respective parties and on considering the merits and demerits of their case, rightly found that the plaintiff is owner of the suit property and that the suit property is in the possession and enjoyment of the plaintiff and that the defendant is not entitled to deny the right of the plaintiff and also interfere with the plaintiff's possession and enjoyment of the suit property.

19. In conclusion, I do not find any substantial question of law involved in the Second Appeal and accordingly, the Second Appeal is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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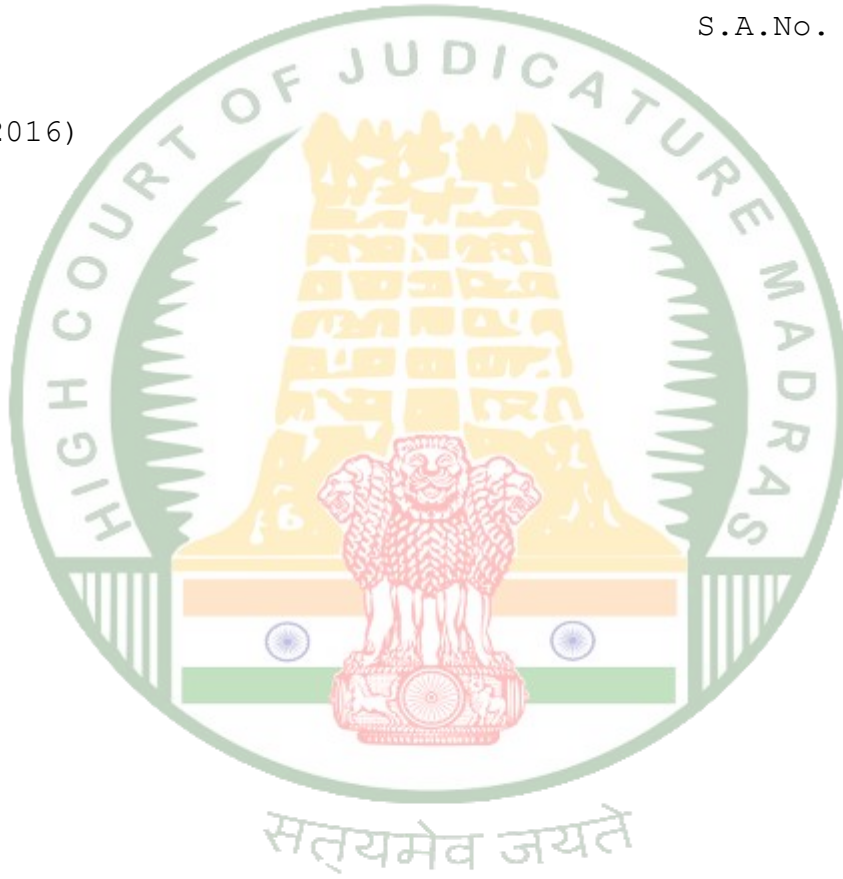
To

1. The Additional District Judge(Fast Track Court),
Ariyalur.
2. The District Munsif Court,
Jayangondum.

+1cc to Mr.T.Chandrasekaran, Advocate, S.R.No.60626

S.A.No. 233 of 2011

SR(CO)
CA(16/11/2016)



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