

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :30.11.2016

PRONOUNCED ON: 07.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.429 & 430 of 2011

1.Jaipunnisa
2.Dowlatnisha
3.Kudubia Begum
4.Sheik Mohideen

... Appellants in both
second appeal

Vs.

1.Abdul Jaleel
2.Habuneesa
3.Akbar Hussain
4.Nasima Begum
5.Syed Sultan Beevi
6.K.S.Abdul Jhafer

... Respondents in
S.A.No.429 of 2011

1.Abdul Jaleel
2.Mohd Jaffer

... Respondents in
S.A.No.430 of 2011

S. A.No.429 of 2011

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 10.12.2007 in A.S.No.46 of 2003 on the file of the Subordinate Judge, Tiruvarur confirming the judgment and decree dated 31.03.2003 in O.S.No.242 of 2000 on the file of the District Munsif, Thiruvarur.

S. A.No.430 of 2011

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 13.08.2007 in A.S.No.77 of 2005 on the file of the Subordinate Judge, Tiruvarur confirming the judgment and decree dated 29.04.2005 in O.S.No.114 of 1999 on the file of the District Munsif, Thiruvarur.

For Appellants : Mr. A.L.Gandhimathi
in both second appeals

For Respondents : Mr. J.Nanda Gopal
in both second appeals

COMMON JUDGMENT

S.A.No.429 of 2011

The legal representatives of the deceased plaintiff in this second appeal have challenged the judgment and decree dated 10.12.2007 made in A.S.No.46/2003 on the file of the Subordinate Court, Thiruvarur, confirming the judgment and decree dated 31.03.2003 made in O.S.No.242 of 2000 on the file of the District Munsif Court, Thiruvarur.

S.A.No.430 of 2011

The legal representatives of the deceased defendant in this second appeal have been impugned the judgment and decree dated 13.08.2007 made in A.S.No.77 of 2005 on the file of the Subordinate Court, Thiruvarur, confirming the judgment and decree dated 29.04.2005 in O.S.No.114 of 1999 on the file of the District Munsif, Thiruvarur.

2. The suit in O.S.No.242 of 2000 has been laid for declaration and permanent injunction and the suit in O.S.No.114 of 1999 has been laid for permanent injunction.

3. The deceased M.Jainulabdeen, claims title to the suit property based upon the exchange deed dated 26.05.1974, the copy of which, has been marked as Ex.A1. Admittedly, the exchange deed stands in the name of his father Mohammed Kasim. According to M.Jainulabdeen, the suit property was purchased in the name of his father on the basis of the amount sent by him from abroad to his father and it is stated that even though, the suit property stands in the name of his father, his father had not asserted any independent title over the suit property, since it had been acquired out of the money sent by him from abroad to his father and therefore, claiming title, possession and enjoyment of the suit property and alleging that the defendants without any authority had taken steps to interfere with his possession and enjoyment of the suit property, he has come forward with the suit.

4. To establish that he had sent amount from abroad to his father, Exs.A22 to 33 were pressed into service by M.Jainulabdeen. However, as rightly found by the courts below, all those documents are of the year 1976 and thereafter, it could thus be seen that the plea put forth by M.Jainulabdeen that out of the amount sent by him from abroad, the suit property had been acquired under Ex.A1 exchange deed in the year 1974, as such, cannot be readily accepted.

5. Barring Exs.A22 to 33, no other material has been placed by M.Jainulabdeen to evidence that he had contributed any sum for the acquisition of the suit property through his father under Ex.A1. It is admitted by both parties that the suit property had been acquired under Ex.A1 by exchanging the property purchased in Thirupallimukoodal of an extent of Acre 2.11 in R.S.No.196 / 2. The said property was also purchased in the name of his father Mohammed Kasim. In this connection, the courts below have found that M.Jainulabdeen has admitted that he is not aware as to when the property situated at Thirupallimukoodal had been purchased. Therefore, his plea that the said property was also purchased by his father out of the amount sent by him from abroad as such was rightly negated by the courts below.

6. Further, the courts below have found that inasmuch M.Jainulabdeen has pleaded Benami Transactions in respect of the acquisition of the suit property in the name of his father, his plea is barred under The Benami Transactions (Prohibition) Act 1988. Further, the courts below have also found that M.Jainulabdeen has failed to establish that he comes within the exception provided under the Act to exclude the acquisition of the suit property out of the purview of The Benami Transactions (Prohibition) Act, 1988. Therefore, the courts below have rightly held that the plea of

M.Jainulabdeen that the suit had been acquired benami in the name of his father out of his amount sent from abroad is barred by The Benami Transactions (Prohibition) Act, 1988 and no exception could be taken to the above said findings of the courts below.

7. Further, M.Jainulabdeen has also pleaded that his father had gifted the suit property to him under oral hiba, which is stated to have been taken place on 19.12.1979. In this connection, he has pleaded that subsequently his father had written the letter recognizing the oral hiba, which has been marked as Ex.A34. However, the courts below have rightly found that Ex.A34 would not be helpful to sustain the above case of M.Jainulabdeen. It has not been established by M.Jainulabdeen that when the suit property was given to him by his father through oral hiba, the suit property was also delivered to him. Therefore, it could be seen that the courts below have rightly found that the oral Hiba sans delivery of possession is not valid in law. Further, the courts below have also found based upon the evidence adduced by the parties concerned that the possession has not been handed over to the plaintiff at the time of alleged hiba. It is admitted that under Ex.A18 the plaintiff and his brothers have divided their properties. It is also admitted that Mohammed Kasim had retained the suit property to himself under Ex.A18 dated 11.08.1975. Therefore, it could be seen that

the plea of M.Jainulabdeen that possession was handed over to him at the time of hiba as such cannot be countenanced. Therefore, the case of M.Jainulabdeen that in recognition of oral hiba, his father had written Ex.A34 as such cannot be accepted in any manner.

8. Therefore, the courts below have rightly disbelieved the case of the plaintiff based upon the oral hiba, and the subsequent document alleged to have been written in recognition of the same marked as Ex.A34. Further, according to the contesting defendants, they had purchased an extent of 35 cents each from Mohammed Kasim under Ex.B5 and B6. Therefore, it could be seen that the brothers of M.Jainulabdeen had acquired particular extent from Mohammed Ksim under the sale deeds marked as Exs.B5 & 6 and enjoying the said portion of the suit property purchased by them. Therefore, it could be seen that the courts below have rightly found that the case of M.Jainulabdeen that the suit property was acquired in the name of his father out of the funds sent by him from abroad as such cannot be accepted in the absence of any reliable and convincing evidence.

9. According to Abdul Jaleel, the first defendant in O.S.No.242 of 2000 and the plaintiff in O.S.No.114 of 1999 inasmuch M.Jainulabdeen attempted to interfere with his possession

and enjoyment of the extent purchased by him under Ex.B6, he has been necessitated to lay the suit for permanent injunction, In the said suit also, the courts below have disbelieved the plea of M.Jainulabdeen that he had acquired the suit property Benami in the name of his father out of his funds sent by him from abroad and also the plea of oral hiba, made by him.

10. Nothing has been pointed out in this second appeal to interfere the well considered and reasonable judgments of the courts below in rejecting the plea of M.Jainulabdeen that he is having title and possession and enjoyment of the suit property. Therefore, it could be seen that courts below have rightly dismissed his plea and no interference is called for in the findings and conclusion of the courts below for rejecting his case and upholding the case of Abdul Jaleel.

In conclusion, I do not find any substantial question of law being involved in these second appeals. Accordingly, the second appeals are dismissed. No costs.

07.12.2016

Index : Yes/No
Internet:Yes/No
sms

T.RAVINDRAN,J.

Sms

To

1. The Subordinate Court, Tiruvarur.
2. The District Munsif, Thiruvarur.

Pre-delivery order in
S. A.Nos.429 & 430 of 2011

07.12.2016