

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.10.2016

Pronounced on 17.10.2016

CORAM**THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No.57 of 2011****and****M.P.No. 1 of 2011**

Amudha

...

Appellant

/Vs/

Poongodhai

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 31.08.2010 made in A.S.No.59 of 2007 on the file of the Principal Sub Court, at Pondicherry confirming the Judgment and decree dated 03.08.2007 made in O.S.No.1101 of 2006 on the file of the I Additional District Munsif Court, Pondicherry.

For Appellant : T.Dhanyakumar

For Respondent : B.Balavinayagam
for M/s.C.S.Associates

JUDGMENT

Challenging the judgment and decree dated 31.08.2010 made in A.S.No.59 of 2007 on the file of the Principal Sub Court, Pondicherry confirming the Judgment and Decree dated 03.08.2007 made in O.S.No.1101 of 2006 on the file of the First Additional District Munsif Court, Pondicherry, the defendant has preferred this second appeal.

2. Concisely stated, the case of the respondent/plaintiff is that she is the absolute and exclusive owner of the suit property, by virtue of a registered sale deed dated 03.03.1974, purchased from one Kothandam and right from the date of purchase, she has been possessing and enjoying the suit property along with her family members by constructing a house partly, the remaining portion being vacant. The revenue records in respect of the suit property stand in the name of the plaintiff and except the plaintiff, no one including the appellant/defendant has any right over the suit property. The appellant /defendant is the daughter of the plaintiff. The appellant /defendant has been given in marriage by providing all Sridhana properties and she has settled at her husband's house.

3. While so, the appellant/defendant and her husband have been giving problems to the plaintiff and also attempting to interfere with the peaceful possession and enjoyment of the suit property by the plaintiff without any right or interest. Hence, the plaintiff has been necessitated to file the suit for permanent injunction.

4. The case of the defendant, to put in a nutshell, is that the plaintiff is her mother and that the plaintiff is the owner of the suit property by virtue of the sale deed dated 03.03.1974. The plaintiff, with the consent of all the members of the family, had executed a gift settlement deed dated 03.11.1997 in favour of the defendant in respect of an extent of 603 3/4 sq.feet alone situated on the southern side of the suit property and from the date of the aforesaid gift deed, the defendant is in possession and enjoyment of the property covered under the gift deed and the gift deed has been acted upon. Further, it is stated by the defendant that the plaintiff had purchased the suit property, out of the sale proceeds realised from the selling of an ancestral house property of the defendant's father and therefore, according to the defendant, the remaining extent of 1396 1/4 sq.feet of the suit property has been in joint possession of the plaintiff and the defendant. Therefore, the defendant, as co-owner, is entitled to be in possession and enjoyment of the extent of 1396 1/4 sq.ft situated on the northern side of the suit property and she is entitled to be in exclusive possession and enjoyment of the portion measuring 603 3/4 sq.ft situated on the southern side of the suit property as absolute owner and hence, the suit is liable to be dismissed.

5. In support of the plaintiff's case, the plaintiff was examined as PW1 and Exhibits A1 to A5 were marked. In support of the defendant's case, the defendant examined herself as DW1 and marked Exhibits B1 and B2.

6. On a consideration of the oral and documentary evidence, adduced by the parties, the trial court was pleased to decree the suit as prayed for.

7. Aggrieved by the judgment and decree of the trial Court, the defendant has preferred the appeal before the appellate Court, which has also confirmed the judgment and decree of the trial Court and dismissed the appeal.

8. On a perusal of the judgment of the appellate court, it could be seen that the appellant was permitted to mark Exhibits B3 to B18 on the side of the defendant/appellant as additional evidence in the appeal.

9. The unsuccessful defendant is the appellant. The appellant is the daughter of the respondent. The appellant claims title to 603 3/4 sq.ft on the southern side of the suit property by virtue of the gift settlement deed dated 03.11.1997 alleged to have been executed in her favour, by her mother/the respondent. Insofar as title of the suit property, it is admitted by the appellant that the respondent has purchased the suit property under the sale deed dated 03.03.1974.

10. According to the appellant, the respondent had purchased the property out of the sale proceeds of a house belonging to the family, which is ancestral and therefore, it is the case of the appellant that barring 603 3/4 sq.ft situated on the southern side of the suit property, the remaining portion of the suit property is in the joint possession of the appellant and the respondent. However, as rightly found by the Courts below, no material whatsoever has been placed by the appellant to show that the respondent had purchased the suit property under the sale deed dated 03.03.1974 out of the sale proceeds, derived from selling of the ancestral house property. On the other hand, from the averments in the sale deed, it could be seen that the respondent had purchased the suit property, in its entirety, by providing consideration for the same and therefore, it is seen that the

respondent is the absolute owner of the suit property. To show that the respondent is in possession and enjoyment of the suit property, the respondent had marked exhibits A2, A4 and A5 viz., the house tax demand notice, copy of the ration card and copy of the voter's identity card and therefore, it could be seen that the respondent is in possession and enjoyment of the suit property in its entirety.

11. The main case of the appellant is that the respondent had gifted a portion of the suit property in favour of the appellant under the gift deed dated 03.11.1997 and the same has been vehemently denied by the respondent.

12. Despite the same, no proof has been placed, whatsoever, by the appellant to establish that the respondent had executed the above mentioned gift deed in her favour and that, she had accepted the gift deed and pursuant to the same, the gift deed had been acted upon. In the trial Court, a certified copy of the gift deed has been marked as Ex.B2. As seen earlier, the execution of the alleged gift deed has been seriously impugned by the respondent. Now, according to the appellant, the respondent had affixed her left hand thumb impression in the gift deed and the same has been challenged by the

respondent. It is argued that the respondent used to affix her signature in the document and not left thumb impression. Therefore, on the face of it, according to the learned counsel for the respondent, the gift deed is a forged document. As found earlier, no material whatsoever, has been placed by the appellant to show that the gift deed had been accepted by her and acted upon. If really the gift deed had been acted upon, as rightly argued by the counsel for the respondent, the appellant would have endeavoured to establish her possession and enjoyment of the property covered under the gift deed. However, in the trial Court, no proof has been placed by the appellant to establish her possession and enjoyment of the property covered under the gift deed. Accordingly, it could be seen that the trial Court was pleased to reject the case of the appellant and decreed the suit.

13. In the first appellate Court, it could be seen that the appellant has been permitted to mark Exhibits B3 to B18 as additional evidence in support of her case. According to the first appellate court, no safe credence could be attached to documents marked as Exhibits B3 to B18 to hold that the appellant has been in possession and enjoyment of the suit property. It was also held by the lower appellate court that in the affidavit filed by the appellant, before the lower

appellate court, she has only stated that she is residing at Mandagampattu Village, Villupuram Taluk. The trial Court has also found that the defendant has received the Court summons sent to her at Mandagampattu Village, Villupuram Taluk.

14. The main argument putforth by the appellant's counsel is that the lower appellate court has failed to consider the additional documents marked as Exhibits B3 to B18 which would establish that the appellant is in possession and enjoyment of the suit property

15. On the other hand, according to the counsel for the respondent, the documents marked as Exhibits B3 to B18 would not, in any manner, substantiate the case of the appellant to prove her possession in respect of the suit property. The contention of the counsel for the respondent deserves acceptance. On a perusal of Exhibits B3 to B18, as found in the additional typed set, it could be seen that barring Exhibits B4, B5 and B10, all the other documents are in the name of the appellant's son or her husband. Therefore, those documents could not be relied upon to hold that the appellant has been in possession and enjoyment of the property covered under the gift deed nor for holding that the gift deed dated 03.11.1997 had been

acted upon as contended by the appellant. Therefore, it could be seen that if at all, the gift deed had been acted upon, the appellant would have taken steps to establish her possession and enjoyment of the property covered under the gift deed. The Documents marked as Exs.B4 and B5 are prior to the execution of the gift deed. Therefore, no safe reliance could be placed on those documents to hold that the gift deed had been acted upon and that pursuant to the same, the appellant had been in possession and enjoyment of the property covered under gift deed as full owner thereof. Barring exhibits B4 and B5, the remaining document is only Ex. B10. As rightly contended by the counsel for the respondent, Ex.B10 is found to have come into existence after the institution of the suit. In such circumstances, no safe reliance could be placed on Exhibit B10.

16. That apart, it could be seen that though the Appellate Court had permitted the appellant to mark Exhibits B3 to B18 as additional evidence it is not the case of the appellant that the respondent had accepted the genuineness of the documents marked by the appellant in the first appellate Court. In such circumstances, when the genuineness of the documents marked as Exhibits B3 to B18 has not been established by the appellant, by producing acceptable and

reliable evidence, merely on the footing that the first appellate court permitted to mark the additional documents, it cannot be held that the appellant has established her possession and enjoyment of the property covered under the gift deed. In such circumstances, I am unable to place safe reliance upon Exhibits B3 to B18 to hold that the appellant is in possession and enjoyment of the property covered under the gift deed and the gift deed had been acted upon.

17. Further, it can also be seen that when the respondent has seriously challenged the genuineness of the gift deed, the appellant should have taken earnest steps to establish that the gift deed had been really executed by the respondent. However, the appellant has not taken any steps to prove that the gift deed had been executed by the respondent, out of her own volition and will and that the same had been accepted by the appellant and that the gift deed had been acted upon. Accordingly, it could be seen that the appellant has failed to establish that the respondent had executed the gift deed in respect of the disputed property i.e. 603 3/4 sq.ft on the southern side of the suit property and that the same had been acted upon. Further it could be seen that the appellant has failed to establish that she has been in possession and enjoyment of the disputed suit property.

18. In the light of the above discussion, I do not find any substantial question of law involved in this second appeal. In conclusion, the second appeal does not deserve acceptance and accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2016

Index : Yes/No
Internet:Yes/No
sms

To

1. The Principal Sub Court,
Pondicherry.
2. The I Additional District Munsif Court,
Pondicherry.

T.RAVINDRAN,J.

sms

Pre-delivered order in
S. A.No.57 of 2011

17.10.2016

Pre -delievery judgment
in S.A.No.57 of 2011

To

The Hon'ble Mr.Justice T.Ravindran

Respectfully submitted by
sms
(P.A.to the Hon'ble Judges)