

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.579 of 2017
and C.M.P.No.14390 of 2017

1.K.Dharuman
2.K.Manivel
3.K.Anbalagan

.. Appellants

-Vs-

1.Settu Alias Lakshmi
2.Velmurugan
3.Chinthamani
4.Madheswari
5.Radhika

.. Respondents

PRAYER: Second Appeal filed under Section 100 C.P.C against the Judgment and Decree of the Additional District Court, Krishnagiri dated 25.04.2017 in A.S.No.24 of 2017 confirming the Judgment and Decree of the District Munsif Court, Krishnagiri dated 13.06.2014 in O.S.No.284 of 2008.

For Appellants V.Nicholas

O R D E R

The plaintiffs, who have lost, before both the Courts below have filed the above Second Appeal.

2. The suit is filed for declaration of title of the plaintiffs and for permanent injunction restraining the defendants from alienating the suit property.

3. The case of the plaintiffs is that the suit property was an ancestral property standing in the name of their father Krishnan. It is stated that patta was also issued in the name of their father being the Kartha of the joint family. On 14.07.2008, the said Krishnan executed a registered gift deed and delivered the possession to them. Since then, plaintiffs became the absolute owner of the property and they have been in exclusive possession and enjoyment of the same. As the defendants interfered with their right and title of possession, the suit was filed by the plaintiffs.

4. The case of the defendants is that the plaintiffs' father himself had sold the property to one Rangasamy for his legal necessities for discharging the family debt as early as on 02.05.1985. Since then, the said Rangasamy had been in possession and enjoyment of the suit property and after his death, the defendants are in possession and enjoyment of the suit property, being the legal heirs. The father of the plaintiffs' had sold the property to the said Rangasamy and he has fraudulently executed the gift deed on 14.07.2008 to defeat the rights of the defendants. Hence, they prayed for dismissal of the suit.

5. Before the Trial Court, the first plaintiff examined himself as PW-1 and three more witnesses were examined as PW-2, PW-3 and PW-4 and Exhibits A1 and A18 were marked. On the side of the defendants, the second defendant was examined as DW-1 and two more witnesses were examined as DW-2 and DW-3 and Exhibits B1 to B3 were marked.

6. Based on the above pleadings, the trial Court had dismissed the suit. On appeal by the plaintiffs in A.S.No.24 of 2014, the judgment and decree of the trial Court was confirmed by dismissing the appeal. Aggrieved by the same, the above second appeal has been filed by the plaintiffs.

7. Heard the learned counsel for the appellants and perused the materials available on record.

8. The Courts below have concurrently held that on the date of the said gift deed (i.e) 14.07.2008, which is marked as Ex.A8, the father of the plaintiffs' did not have any right, as he had already sold the property on 02.05.1985 under Ex.B1 in favor of the father of the defendants. The father of the plaintiffs was also examined as P.W.2. Though he has admitted the execution of the sale deed, he has not taken any steps to set aside the same. It is also not his case that the sale deed was obtained from him by fraud, coercion or undue influence. Even presuming so, it was open to the first plaintiff to set aside the sale deed within a period of limitation. However, he had not done so and after 23 years, he has executed a settlement deed in favour of the plaintiffs' only with an ulterior motive to defeat the rights of the defendants. If really the plaintiffs' father is the owner of the property and continued to be the owner, after his life time, it will automatically devolve on the plaintiffs' and there is no necessity for him to execute the gift deed. From the very act of executing the gift deed, it is clear that the same has been done only to avoid the sale deed. Therefore, it is categorically found that the plaintiffs' have no right over the

suit property on the date of execution of gift deed dated 14.07.2008. The father did not have saleable right over the suit property, as he had already sold the same under Ex.B1 in favour of the defendants. In such circumstances, the Courts below had rightly held that the plaintiffs' are not entitled to the relief sought for.

9. In view of the above discussion, there is no infirmity in the judgment of the Lower Appellate Court warranting any interference and there is no question of law, much less, substantial question of law, for consideration in this Second appeal.

10. Accordingly, the Second appeal is dismissed confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Additional District Judge, Krishnagiri.
 2. The District Munsif, Krishnagiri.
 3. The Section Officer, V.R.Section, High Court, Madras
- +1 cc to Mr.V.Nicholas Advocate sr 74829

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