

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2017

Coram:

The Honourable Mr.Justice **M.M.SUNDRESH**

S.A.No.71 of 2000
& CMP No.894 of 2000

1.Kaliyan alias Kaliyamoorthy

2.Gopalakrishnan

.. Appellants

Vs.

1.Krishnan

2.Partheeban

3.Kuppammal

4.Deivasikamani

5.Minor Kubendran S/o Seetharaman
(Minor represented by Court guardian Ranganathan,
Tirukoilur)

.. Respondents

Second Appeal is filed under Section 100 C.P.C., as against the judgment and decree dated 29.07.1999 made in A.S.No.214 of 1997 on the file of Principal District Court, Villupuram, in confirming the judgment and decree dated 04.04.1997 made in O.S.No.880 of 1988 on the file of Principal District Munsif Court, Tirukoilur.

For appellants : Mr.V.Raghavachari

For respondents : Mr.N.Suresh for R1

No appearance for R2, 4 & 5

R3-Exparte before the lower Court.

JUDGMENT

This second appeal has been preferred by defendants 3 and 4 seeking to set aside the judgments and decrees rendered by the Courts below in a suit filed for declaration and permanent injunction based upon Ex.A6.

2.The following substantial questions of law have been raised in the above second appeal.

1.Whether the Courts below are right in upholding Ex.A6, when the plaintiff had failed to examine the attestor to the documents or atleast proved their signatures?

2.Whether the Courts below are right in relying upon the Deed in the name of Gangadharan,

particularly when the independent income of the Gangadharan had not been proved?

3. Whether the Courts below are right in its assessment of Ex.A6 and whether the judgment of the Court below are not liable to be set aside, on such other substantial questions of law, as this Court may deem fit and proper?

3. The relationship between the parties is admitted. The plaintiff is the son of Gangadharan, so is the case of the defendants 1 and 2. The appellants, who are defendants 3 and 4, are the sons of said Gangadharan through his second wife. The plaintiff has relied upon Ex.A6-settlement deed in support of his case. Under Ex.A6 dated 19.06.1986, Gangadharan executed a registered settlement deed in favour of the plaintiff. It is the case of the plaintiff that based upon the said document, he is in possession and enjoyment of the suit property, which is being interfered by the defendants and hence, he has filed the suit in O.S.No.880 of 1988.

4. Both the Courts decreed the suit as prayed for on the premise that the document placed in pursuant to the settlement executed by Gangadharan under Ex.A6 dated 19.06.1986 in favour of the plaintiff and from that date onwards the plaintiff is in possession and enjoyment of the suit property and Ex.A6 has not been denied or disputed specifically by the appellants.

5. The learned Senior Counsel appearing for the appellants submits that the plaintiff has not proved Ex.A6 in the manner known to law by examining the attestors. The trial Court committed a mistake making reliance upon the evidence of P.W.2, who is not an attestor and therefore, the decree and judgment of the Courts below will have to be set aside for non compliance of the Indian Evidence Act.

6. The learned counsel appearing for the respondent submits that the findings rendered by the Courts below are not perverse. In the written statement, no specific denial has been raised and so is the case in the evidence of the defendants 3 and 4/appellants and hence, no interference is required.

7. The appellants in their evidence as P.Ws.1 and 3 admitted that there is a division of family properties between them and Gangadharan. They have also admitted that the suit property, which has been mentioned in Ex.A6, has been assigned in favour of Gangadharan. There is a further statement by them it is that property, which has been given in favour of the plaintiff by Gangadharan. Therefore, the lower appellate Court has taken into consideration of the evidence given by the appellants as P.Ws.1 and 3 coupled with the averments made in the written statement. Though the learned counsel for the appellant seeks to rely upon paragraph 2 of the written statement, such a statement has to be read as a whole. There is no serious challenge to the execution of document as rightly found by the lower appellate Court. P.W.2 has stated that he has seen the execution of Ex.A6. This has been taken note of by the Courts below. There is nothing wrong in adopting the said yardstick. Therefore, the Courts below have taken into consideration the presumption with reference to the registration of document coupled with the evidence of D.Ws.1 and 3 and the written statement. When the Courts below have concurrently taken a view, this Court does not find

any reason to interfere with the same in exercise of power under Section 100 of Code of Civil Procedure. It is also not in dispute that the appellants got their respective shares pursuant to the partition made with Gangadharan. Accordingly, the substantial questions of law raised are answered in favour of the respondents and the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

09.02.2017

raa

To

- 1.Principal District Court,
Villupuram.
- 2.Principal District Munsif Court,
Thirukovilur.

M.M.SUNDRESH, J

raa

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