

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 11.01.2017****PRONOUNCED ON : 23.01.2017****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No.361 of 2011****and****M.P.No.1 of 2011**

Singaravel

...

Appellant

Vs.

1.Balamurugan

2.Kasinathan

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 26.11.2010 passed in A.S.No.11 of 2008 on the file of the Principal Sub Court, Vridhachalam, reversing the judgment and decree dated 20.12.2005 passed in O.S.No.573 of 2000 on the file of the Second Additional District Munsif Court, Vridhachalam.

For Appellant

: Mrs.Hema Sampath
for M/s.R.MeenalFor Respondent
No.1: Mr.S.Mukundan
for M/s.Sarvabhauman AssociatesFor Respondent
No.2

: No appearance

JUDGMENT

Challenge in this second appeal is made by the first defendant against the judgment and decree dated 26.11.2010 passed in A.S.No.11 of 2008 on the file of the Principal Sub Court, Vridhachalam, reversing the judgment and decree dated 20.12.2005 passed in O.S.No.573 of 2000 on the file of the Second Additional District Munsif Court, Vridhachalam.

2. The second appeal has been admitted and the following substantial question of law is formulated for consideration in this second appeal

“ Whether the judgment and decree of the first appellate court in accepting the case of the plaintiff are based upon the perverse findings and misdirected against the evidence on record?”

3. The suit has been laid by the plaintiff for declaration, possession, permanent injunction, mandatory injunction and mesne profits.

4. It is admitted that the suit properties originally belonged to Periyathangal Ammal. The plaintiff claims title to the suit properties by way of the settlement deed dated 17.11.1993 executed in his favour by Periyathangal Ammal, which has been marked as Ex.A2. The defendants, who are the sons of Periyathangal Ammal, claim title to the suit properties by way of the settlement deed dated 21.10.1993 executed in their favour by Periyathangal Ammal, which has been marked as Ex.B1. Therefore, it could be seen that both rival parties claim title to the suit properties from Periyathangal Ammal under different settlement deeds. It is found that Ex.B1 is dated 21.10.1993 whereas, Ex.A2 is dated 17.11.1993. Therefore, it could be seen that Ex.B1 has come to be executed by Periyathangal Ammal in favour of the defendants anterior to Ex.A2. No doubt Ex.B1 has come to be registered only on 28.12.1993. In this connection, reliance is placed on Section 47 of the Indian Registration Act by which the defendants claim that even though it was registered subsequently, but, since it was registered within the time allowed by law, Ex.B1 will operate from the date of execution i.e. 21.10.1993 and according to them, their settlement deed being the first deed executed by Periyathangal Ammal, after Ex.B1, Periyathangal Ammal ceased to have any title in

respect of the suit properties and therefore, according to them, Ex.A2 settlement deed would not confer title on the plaintiff in respect of the suit properties and further, Periyathangal Ammal would not have any legal competency to execute Ex.A2 settlement deed after Ex.B1 settlement deed.

5. As regards this case is concerned, it is found that both settlement deeds, based upon which the rival parties are claiming title have come to be executed by the same person. As regards the plaintiff's case is concerned, the first defendant in his written statement has specifically taken a plea that Ex.A2 settlement deed has not been executed by Periyathangal Ammal in favour of the plaintiff and the same has not been acted upon and the plaintiff cannot claim any title under the same in respect of the suit properties. It is also found that the second defendant has also taken a plea that Ex.A2 settlement deed would not confer any title on the plaintiff in respect of the suit properties.

6. However, the first appellate court has proceeded on the footing that the second defendant has admitted the execution of Ex.A2 by Periyathangal Ammal in favour of the plaintiff in respect of the suit

properties in his written statement. On the other hand, as rightly argued by the first defendant's counsel, a reading of the written statement filed by the second defendant in its entirety would go to show that the second defendant has disputed the validity of Ex.A2 settlement deed and also pleaded that the plaintiff has no cause of action to lay the suit on the basis of the said settlement deed. In toto, it could be seen that the defendants have vehemently disputed the execution of Ex.A2 settlement deed by Periyathangal Ammal in favour of the plaintiff. In such view of the matter, on noticing the defence raised by the defendants, it could be seen that the plaintiff having come forward with the case seeking necessary reliefs on the basis of Ex.A2 settlement deed, as per the proviso appended to Section 68 of the Indian Evidence Act, 1872, has to establish Ex.A2 settlement deed in the manner known to law, at least, by examining one of the attestors to the document concerned. However, for the reasons best known to the plaintiff, he has not chosen to examine even one of the attestors to the document to establish his case. No reason has been adduced by the plaintiff for the same. As seen above, the first appellate court has proceeded on the basis that the second defendant has accepted the genuineness of Ex.A2 settlement deed in his written statement, however, the position is otherwise as seen above. Even

then, when the first defendant has disputed the settlement deed relied upon by the plaintiff, lock, stock and barrel, it is incumbent upon the plaintiff to establish his title deed in the manner known to law i.e. to prove its authenticity, the plaintiff should have examined, at least one of the attestors to the document. However, the plaintiff has failed to establish the genuineness of Ex.A2 settlement deed by examining one of the attestors to the document as required by law. Therefore, the conclusion of the first appellate court in accepting the plaintiff's case without the plaintiff establishing the authenticity of the title document as such cannot be countenanced in any manner.

7. That apart, the defendants have raised a plea that the settlement deed relied upon by the plaintiff has not been acted upon and pursuant to the same, the plaintiff has not taken possession of the suit properties and enjoyed the same. There is no evidence on the side of the plaintiff to hold that Ex.A2 settlement deed had been acted upon by the plaintiff and pursuant to the same, the suit properties are in the possession and enjoyment of the plaintiff. No document has been placed by the plaintiff to show that he has taken possession of the suit properties pursuant to Ex.A2 settlement deed. The kist receipts filed on behalf of the plaintiff as Exs.A3 to A5 stand in the

name of Periyathangal Ammal. Therefore, the above documents do not advance the case of the plaintiff in any manner.

8. It is also found that the plaintiff has laid the suit only for possession. The plaintiff has failed to establish the plea of trespass of the defendants into the suit properties as claimed in the plaint. On the other hand, according to the defendants' case, they were in possession and enjoyment of the portion of the suit properties, even prior to Ex.B1 settlement deed, by way of oral partition, effected amongst the brothers. According to the defendants, as per the oral partition effected, they are in possession and enjoyment of 0.51 cents in the first item of the suit properties and 0.01 cent in respect of the second item of the suit properties. It is also their case that the plaintiff's father is in possession of the remaining 0.01 cent in the second item of the suit properties. Further, according to the defendants, their mother Periyathangal Ammal had executed the settlement deed in respect of the suit properties under Ex.B1 in their favour.

9. The first appellate court has, by holding that the defendants have admitted the settlement deed Ex.A2, in its entirety, proceeded to analyse the defence of the defendants and accordingly, found that the

defendants have not established their settlement deed in the manner known to law, disbelieved their version and thereby upheld the plaintiff's case. However, as rightly argued by the defendants' counsel, since the plaintiff has come forward with the suit seeking for necessary reliefs, he has to stand or fall on the strength of his own case. The onus of proof squarely rests on the plaintiff. Only after the discharge of the said onus, it is shifted to the defendants to prove their case. In so far as this case is concerned, as rightly put forth by the defendants' counsel, the plaintiff has not established the authenticity of Ex.A2 in the manner known to law by calling upon one of the attestors in support of the same. The plaintiff has not placed any evidence to hold that Ex.A2 settlement deed has been acted upon and accepted by the plaintiff, no evidence is forth coming with reference to the same. As rightly found by the courts below, the encumbrance certificate marked as Ex.A6 cannot be safely relied upon as it does not reflect Ex.B1 settlement deed. Therefore, the courts below have rightly discarded Ex.A6 from consideration.

10. In such view of the matter, when there is nothing placed on record to uphold the plaintiff's case either as regards the authenticity of Ex.A2 in the manner known to law or as regards the acceptance of

the gift deed by the plaintiff in the manner known to law, iIt could be seen that the first appellate court has erred in analysing the defendants' version, thereby picking holes in the defendants' case, had upheld the plaintiff's case without material on record. The above approach of the first appellate court is found to be erroneous and not acceptable.

11. The defendants placed reliance upon the decisions reported in **(2011) 12 Supreme Court Cases 220 (Rangammal Vs.Kuppuswami and Another)** and **2013 (1) CTC 318 (Kali Naicker and two others Vs. Jaganathan and two others)**. The principles of law outlined in the above decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

12. In the light of the above discussions, the first appellate court has erred in upholding the plaintiff's case by misdirecting itself improperly against the evidence on record and also upon the erroneous and perverse findings, without any proof on the side of the plaintiff to hold that Ex.A2 settlement deed had been executed by Peirathangal Ammal and the same had been acted upon and accepted

by the plaintiff. In such view of the matter, the substantial question of law formulated for consideration in this second appeal is answered in favour of the defendants and against the plaintiff.

In conclusion, the judgment and decree dated 26.11.2010 passed in A.S.No.11 of 2008 on the file of the Principal Sub Court, Vridhachalam are set aside and the Judgment and decree dated 20.12.2005 passed in O.S.No.573 of 2003 on the file of the Second Additional District Munsif Court, Vridhachalam are confirmed and accordingly, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2017

Index : Yes/No
Internet: Yes/No
sms

To

1. The Principal Sub Court, Vridhachalam.
2. The Second Additional District Munsif Court, Vridhachalam.

T.RAVINDRAN,J.

sms

**Pre-delivery Judgment in
S. A.No.361 of 2011
and
M.P.No.1 of 2011**

23.01.2017

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