

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2017

CORAM:

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

S.A.Nos.601 and 602 of 2011

S.A.No.601 of 2011:

1. A.G.Agnes (deceased)
 2. Irudayaraj
 3. Dalala
 4. G.Lourders Latha
 5. G.Simrose
 6. G.Antony Raja
 - 7.G.Irish Lourdhu Mary
- ... Appellants/Defendants and
Lrs of deceased defendant 3

(Appellants 4 to 7 brought on record as
L.Rs. of the deceased 1st Appellant, vide
order of the Court dated 10.01.2017)

vs.

1. Pushparani
 2. A.Mercy Leena
 3. A. Stella
 4. A.Mathews
 5. V.Elizabeth
 6. A.Don Bosco
 7. A.Cyril Jairus
 8. A.Joseph Gerogery
 9. Carmel Mary
- ... Respondents/Plaintiffs

S.A.No.601 of 2011 filed under Section 100 C.P.C. against the judgment and decree of the Additional District and Sessions Judge (FTC No.III), Chennai in A.S.No.102 of 2007, dated 13.11.2009, confirming the common judgment and decree dated 21.09.2005 passed by the XII Assistant Judge, City Civil Court, Chennai in O.S.No.1833 of 2001.

S.A.No.602 of 2011:

1. A.G.Agnes (deceased)
2. G.Lourders Latha
3. G.Simrose
4. G.Antony Raja

5. Irudhayaraj
6. G.Irish Lourdhu Mary
- 7.G.Ranjani Delailah

... Appellants/Plaintiff and
Lrs of deceased Plaintiff

(Appellants 2 to 7 brought on record as L.Rs. of
the deceased 1st Appellant, vide order of Court
dated 10.01.2017 in M.P.Nos.1 to 3/2014)

vs.

1. Pushparani
2. Mercilina
3. Stella
4. A.Mathews
5. Elizabeth
6. Don Bosco
7. Carmel
8. Jairus
9. Joseph

10. T.Irudaya Mary ... Respondents/Defendants
(R10 given up vide order of this Court, dated 05.01.2017)

S.A.No.602 of 2011 filed under Section 100 C.P.C. against
the judgment and decree of the Additional District and Sessions
Judge (FTC No.III), Chennai in A.S.No.58 of 2007, dated
13.11.2009, confirming the common judgment and decree dated
21.09.2005 passed by XII Assistant Judge, City Civil Court,
Chennai in O.S.No.4121 of 2002.

For Appellants in both Appeals : Mr.K.R.A.Muthukirushnan

For Respondents 1 to 9
in both Appeals : Mr.J.James

C O M M O N J U D G M E N T

As the issue involved in both the appeals is one and the
same, the cases are taken up for disposal by a common judgment.

2. For the sake of convenience, the plaintiff and the 1st
defendant in O.S.No.1833 of 2001 are referred by their names,
viz. Anthony Das and Agnes.

3. The case of the plaintiff in O.S.No.1833 of 2001 viz.
Anthony Das is that the house bearing Old No.9, New No.15, Samy
Reddy Street, Egmore, Chennai belongs to him and he obtained the
property under Settlement Deed dated 23.05.1968 executed by his
mother Mangalam Mariammal and from the date of settlement, he
has been continuously residing in the said property by paying

all taxes and electricity charges and thereby, he and his legal representatives, i.e. respondents 1 to 9 in S.A.No.601 of 2011 have got absolute right, title and interest in the said property.

4. While so, Agnes, the sister of Anthony Das filed a suit in O.S.No.4121 of 2002 contending that the suit property originally belonged to her mother Mangalam Mariammal, who had purchased the same by way of a registered sale deed dated 07.03.1952 and from the date of purchase, her mother was in possession of the property and Agnes and her brother Anthony Das have been living in that property along with their mother. After her marriage, Agnes has been living in the same premises along with her family members. On the death of her mother, her brother Anthony Das attempted to chase her out and he informed that the property was purchased in his favour. After the death of Anthony Das on 24.02.2002, Agnes came to know that she was allotted only a small portion in the suit property, whereas, Anthony Das and his family were allotted a major portion of the suit property. Since, she is entitled to a share in the suit property as also the rental income out of the suit property, Agnes filed the said suit for partition.

5. According to the plaintiff in O.S.No.1833 of 2001, i.e. Anthony Das, the plaintiff in O.S.No.4121 of 2002, viz. Agnes, who is his sister, has two sons and four daughters and when she was in distress, he gave shelter to her by accommodating her and her children freely in one of the rooms in the suit property. However, when Anthony Das wanted to provide separate accommodation in the suit property to his children and demanded Agnes to vacate the suit property, she did not vacate the premises. Hence, Anthony Das caused a legal notice to her to vacate the premises. Even after the receipt of legal notice, since, Agnes did not vacate the premises, having no other alternative, Anthony Das filed a suit for delivery of possession.

6. The Trial Court, on a consideration of the entire oral and documentary evidence, by a common judgment and decree dated 21.09.2005, decreed the suit in O.S.No.1833 of 2001 filed by Anthony Das, as prayed for, specifically mentioning the time for delivery of possession as three months from the date of judgment and dismissed the suit in O.S.No.4121 of 2002. Challenging the said common judgment and decree, Agnes filed two Appeal Suits in A.S.No.58 of 2007 and A.S.No.102 of 2007 and the First Appellate Court, by a common judgment and decree, dated 13.11.2009, dismissed both the appeal suits, thereby confirming the common judgment and decree passed by the Trial Court.

7. Learned counsel for the appellants contended that the Courts below ought to have considered that the deceased Agnes is

also one of the legal heirs of Late Mangala Mariammal and entitled to half-a-share in the suit property. He added that the Courts below wrongly appreciated Ex.A2 - Settlement Deed, dated 23.05.1968 marked in O.S.No.1833 of 2001, whereby, the entire suit property is said to have been settled in favour of Anthony Das, even though he is entitled to only half-a-share in the suit property. Hence, according to the learned counsel, Ex.A2 is not a genuine document and it is a forged one.

8. In reply, learned counsel appearing for the respondents submitted that the Courts below have rightly held in favour of the deceased Anthony Das. It is his contention that when Ex.A2 - Settlement Deed is disputed by the appellants, the burden is on them to prove that the said document is not a genuine one and the respondents are not bound to prove the same. He further submitted that during the pendency of the Second Appeal, as no stay was granted, the Execution Proceedings continued and possession of the suit property was taken over by the respondents herein.

9. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

10. Substantial questions of law that arise for consideration in this appeal are as follows:

(i) Whether the judgment and decree of the Courts below are legally sustainable on the ground that the Courts below are right in finding that the respondents are entitled for entire extent of suit schedule property under Ex.A2 - Settlement Deed, dated 23.05.1968 by depriving the rights of the other co-sharers, i.e. the 1st appellant, who was already in possession as a joint owner?

(ii) Whether the First Appellate Court is justified in holding that the 1st appellant is a permissive occupant without any reference to evidence and document like Settlement Deed, Ex.A2, even though the 1st appellant was in possession from 1953 till date as a joint owner?

11. It is the case of the appellants herein that the plaintiff in O.S.No.1833 of 2001, i.e. Anthony Das filed the said suit only for delivery of possession and has not sought the relief of declaration. According to them, Ex.A2- Settlement Deed dated 23.05.1966 is not a genuine one and that Mangalam Mariammal, mother of Anthony Das and Agnes, lived in the suit

property till her death along with her children. Whereas, it is the case of the respondents that Anthony Das is the absolute owner of the suit property and that is the reason he had sought the relief of delivery of possession in the said suit.

12. On a perusal of the oral and documentary evidence, it is seen that the suit property originally belonged to Mangalam Mariammal and it was purchased by her by way a registered Sale Deed on 07.03.1962, marked as Ex.A8. Thereafter, Mangalam Mariammal settled the suit property in favour of her son, Anthony Das, by a registered Settlement Deed dated 23.08.1968, marked as Ex.A2. Based on the same, the Trial Court has come to the conclusion that Anthony Das is the absolute owner of the suit property and the First Appellate Court also confirmed the same.

13. To substantiate her claim, Agnes, in her cross-examination has stated that she had contributed amount towards purchase of the suit property, when she was 15 years old, by pledging her jewels. In her reply notice under Ex.A7 to the legal notice issued by her brother Anthony Das, Agnes has stated that the suit property was in a dilapidated condition and in order to reconstruct the same, the owner of the property, i.e. her mother, Mangalam Mariammal reconstructed the said house and even during the construction, she has contributed a lot for developing the superstructure. But, the same is unbelievable, as there is no evidence in support of the same.

14. Also, it is the claim of Agnes that she and her brother, Anthony Das are joint owners of the suit property and hence, she has filed a suit claiming partition. Even assuming that Agnes and Anthony Das are joint owners, Agnes ought to have categorically pleaded as to when she has demanded partition. Moreover, there is no evidence, both oral and documentary in O.S.No.2421 of 2002 to speak about the exact date on which the claim of partition was made. It is pertinent to note that Agnes has filed a suit for partition in O.S.No.4121 of 2002 only after the death of her brother, Anthony Das. Further, even though the defendants in O.S.No.4121 of 2002 have accepted notice, there is no reservation of right with regard to the claim for partition.

15. The First Appellate Court has categorically stated in its judgment that Ex.A2 is a registered Settlement Deed and that name transfer was effected in the name of Anthony Das, which is evident from Exs.A3 and A4. Further, electricity connection was also transferred in the name of Anthony Das and he has also been paying necessary taxes to the Corporation and Municipal authorities. In such circumstances, when the Settlement Deed was acted upon and name transfer in favour of Anthony Das has been effected, if Agnes had really got a right over the suit

property, she would have raised her objection at the earliest point of time. In the absence of any such objection and in view of the revenue records in favour of Anthony Das, the First Appellate Court has rightly come to a conclusion that Anthony Das is the absolute owner of the suit property. Accordingly, the first substantial question of law is answered against the appellants herein.

16. It is further seen that in her cross-examination, Agnes had admitted that the suit property was mortgaged by her mother and her brother Anthony Das in the year 1955, but, she has deposed that she did not know whether the property was purchased in the name of Anthony Das and her mother. She has also admitted that she got married in the year 1956 and she returned to her parent's house in the year 1958 and only on the permission granted by her mother, she was residing in a portion of the suit property.

17. In such view of the matter, the First Appellate Court carefully came to a conclusion that Agnes was residing in the suit schedule property only on the leave and licence by her mother and rightly, it observed that Agnes has not approached the Court with clean hands. Thus, it is clear that Agnes had been living in the suit property only as a permissive occupant. The second substantial question is answered accordingly.

18. Merely because Agnes and Anthony Das were living in the suit property, it cannot be said that they are joint owners of the property. Since it is clear from the material documents that the suit property has been settled in favour of Anthony Das by his mother and that his sister Agnes had been living in the suit property only as a permissive occupant, I find no reason to interfere with the judgment and decree of the First Appellate Court and the same is confirmed.

19. The submission of the learned counsel for the respondents that possession of the suit property was taken over by the respondents is recorded.

In fine, the Second Appeals are dismissed. No costs. Consequently, connected M.P.No.1 of 2011 in S.A.No.601 of 2011 is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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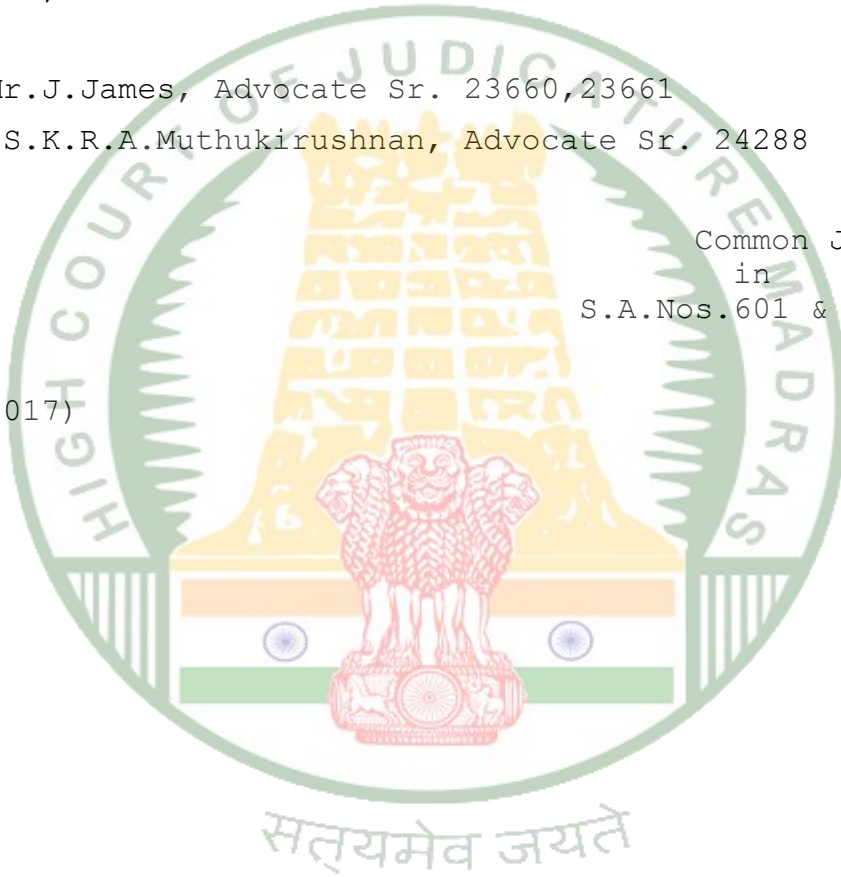
- 1.The Additional District and Sessions Judge
(FTC No.III), Chennai.
- 2.The XII Assistant Judge,
City Civil Court, Chennai.
- 3.The Section Officer, V.R. Section,
High Court, Madras.

+2ccs to Mr.J.James, Advocate Sr. 23660,23661

+1cc to M/S.K.R.A.Muthukirushnan, Advocate Sr. 24288

Common Judgment
in
S.A.Nos.601 & 602 of 2011

NM(CO)
VR(19/06/2017)



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