

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2016

PRONOUNCED ON : 18 .01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.93 & 98 of 2011

and

M.P.Nos.1 & 1 of 2011

Vadivel represented by his power Agent, Kumaraguru	...	Appellant in both second appeals
Vs.		
1. Murugaiyan	...	1 st defendant in S.A.No.93 /2011
2. Palanivel	...	2 nd defendant in S.A.No.93/2011 & Respondent in S.A.No.98 /2011
3. Mageswaran		
4. Mahadevan	...	3 rd and 4 th Respondents in S.A.No.93/2011

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree passed in A.S.Nos.61 of 2007 and 24 of 2007 dated 13.11.2009 on the file of the Court of Sub ordinate Judge, Chidambaram in confirming the Judgment and Decree passed in O.S.Nos.247 of 2003 and 88 of 2003 dated 31.08.2006 on the file of the Court of Principal District Munsif, Chidambaram.

For Appellant in
both S.As. : Mr.A.Muthukumar

For Respondents in : Mr.S.Balasubramanian
both S.As.

COMMON JUDGMENT

S.A.No.93 of 2011

Challenge in this second appeal is made by the plaintiff against the judgment and decree passed in A.S.No.61 of 2007 dated 13.11.2009 on the file of the Sub Court, Chidambaram, confirming the judgment and decree passed in O.S.No.247 of 2003 dated 31.08.2006 on the file of the Principal District Munsif Court, Chidambaram.

S.A.No.98 of 2011

Challenge in this second appeal is made by the defendant against the judgment and decree dated 13.11.2009 passed in A.S.No.24 of 2007 on the file of the Sub Court, Chidambaram confirming the judgment and decree dated 31.08.2006 passed in O.S.No. 88 of 2003 on the file of the Principal District Munsif, Chidambaram.

2. The case of Vadivel pillai, represented by his Power agent of V.Kumaraguru in O.S.Nos.247 of 2003 and 88 of 2003, is as follows:

The suit properties originally belonged to Murugesam Pillai and he had three sons viz., Subbaiah Pillai, Ramanujam @ Velayutham Pillai and Natarajan Pillai. On 14.05.1925, Murugesam Pillai executed a settlement deed in favour of his son Subaiah Pillai, whereby, he settled the suit properties and other properties absolutely and the same was true and valid document and accepted and acted upon. Subbaiah Pillai, pursuant to the settlement, had been in possession and enjoyment of the suit properties. His wife is Thillai ammal. Subbaiah Pillai and Thillai ammal have no issues. On 03.03.1965, Subbaiah Pillai and Thillai ammal executed a registered settlement deed in favour of Vadivel Pillai, the plaintiff settling all their properties including the suit properties and the above said settlement deed was a true and valid document and accepted and acted upon. Under the settlement deed, Subbaiah Pillai and Thillai ammal had given a absolute right to Vadivel Pillai with a condition that he has to perform the obsequies after their death and accordingly, Vadivel Pillai, the plaintiff has done their obsequies and he has been in possession and enjoyment of all the properties including the suit properties. The defendants 2 to 4 in O.S.No.247 of 2003 are the sons of Natarajam Pillai and the first

defendant is the son of Velayutham Pillai. The defendants wanted to purchase the settlement properties from the plaintiff for a very low price, but the plaintiff refused. On the other hand, the plaintiff Vadivel Pillai sold one of the items of settlement properties to Rajavelu S/o. Anda Pillai and in connection with the same, there is a suit in O.S.No.111/2002 pending before the District Munsif Court, Chidambaram. The second defendant has also laid a suit in O.S.No.88 of 2003 against the plaintiff seeking the relief of permanent injunction. Enraged at the refusal of the plaintiff to sell the properties to the defendants, the defendants joined together and interfered with the plaintiff's possession and enjoyment in respect of the suit properties. On 20.02.2003, the plaintiff issued a notice and to the same, a reply notice dated 15.03.2003 was issued containing false and untenable allegations. It is false to state that the settlement deed dated 03.03.1965 is an invalid document and it was never accepted and acted upon by the plaintiff Vadivel Pillai. It is false to state that obsequies of settlors of the above settlement deed were not performed by the plaintiff. The defendants, during absence of the plaintiff, trespassed into the suit properties and hence, the plaintiff has been necessitated to file the suit for declaration and possession and inasmuch as the second defendant Palanivelu has no right over the suit properties and also not in legal possession and enjoyment of the suit properties, he is not entitled to seek the relief of permanent injunction

against the plaintiff.

3. The case of the defendants, in brief, is as follows;

The suit is not maintainable either in law or on facts. The second defendant is the absolute owner of the suit properties and he has obtained patta and been paying kist for the same in his name and also, obtained agricultural loan for raising crop in the suit properties. Further, the second defendant has also perfected his title by his continuous possession and enjoyment of the suit properties by way of adverse possession. One Rajavelu, who is inimical towards the defendants and their family, has created trouble and at this instance, the plaintiff has come forward with the suit seeking the reliefs of declaration and possession. The plaintiff Vadivel Pillai has no right or interest over the suit properties. It is false to state that the second defendant and the other defendants have trespassed into the suit properties illegally during the absence of Vadivel Pillai. On the other hand, it is only the second defendant, who has been in possession and enjoyment of the suit properties all along and inasmuch as the plaintiff has threatened and attempted to interfere with the possession and enjoyment, he has been constrained to file the suit in O.S.No.88 of 2003 for the relief of permanent injunction. The settlement deed relied upon by the plaintiff dated 03.03.1965 is invalid and no title could be derived by the plaintiff under the same. The plaintiff did not

perform the obsequies of Subbaiah Pillai and Thillai ammal and there is no cause of action for laying the suit. Hence, the suit is liable to be dismissed and the suit filed by the second defendant is to be decreed as prayed for.

4. Both O.S.Nos.247 of 2003 and 88 of 2003 were jointly tried and common evidence was recorded. The evidence recorded in O.S.No.88 of 2003 was treated as evidence in O.S.No.247 of 2003.

5. In support of the plaintiff's case, PW1 to 3 were examined and Exs.A1 to 27 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to 4 were marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for in O.S.No.88 of 2003 and dismissed the suit in O.S.No.247 of 2003. Vadivel Pillai had preferred the first appeals and the first appellate court also dismissed the appeals filed by him and confirmed the judgment and decree of the Courts below. Challenging the same, the present second appeals have been laid.

7. Second appeals were admitted and the following substantial questions of law are formulated for consideration in these second

appeals.

A. Whether the Courts below erred in law in holding that Ex.B-2, Settlement Deed dated 03/03/1965 is not valid when the executant of Ex.B-2 had admittedly got the said properties under Ex.B-1?

B. Whether the principles embodied in Section 119 of the Indian Succession Act would apply to the Settlement Deeds also?

C. When Subbiah Pillai was admittedly the son of the executant of Ex.B-1 and on failure of the alleged contingent request under Ex.B-2, whether the Courts below erred in law in ignoring that Subbiah Pillai would be entitled to a share in the suit properties and Ex.B-2 is valid to the extent of his share?

D. Whether the Courts below have misconstrued and misinterpreted Ex.B-1 and Ex.B-2 which resulted in dismissal of the suit for possession?

E. Whether the Courts below misconstrued and misappreciated the evidence on record?

8. Vadivel Pillai claims title to the suit properties based upon the settlement deed dated 03.03.1965 said to have been executed in his favour by Subbaiah Pillai. According to him, Subbaiah Pillai derived the suit properties under the settlement deed dated 14.05.1925 said to have been executed by Murugesam Pillai. Certified copy of the settlement deed dated 03.03.1965 has been marked as Ex.B2 and the certified copy of the settlement deed 14.05.1925 has been marked as Ex.B1. The settlement deed dated 03.03.1965, on the basis of which Vadivel Pillai claims title to the suit properties, has been seriously impugned by the respondents. Under such circumstances, it could be seen that the onus of proving that the settlement deed dated 03.03.1965 is a valid document and that the same has been accepted and acted upon by the appellant, is on the appellant.

9. To prove his case, the appellant has examined himself as DW1 and marked the copies of the above said settlement deeds as Exs.B1 and 2. Further, the notice dated 20.02.2003 and the reply notice dated 05.03.2003 have been marked as Exs.B3 and 4. Other than those documents, no other document has been projected by the appellant to sustain his case. It could also be seen that the appellant has also been examined on commission.

10. As rightly found by the courts below, it could be seen that the appellant has renounced the world and leading a hermit life and that he has also severed his connection with his family and also not having any dealing with the suit properties. Therefore, it could be seen that the appellant has completely no connection whatsoever with the suit properties. Therefore, it could be seen that the case has been instituted on his behalf only through his alleged power agent Kumaraguru, stealthily. As rightly found by the Courts below, his power agent has not been examined and even the power of attorney deed has not been produced. Be that as it may. On the basis of the evidence of DW1 by itself, we have to see whether the case of the appellant could be sustained.

11. A perusal of the recitals found in Ex.B1 would go to disclose that under the said document, Murugesan Pillai has only given life interest to Subbaiah Pillai to enjoy the suit properties and absolute interest over the suit properties has been given only to the issues of Subbaiah Pillai. Further, it could also be seen that Subbaiah Pillai has not been given any power of alienation under the said document. Therefore, it could be seen that Subbaiah Pillai would not be competent to alienate or convey the suit properties claiming absolute title. It is also admitted that Subbaiah Pillai and his wife Thillai ammal

have no issues. Therefore, it could be seen that when Subbaiah Pillai and his wife Thillai ammal have no issues and when it is found that Subbaiah Pillai has not been given absolute power under Ex.B1 and also not conferred with the power of alienation, in any manner, it does not stand to reason as to how Subbaiah Pillai would be competent to execute Ex.B2 Settlement deed in favour of the appellant. With reference to the above facts, the appellant is unable to put forth a valid reason.

12. Further, as per Ex.B2 settlement deed, the recitals are that the appellant should take care of Subbaiah Pillai and his wife and maintain them and also perform their last rites and obsequies after their death. With reference to the above facts, there is no material produced on the side of the appellant to show that after Ex.B2 settlement deed was executed, Subbaiah Pillai and his wife had been living with the appellant. No material is projected to show that the appellant and Subbaiah Pillai and his wife Thillai ammal were living together and that the appellant was looking after them and maintaining them by providing food, clothing, etc., With reference to the above matter, DW1 has admitted that no document has been produced to show that Subbaiah Pillai and Thillai ammal were living with him. Equally, there is also no material produced by the appellant to evidence that he had performed the last rights and obsequies of

Subbaiah Pillai. That apart, it has also not been established by the appellant that he had accepted Ex.B2 settlement deed and taken possession of the suit properties, pursuant to the same. Nil material has been produced by the appellant to evidence that he has taken possession and enjoyment of the suit properties pursuant to Ex.B2 and that he has been exclusively in the possession and enjoyment of the same. On the other hand, DW1 has admitted that it is only the family members of the respondents, who had been helping him in the cultivation of the suit properties. Therefore, absolutely, there is no material on the side of the appellant to show that the gift deed Ex.B2 had been accepted and acted upon and that he had taken delivery of the possession of the suit properties pursuant to the same and that he has been in possession and enjoyment of the suit properties. In any event, when the appellant has not established that Subbaiah Pillai was legally competent to convey the suit properties to him under Ex.B2 settlement deed and when as per the recitals found in Ex.B1, Subbaiah Pillai does not have the right to convey the suit properties to the appellant under Ex.B2, it could be seen that Ex.B2 cannot be termed as a valid document. Therefore, it could also be seen that no legal right would flow to the appellant in respect of the suit properties pursuant to Ex.B2.

13. The counsel for the appellant argued that in any event, on

the failure of the conditions provided under Ex.B1, Subbaiah Pillai being the son of Murugesam Pillai, would be, in any event, entitled to a share in the suit properties as one of the heirs of Murugasem Pillai and therefore, the Courts below should have held that to that extent Ex.B2 settlement deed is a valid document. However, the above contention cannot be accepted straightaway. A perusal of the recitals found in Ex.B1 would go to show that Subbaiah Pillai had already got himself divided from the family by taking away his share i.e. even during the month of December 1921, he has become divided from the family by taking away his share in the family properties. In such circumstances, when Subbaiah Pillai has got himself divided from the family and the suit properties being found to be absolutely owned by Murugasem Pillai and when accordingly, Murugesam Pillai had executed Ex.B1 settlement deed on conditions and when those conditions had failed, it could be seen that Subbaiah Pillai would not be entitled to claim any share in the suit properties. Even if the properties revert back to Murugasem Pillai on the failure of the contingent request provided under Ex.B1, even assuming that Subbaiah Pillai would be entitled to claim a share in the suit properties as one of the heirs of Murugasam Pillai, it has not been explained as to how Ex.B2 settlement deed could be made valid to the extent of his share when it has been found that Ex.B2 settlement deed is an invalid document.

14. In the light of the above discussions, looking at from any angle, it could be seen that even assuming that Subbaiah Pillai would be entitled to claim a share in the properties of Murugaseam pillai, it is for Subbaiah Pillai or his legal heirs to work out his/their remedy claiming the same as per law and the appellant would not be entitled to make a claim to their share based upon Ex.B2 settlement deed, which has been declared to be an invalid document. Therefore, the argument put forth by the appellant's counsel that Ex.B2 settlement deed could not be declared invalid in its entirety, it could be declared to be valid to the extent of the share, to which Subbaiah Pillai would be entitled to get, as one of the heirs of Murugasam Pillai, cannot be accepted, in any manner. If, as pointed out earlier, Subbaiah Pillai had any right over the same, it is for him or his legal heirs to work out his/their remedy subject to the question of limitation and other legal hurdles, if any.

15. The respondents, in particular, the respondent Palanivel claims to be in possession and enjoyment of the suit properties. The plea of unlawful trespass of the suit properties by the respondent as put forth by the appellant has not been established. On the other hand, the appellant himself has admitted that it is only the respondents family members, who had helped him in the cultivation of

the suit properties When the appellant, has not established any legal right or title over the suit properties, as such, his contention that the respondents have unlawfully trespassed into the suit properties and therefore, they are liable to be hand over the possession of the same cannot be countenanced in the eyes of law. The respondent Palanivel has laid the suit in O.S.No.88 of 2003 claiming the relief of permanent injunction on the footing that the suit properties are in his possession and enjoyment and that the appellant is unlawfully causing interference in his possession and enjoyment against the law. When it is found and admitted also that it is only the respondent, Palanivelu, who is in possession and enjoyment of the suit properties and when it has not been shown he has unlawfully trespassed into the suit properties as put forth by the appellant and when it is also found that the appellant has no right to make any claim or right over the suit properties and when it is also found that the appellant has not placed any record to hold that he had been in possession and enjoyment of the suit properties at any point of time, the respondent Palanivel is entitled to protect his possession against all, including the appellant and as rightly argued, it is only the true owners of the suit properties, if at all, who would be entitled to seek recovery of possession from the respondent Palanivel under due process of law and not otherwise. In such view of the matter, it could be seen that the relief of permanent injunction granted in favour of the respondent Palanivelu by the

Courts below cannot be faulted with.

In the light of the above discussions, I hold that the substantial questions of law formulated for consideration in these second appeals are answered in favour of the respondents against the appellant. Hence, the second appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

18 .01.2017

Index : Yes/No
Internet: Yes/No
sms

To

1. The Sub Court, Chidambaram.
2. The Principal District Munsif Court,
Chidambaram.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.Nos.93 & 98 of 2011
and
M.P.Nos.1 & 1 of 2011

18.01.2017

<http://www.judis.nic.in>