



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2017

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A. (MD) No.623 of 2014

and

M.P. (MD) .No.1 of 2014

1.Muthumanickam

2.Seenivasan

.... Appellants/Respondents/
Defendants

Vs.

Arumugam .

... Respondent/ Appellant/
Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the Judgement and Decree, dated 18.11.2013, made in A.S.No.6 of 2011 on the file of the Subordinate Judge, Virudhunagar, reversing the Judgement and Decree of the District Munsif, Virudhunagr, in O.S.No. 207 of 2008, dated 28.10.2009.

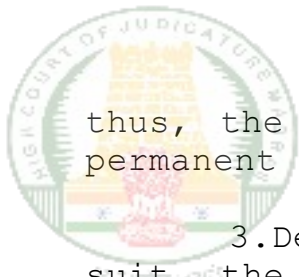
For appellants : Mr.N.Subramanian

For respondent : Mrs.Lakshmi Gopinathan
for M/s.Polax Legal Solutions

JUDGMENT

The unsuccessful defendants are the appellants in a suit for declaration and permanent injunction.

2.The plaintiff and the defendants are relatives. The property originally belonged to one Velusamy Chettiar. Velusamy Chettiar had two wives. The plaintiff is the son of Velusamy Chettiar born through the first wife. After the death of the first wife, the said Velusamy Chettiar married the first defendant, as his second wife. Through second wife, Velusamy Chettiar had two daughters and one son viz., Packiyalakshmi, Vijayalakshmi and the second defendant. After the death of Velusamy Chettiar, the suit properties were enjoyed as joint family properties. On 15.12.1989, it is stated that the daughters of the first defendant and the defendants themselves had executed a release deed in favour of the plaintiff, in respect of their shares in the suit properties after receiving a sum of Rs.20,000/-. Therefore, the plaintiff claims that the suit properties are exclusively belonging to him. The defendants have got no right or title in the suit properties and



thus, the plaintiff had prayed for declaration of title and for permanent injunction.

3. Denying the facts relating to the cause of action of the suit, the defendants had contended that they had never executed any release deed in favour of the plaintiff, after receiving a sum of Rs.20,000/- from the plaintiff. According to the defendants, the allegation of the family arrangement, dated 10.07.1988 is false and fabricated one. The first defendant also claimed that an extent of 1 acre and 6 cents was purchased by him on 26.06.1972, which is his separate property. Thus, they prayed for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiff, the plaintiff himself was examined as PW1 and Exs.A1 to A6 were marked. On the side of the defendants, the second defendant himself was examined as DW1 and another witness was examined as DW2. No documentary evidence was marked on the side of the defendants. After considering the facts and evidences, the trial Court dismissed the suit. But, on appeal by the plaintiff, the first appellate Court had decreed the suit as prayed for. Aggrieved by the same, the defendants have preferred the above second appeal.

5. At the time of admission, only notice was ordered to the respondent.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent.

7. The relationship between the parties are not in dispute. It is the specific case of the plaintiff that the suit properties were joint family properties and after registration of Ex.A4, the suit properties have become his absolute properties. According to the plaintiff, Ex.A4 is a registered document, in and by which the defendants 1 and 2 and the 2nd defendant's sisters, viz., Packiyalakshmi and Vijayalakshmi have relinquished their shares in the suit properties in favour of the plaintiff and received money equivalent to the value of the same. Thus, the entire case devolves upon the proof of Ex.A4, dated 15.12.1989.

8. The plaintiff had specifically stated in the plaint that he got title only based on Ex.A4. The defendants have denied the execution of Ex.A4 in the written statement. However, D.W.1, who is the second defendant, during the cross examination, had specifically stated that he went to the Office of the Registrar to execute the release deed - Ex.A4 and he had further stated that along with him, his mother (first defendant) and his sisters had also come to the Office of the Registrar and they signed in Ex.A4 document. D.W.1 had also categorically admitted his signature in Ex.A4 and also the execution of Ex.A4. Since there is no specific



denial of execution and the execution of release deed is admitted, the first appellate Court had rightly held that Ex.A4 is true and valid.

9. The objection raised by the appellants is that Ex.A4 does not contain any specific mention about the suit properties. But, a perusal of Ex.A4 would reveal that it is with respect to all the properties belonging to the joint family and that the defendants have given up their rights for all the properties belonging to the family, after receiving money equivalent to their shares. The first Appellate Court has also held that since the execution of document is admitted and it is specifically mentioned in the release deed that "the rights in all properties belonging to the family were released in favour of the plaintiff", the defendants now cannot claim any right or title to the same.

10. Even regarding the joint family character of the properties, P.W.1 had stated that after the death of his father - Velusamy Chettiar, all the properties were enjoyed as joint family properties. However, the said evidence of P.W1 was not denied by the defendants in the cross examinations. In fact, it is found that D.W.1 himself had admitted that the suit properties was belonging to his father as joint family properties. Hence, the first appellate Court had held that the suit properties were only joint family properties and for the same, the defendants had executed a release deed in favour of the plaintiff.

11. So far the question of non-payment of money equivalent to their share, as mentioned in the release deed, is concerned, it is for the defendants to take any steps to recover the same. When the execution of the document is admitted by defendants, it is to be taken that the amount mentioned therein have been paid to the defendants.

12. So far the question of possession is concerned, the plaintiff had claimed that he is in possession of the properties and also produced tax receipts in respect of the same as Ex.A5. However, the defendants have not produced any document to prove their possession. Though as per Ex.A1, the patta stands in the name of the plaintiff and the 2nd defendant, the plaintiff has stated that he had already taken steps to change the patta in his exclusive name and given an application to the Tahsildar. As plaintiff had established his title and possession, the first appellate Court had decreed the suit based on the evidences of P.W.1 and D.W.1, and this Court does not find any reason to interfere with the said finding of the first appellate Court. On the above facts, there is no question of law arising for consideration.

13. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed



by the first appellate Court. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar

To

1. The Subordinage Judge,
Virudhunagar.
2. The District Munsif,
Virudhunagar
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

MSA

VB/MR/KKR/SAR4/20/09/2017/4P/4C

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