



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.659 of 2014

WEB COPY

Vairamani

... Appellant/Plaintiff

Vs.

1.R.Chinnadurai

2.Ponmari

... Respondent/Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 13.09.2013 made in A.S.No.9 of 2013, on the file of the Sub Court, Uthamapalayam, confirming the Judgment and Decree, dated 21.06.2012 made in O.S.No.41 of 2010, on the file of the District Munsif Court, Uthamapalayam.

For Appellant : Mr.T.R.Subramanian

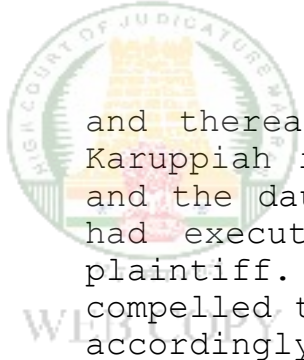
For Respondents : Mr.S.Kadarkarai

JUDGMENT

The above Second Appeal arises against the Judgment and Decree, dated 13.09.2013 passed in A.S.No.9 of 2013, on the file of the Sub Court, Uthamapalayam, confirming the Judgment and Decree, dated 21.06.2012, passed in O.S.No.41 of 2010, on the file of the District Munsif Court, Uthamapalayam.

2.Challenging the Judgment and Decree refusing to grant a decree for declaration that the plaintiff is the owner of the suit property, the plaintiff has filed the above Second Appeal.

3.The suit is filed by the plaintiff for a declaration that she is the owner of the suit property based on the settlement deed executed by the first defendant on 02.01.2007 and for permanent injunction. The suit property is a house property originally belonged to one Subramania Pillai, who had two sons by name Muthu Irulappa Pillai and Punugu Karuppanna Pillai. The said Subramania Pillai himself had settled the properties to both the sons. There is no dispute with respect to the properties allotted to Muthu Irulappa Pillai. The said Punugu Karuppanna Pillai pre-deceased his father Subramania Pillai and the first defendant is the wife of the pre-deceased son. The said Punugu Karuppanna Pillai also had two children, namely Karuppai and Vairamani, who is the plaintiff. After the death of Punugu Karuppanna Pillai, the said Subramania Pillai had executed a settlement deed in respect of the suit property along with some other property by a registered settlement deed, in and by which, the first defendant was to hold it for life



and thereafter, it should go to the son Karuppiyah. The said son Karuppiyah is missing for 14 years. His son is the second defendant and the daughter-in-law is the third defendant. The first defendant had executed a settlement deed on 02.01.2007 in favour of the plaintiff. While so, the defendants 2 and 3 alleged to have compelled the first defendant to cancel the said settlement deed and accordingly, the same was cancelled on 29.12.2008. Pending suit, the first defendant died. According to the plaintiff, the settlement deed, dated 02.01.2007 executed by the first defendant in her favour is valid and the title devolved on her, as per the said settlement deed, is absolute. Hence, sought for declaration and permanent injunction.

4.The suit was resisted by the defendants 2 and 3 denying the right of the plaintiff contending that she is entitled to the property under the settlement deed executed by a person, who had only life estate. The contention of the plaintiff is that the first defendant got the property absolutely by virtue of Section 14(1) of the Hindu Succession Act was denied by the defendants 2 and 3. As the defendants 2 and 3 are in possession of the suit property, after the death of the first defendant, they are alone entitled to the suit property. Hence, sought for dismissal of the suit.

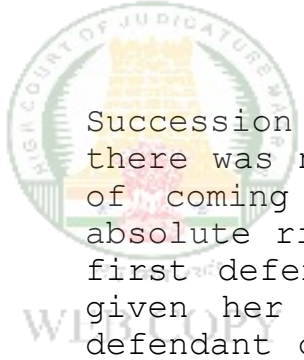
5.Before the trial Court, on the side of the plaintiff, she herself has been examined as P.W.1 and marked Exs.A.1 to A.12 and on the side of the defendants, D.W.1 and D.W.2 have been examined and Exs.B.1 to B.9 were marked.

6.Both the Courts below have concurrently held that the plaintiff is not entitled to the suit relief.

7.The question that arise for consideration is whether the plaintiff is entitled to the suit relief?

8.As per Ex.A.2, Subramania Pillai executed a settlement deed in favour of his daughter-in-law, namely the first defendant and Karuppiyah. As per the said settlement, only a life interest was given to the first defendant and thereafter, it should vest with her son Karuppiyah. The first defendant on the strength of the settlement deed executed another settlement deed, dated 02.01.2007 under Ex.A.3 in favour of the plaintiff, who is her daughter. The relationship between the parties is not disputed. The defendants 2 and 3 claimed that they are in possession of the property even during the life time of the first defendant and continues to be in possession after her death. The plaintiff further contended that even during the life time of the first defendant, the suit property which is a house property was partitioned orally and after the said oral partition, the first defendant had executed a settlement deed in favour of the plaintiff. Therefore, the said settlement deed is irrevocable.

9.On the contrary, the learned counsel appearing for the respondents/defendants contended that Section 14(1) of the Hindu



Succession Act will not have any application to the present case, as there was no pre-existing right for the first defendant on the date of coming into force of the Act which would crystallize into absolute right after the Act. The suit property was obtained by the first defendant under the settlement deed viz., Ex.A.1, which had given her only a life estate. For ensuring the same, the first defendant could not have right to settle the same in favour of the plaintiff. A cursory reading of Exs.A.1 and A.2 settlement deed, shows that the first defendant was given a life interest and thereafter, it should vest with her son Karuppiyah. Therefore, the intention of the executor of Ex.A.2 was to benefit the first defendant only to enjoy during her life time.

10.As stated earlier, when there is no pre-existing right for the limited right become absolute right of the person, Section 14(1) has got no applicability. Admittedly, Ex.A.2 itself came into force only after the coming into force of the Hindu Succession Act, 1956. Therefore, only Section 14(2) of the Hindu Succession Act is applicable to the present case and Section 14(1) cannot be applied as claimed by the plaintiff. In such event, when the first defendant is only a limited owner, she has got no right to alienate or encumber the property as has been done by her under Ex.A.3. Having obtained a settlement deed from a person without title, the defendants 2 and 3 cannot claim any right over the property, much less, claim injunction based on possession. Admittedly, the plaintiff is living in Periyakulam and the possession is only with the defendants 2 and 3. The defendants 2 and 3 have also produced house Tax receipts and also electricity receipts to substantiate their possession. When the plaintiff cannot claim right over the suit property, she cannot claim a decree for injunction. Hence, the Second Appeal deserves to be dismissed and there is no question of law arising for consideration in the present Second Appeal.

11.Accordingly, the Second Appeal fails and the same is dismissed confirming the Judgment and Decree of both the Courts below. No costs.

Sd/-

Assistant Registrar(CRL. SIDE)

/True Copy/

Sub Assistant Registrar

To

1.The Sub Judge,
Uthamapalayam.

2.The District Munsif,
Uthamapalayam.

+1cc to Mr.T.R.SUBRAMANIAN Advocate in SR. No.72708

+1cc to Mr.S.KADARKARAI Advocate in SR. No. 72714

PS

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