



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.08.2017

Coram

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A(MD)No.809 of 2014

and

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

Michael Raj

..Appellant/Respondent/Defendant

Vs.

1.Juliya Rani

2.Bernath Rani

3.Theras Sherin

.. Respondents/Appellants/Plaintiffs

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 06.08.2014, made in A.S.No.3 of 2014 on the file of the Sub Court, Dindigul, reversing the Judgment and Decree, dated 05.08.2013 made in O.S.No.92 of 2009 on the file of the District Munsif Court, Nilakottai.

For appellant : Mr.K.Chengiz Khan

For respondents : Mr.K.K.Ramakrishnan

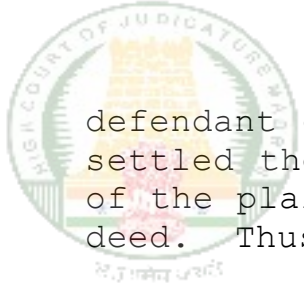
JUDGMENT

This appeal has been filed by the defendant challenging the decree of permanent injunction granted by the Lower Appellate Court in A.S.No.3 of 2014 in favour of the plaintiffs.

2.The case of the plaintiffs is that the father of the plaintiffs and the defendant viz., Martin, had purchased the suit property on 15.12.1981 from one K.Muniandi. From the said date, he has been in possession of the property. The said Martin had three daughters, viz., the plaintiffs / respondents and two sons, viz., the first defendant/appellant and one Arokiya Joseph. The said Martin had executed a settlement deed, dated 05.01.2007, in favour of the plaintiffs. From the date of execution of the settlement deed, the plaintiffs are in possession of the suit property. As the defendant attempted to interfere with the peaceful possession of the plaintiffs, the suit has been filed.

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3.The suit was resisted by the defendant on the ground that the father of the plaintiffs viz., Martin had no income to purchase the suit property. It is also stated that the suit property was purchased out of the joint family income. Since the



defendant questioned the character, his father viz., Martin, had settled the suit property in favour of the plaintiffs. The father of the plaintiffs did not have any right to execute the settlement deed. Thus, he prayed for dismissal of the suit.

4. The Trial Court had dismissed the suit on the ground that the plaintiffs have not produced any document to show their possession and all the documents still continued to be in the name of their father and the father of the plaintiffs though alive, he had not been examined. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.3 of 2014 on the file of Sub Court, Dindigul. The Lower Appellate Court had reversed the findings of the Trial Court and granted the decree of injunction in favour of the plaintiffs. Aggrieved by the same, the above appeal has been preferred by the defendant.

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

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

7. The learned counsel appearing for the appellant / defendant contended that the suit is not maintainable for bare injunction without the prayer for declaration. It is also urged that there was no document filed by the plaintiffs to show their possession.

8. The questions that arise for consideration are:

(a) whether the father of the plaintiffs had title to the suit property?; and

(b) whether the plaintiffs are entitled to the decree for injunction.

9. Admittedly, the parties are Christians. The father of the plaintiffs and the defendant had purchased the property on 15.12.1981 under Ex.A.1 from one K.Muniandi and he had been in possession of the property till he settled the same in favour of the plaintiffs on 05.01.2007 under Ex.A.2. It is not in dispute that the property was originally purchased by the father in his own name. It is contended by the learned counsel for the appellant that the said property was purchased by the father from out of the joint family income. As stated earlier, since the parties are Christians, the question of joint family concept is not applicable to them. When the ownership of Martin is not in dispute, his settlement in favour of the plaintiffs could not be challenged. It is the case of the plaintiffs that they have been in possession of the suit property from the date of settlement and they have been cultivating in the property and as there was no ~~service of process~~ ^{they had to stop doing the cultivation}. When the defendant had not disputed the execution of the settlement deed, the possession under the same cannot be challenged.

10. It is also contended that the father of the plaintiffs and defendant viz., Martin should have been examined to prove the settlement deed. As stated earlier, when the settlement deed executed by the father was not challenged by the defendant, the same need not be proved.

11. The plaintiffs have produced Exs.A.3 to A.5, which are the revenue records in the name of their father and Exs.A6 and A7 viz., patta and tax receipt, which are obtained in their own name subsequent to the filing of the suit. The plaintiffs have also filed their adangal under Ex.A8 to prove their possession. Per contra, the defendant had not produced any document to show that he was dealing with the property or he has been in possession of the same by filing any evidence. In the absence of any other evidence contrary to what has been produced by the plaintiffs, the case of the defendant cannot be sustained. When the title of the settlor is not challenged and also the execution of settlement deed under Ex.A.2 is not challenged, it is not necessary to examine the father of the plaintiffs. When the plaintiffs have proved their title through the settlement deed in their favour and established their continued possession after the same, the plaintiffs are entitled to the decree and accordingly the decree has been granted by the lower Appellate Court. In the absence of any other evidence by the defendant to dispute the case of the plaintiffs, this appeal is not maintainable.

12. In the above circumstances, there is no substantial question of law arising for consideration. The judgment and decree passed by the lower Appellate Court is correct in all respect and the same does not warrant any interference of this Court.

13. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by first appellate Court. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge, Dindigul,

2.The District Munsif , Nilakottai.

3.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+One cc to M/s.K.K.Ramakrishnan, Advocate, SR.No.72286

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