

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No.146 of 2018  
CMP.No.3580 OF 2018

1. D.Savithri  
2. D.Usha  
3. D.Raja  
4. D.Venkatesh .... Appellants/Defendants

-Vs-

P.Sundararajan .... Respondent

PRAYER:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned V Additional District & Sessions Judge, Coimbatore in A.S.No.79 of 2014 dated 26.09.2016 confirming the judgment and Decree of the learned I Additional Subordinate Judge, Coimbatore in O.S.No.501 of 2010 dated 27.06.2014.

For Appellants : Mr.Rajasekhar

For Respondent : Ms.M.Chithira Gomathy for  
Mr.R.N.Amarnath

J U D G M E N T

This Second Appeal has been filed against the judgment and decree dated 26.09.2016 made in A.S.No.79 of 2014 on the file of the learned V Additional District & Sessions Judge, Coimbatore, confirming the judgment and decree dated 27.06.2014 made in O.S.No.501 of 2010 on the file of the learned First Additional Subordinate Judge, Coimbatore.

2. Aggrieved by the unanimous decisions of the Courts below the defendants have preferred the above appeal. The suit is filed for recovery of possession of the 'B' schedule property and directing the defendants to pay the damages and future damages. The case of the plaintiff is that the first defendant is the sister of the plaintiff and the defendants 2 to 4 are her

children. The father of the plaintiff and the first defendant is one Perumalsamy Naidu, who had executed the settlement deed in favour of the plaintiff on 21.04.1971. Since the date of settlement deed, the plaintiff has been in possession and enjoyment of the suit property. During the life time of the mother Muthammal, the first defendant had stayed with her mother in order to help her. There was yet another sister to the plaintiff by name Ranganayaki, who had filed a suit for partition against the plaintiff in O.S.No.599 of 2000 before the I Additional Sub Court, Coimbatore, which had later been transferred to Fast Track Court II and renumbered as OS.No.537 of 2004 and the said suit was dismissed on merits and the defendants preferred the appeal before this Court in AS.No.868 of 2006 and the same was also dismissed. It is stated that in the said suit, the validity of the settlement deed dated 21.07.1971 was upheld. After the death of the mother, on 26.12.2008 the defendants 1 to 4 occupied the suit property and refused to vacate the same without having any right over the same. Hence the suit has been filed for delivery of possession and for damages from January 2009.

3. The suit was resisted by three defendants by filing written statement and adopted by other defendant, on the ground that the settlement deed is bad and that the defendants were not allowed to be in possession as a premissive occupier. The suit filed in OS.No. 537 of 2004 and the appeal preferred before this Court which all admitted by them. It is also their case that the settlement deed was canceled later by Father Perumalsamy Naidu on 04.05.1987. Hence the defendants claimed right in the suit property as the legal heirs to the said Perumalsamy Naidu.

4. Before the trial Court, plaintiff examined P.W.1 and marked Exs.A1. to Ex.A5. On the side of the defendants, D.W.1 was examined.

5. The Courts below had concurrently found that the defendants are not entitled to be in possession of the suit property and decreed the suit. Aggrieved by the same the above appeal has been preferred.

6. Admittedly, this Court in AS.No.868 of 2006 held that the settlement deed dated 21.04.1971 is valid and the subsequent cancellation dated 04.05.1987 of the same by Perumalsamy Naidu is invalid in the eyes of law. As the settlement deed in favour of the plaintiff is upheld by this Court, the plaintiff is having valid title and right over the property. It is further contended by the plaintiff that after the death of their mother, the defendants have trespassed into the suit property and refused to vacate the same. Though it is contended by the appellants/defendants that they are in the possession of the

suit property and has got share, there is nothing on record to substantiate of the claim. When the settlement deed, by which the plaintiff's right has been already declared by this Court and that the defendants have no right over the title to the suit property and also in the absence of any jural relationship between the landlord and the defendant, the possession of the defendants of the suit is unlawful. The defendants have no right to continue to be in occupation of the property and they have to deliver the same to the plaintiff.

7. Accordingly, the Courts below have rightly decreed the suit and directed delivery of possession of the vacant property to the plaintiff/respondent. This Court finds no infirmity in the above said orders to interfere with the same, in the absence of any question of law, much less substantial question of law.

8. The learned counsel for the appellants only prayed for time to vacate from the premises, as they have been living in the suit property from 2008. Considering the relationship between the parties, this Court is of the view that it would be appropriate to grant six months time for the appellants to vacate the premises from the date of receipt of a copy of this judgment.

9. The learned counsel for the appellants also undertakes to file an affidavit to that effect within a week. With the above observations this Second Appeal is dismissed. No costs. Consequently connected civil miscellaneous petition is also closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The V Additional District & Sessions Judge, Coimbatore
2. The I Additional Subordinate Judge, Coimbatore.

+1cc to Mr.Rajasekhar, Advocate, S.R.No.17579  
+1cc to Mr.R.N.Amarnath, Advocate, S.R.No.17693

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GMR (Co)  
CS/17/05/18