

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.284 of 2018

and C.M.P.No.7418 of 2018

K.Senthil .. Appellant/Appellant/2nd Respondent

Vs.

1. K.Panneerselvam ..1st Respondent/1st Respondent/Plaintiff

2. S.Kavitha

3. B.Girija 2 & 3 Respondents/3 & 4 respondents/
3 & 4 respondents

Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 12.07.2017 made in A.S.No.181 of 2016 on the file of the XVI Additional City Civil Court, Chennai, confirming the judgment and decree dated 26.07.2013 made in O.S.No.3262 of 2010 on the file of the XVI Assistant City Civil Court, Chennai.

For Appellant : Mr.Krishna Ravindran

For Respondent : No appearance

JUDGMENT

The Second Appeal is filed against the judgment and decree dated 12.07.2017 made in A.S.No.181 of 2016 on the file of the XVI Additional City Civil Court, Chennai, confirming the judgment and decree dated 26.07.2013 made in O.S.No.3262 of 2010 on the file of the XVI Assistant City Civil Court, Chennai.

2.The second defendant, who is unsuccessful in the Courts below, is the appellant herein. The first respondent filed O.S.No.3262 of 2010 on the file of the XVI Assistant City

Civil Court, Chennai, for declaration that the settlement deed executed by the deceased first defendant in favour of the appellant as null and void and for partition. According to the first respondent, the suit property was allotted by Tamil Nadu Slum Clearance Board, to his father Kannaiah. After his death, the appellant and respondents herein gave no objection to the Tamil Nadu Slum Clearance Board for transferring the allotment in favour of their mother, the deceased first defendant. The Tamil Nadu Slum Clearance Board executed a sale deed in favour of their mother, the deceased first defendant. She is not absolute owner of the property. The appellant and the respondents herein have equal shares in the suit property. The deceased first defendant executed settlement deed in favour of the appellant without having absolute right over the property and it is invalid.

3.The appellant and the deceased first defendant filed written statement and denied all the averments made in the plaint and contended that the suit property is absolute property of the deceased first defendant and the settlement deed executed by the deceased first defendant is valid.

4.The respondents 2 and 3 filed separate written statements and denied that the deceased first defendant is absolute owner of the property and they claimed 1/4th share each in the suit property.

5.Based on the pleadings, the learned trial Judge framed necessary issues. Before the learned trial Judge, first respondent examined himself as P.W.1 and marked 8 documents as Exs.A1 to A8. The respondents 2 and 3 examined themselves as D.W.1 and D.W.2 and no document was filed by them. The appellant and the deceased first defendant did not let in any oral and documentary evidence.

6.The learned trial Judge considering the pleadings and oral and documentary evidence, held that the deceased first defendant is not absolute owner of the suit property and settlement deed executed by the deceased first defendant in favour of the appellant is null and void and decreed the suit.

7.Against the said judgment and decree dated 26.07.2013 made in O.S.No.3262 of 2010, the appellant filed A.S.No.181 of 2016 on the file of the XVI Additional City Civil Court, Chennai. Pending suit, the first defendant, who is mother of the appellant and respondents died.

8.The learned first Appellate Judge framed necessary points for consideration and independently considering all the

materials on record, judgment of the trial Court and arguments of the learned counsel for the appellant and respondents, dismissed the appeal.

9. Against the said judgment and decree dated 12.07.2017 made in A.S.No.181 of 2016, the Second Appeal is filed by the appellant.

10. The learned counsel appearing for the appellant contended that the suit property is absolute property of the deceased first defendant as Tamil Nadu Slum Clearance Board executed sale deed only in favour of the deceased first defendant. The respondents are not entitled to plead contrary to the registered document. Only the deceased first defendant and appellant were residing in the suit property and the settlement deed executed by the deceased first defendant in favour of the appellant is valid. After the death of his father, the first respondent was given compassionate appointment and the appellant was given suit property by oral understanding. The Courts below erred in decreeing the suit and dismissing the appeal based on the evidence of the respondents 2 and 3. The respondents 2 and 3 support the case of the first respondent as they are being benefited by the decree of partition. The Courts below failed to see that the suit property is not ancestral property and the property belongs to the deceased first defendant.

11. Heard the learned counsel for the appellant and perused the materials available on record. Though the respondents entered appearance through caveator, there is no representation on behalf of them.

12. The appellant is challenging the concurrent findings of the fact. The first respondent has come out with a specific case that the suit property was allotted to his father and after his death, based on the consent letters given by the appellant and respondents to the Tamil Nadu Slum Clearance Board, the Tamil Nadu Slum Clearance Board allotted the suit property to their mother, the deceased first defendant. All the legal heirs of Kannaiah have equal shares in the property and the deceased first defendant is not absolute owner of the property. To prove his case, the first respondent examined himself as P.W.1 and marked documents. He deposed that after the death of his father, he was given compassionate appointment in the year 1990 and from that date, he was giving his salary to his mother, the deceased first defendant. From and out of that amount, monthly instalment was paid to the Tamil Nadu Slum Clearance Board. The first respondent has also deposed that his mother, the

deceased first defendant is house wife and she did not have any independent income to pay monthly dues to the Tamil Nadu Slum Clearance Board. The respondents 2 and 3 also gave evidence to that effect. The appellant did not let in any oral and documentary evidence to disprove this contention. Based on the consent letter Ex.A2, the allotment was changed in the name of the deceased first defendant.

13.Both the Courts below considering the pleadings and oral and documentary evidence, have given findings of fact that all the legal heirs of Kannaiah have equal shares in the suit property and settlement deed executed by the deceased first defendant in favour of the appellant is not valid. The claim of the appellant is that he made lot of improvements in the suit property by spending considerable amounts. He has also contended that the third respondent is a permissive occupant and she is not owner of the property. The appellant has not raised these contentions before the Courts below and have not let in any evidence to substantiate his contention. No question of law much less than the substantial question of law has been raised in this Second Appeal.

14.In the result, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The XVI Additional City Civil Court Judge, Chennai.

2.The XVI Assistant City Civil Court Judge, Chennai.

+1cc to Mr.Krishna Ravindran Advocate SR.No.29885

S.A.No.284 of 2018
and C.M.P.No.7418 of 2018

SDR 16.05.2018