

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Second Appeal No.345 of 2018
and C.M.P.No.9573 of 2018

1.Nagammal
2.Bommi @ Rani
3.Kumari

... Appellants/Defendants 2,3,& 6

Vs.

1.M.Siva
2.Jagadeesh
3.Rajendiran

.. Respondents/Plaintiffs/Defendants 5 & 4

PRAYER: Second Appeal filed under Section 100 of C.P.C to set aside the judgment and decree dated 24.02.2017 made in A.S.No.18 of 2015 on the file of the Principal District Court, Tiruvallur, confirming the judgment and decree dated 29.10.2014 made in O.S.No.2 of 2000 on the file of the Sub Court, Poonamallee.

For Appellants : Mr.P.Gopalan

J U D G M E N T

This Second Appeal has been filed to set aside the judgment and decree dated 24.02.2017 made in A.S.No.18 of 2015 on the file of the Principal District Court, Tiruvallur, confirming the judgment and decree dated 29.10.2014 made in O.S.No.2 of 2000 on the file of the Sub Court, Poonamallee.

2.The appellants are the defendants 2, 3 and 6 who lost in both the Courts below. 1st respondent is the plaintiff and respondents 2 and 3 are the defendants 4 and 5 in O.S.No.2 of 2000 on the file of the Sub Court, Poonamallee. The first respondent filed the said suit against the appellants, respondents 2 and 3 and one Mallappa Chowdry. The said Mallappa Chowdry is the first defendant and appellants 1 & 2 and respondents 2 & 3 were defendants 2 to 5 in the suit. The said Mallappa Chowdry died. The 3rd appellant was brought on record as legal heir of the deceased 1st defendant. The appellants 1 and 2 and respondents 2 and 3 were already on record. The parties are referred to as plaintiffs and defendants as arrayed in the suit.

The facts of the case:

3.The plaintiff filed the said suit for declaration that he is the owner of the suit property, recovery of possession and for permanent injunction restraining the defendants from in any manner putting up a pucca building by demolishing the existing tiled house and for permanent injunction restraining the defendants from alienating or encumbering the suit property.

3(a).According to the plaintiff, he is the son of one Eranna Chowdry and Shanthi. One Maluammal is the sister of plaintiff's mother and she did not have any issues. She adopted the plaintiff as her son at the age of three and the said adoption was registered by the deed of adoption dated 10.08.1989 as the Doc.No.498 of 1989. The said Maluammal, by the deed of settlement dated 10.08.1989, registered as Doc.No.6297 of 1989, settled the suit property on the plaintiff and the plaintiff was put in possession of the property on the same day itself. The house tax has been paid in the name of the plaintiff by the said Maluammal, adoptive mother of the plaintiff. The plaintiff is the absolute owner of the suit property. The 1st defendant, Mallappa Chowdry is the brother of Maluammal. The defendants 2 to 6 are wife and children of the 1st defendant. The said Maluammal died on 14.11.1989.

3(b).The defendants 1 to 6 came to the suit property to attend the death of Maluammal, the plaintiff's adoptive mother and to attend the subsequent death ceremonies. On 23.11.1989, the defendants 1 to 5 requested the plaintiff to permit them to reside in the suit property. On 23.11.1989, the plaintiff permitted the defendants 1 to 5 to reside in the suit property as they are close relatives of the plaintiff. The defendants have no right, title or interest over the suit property. The plaintiff in the first week of September, 1999, revoked the permission granted to the defendants 1 to 5 and requested them to vacate and hand over the vacant possession of the suit property. The defendants 1 to 5 claimed ownership of the suit property and refused to vacate the same. They tried to demolish the existing tiled house and put up a new construction. In such circumstances, the plaintiff filed suit for the above stated relief.

4.The 1st defendant filed written statement and denied all the averments. The said written statement was adopted by the defendants 2 to 5. The defendants denied that Maluammal adopted the plaintiff as her son. The Maluammal did not properly and validly execute the settlement deed dated 10.08.1989 in favour of the plaintiff and possession was not handed over to the plaintiff. The said Maluammal was in possession of suit property even after the settlement as owner of the property. The plaintiff was not living in the suit property and he was living in the adjoining village. The 1st defendant only performed the

last rites of Maluammal. The plaintiff did not attend the last rites of Maluammal as there was strained relationship between Maluammal and plaintiff. The defendants denied that plaintiff granted leave and license to the defendants 1 to 5 to live in the suit property.

4(a).The 2nd defendant purchased the property from Maluammal by the deed of sale dated 11.11.1998 and from the date of purchase, the 2nd defendant was in possession of the suit property and all the defendants are living in the suit property. The suit property is worth more than Rs.1,50,000/- and the plaintiff has to calculate the market value of the suit property and pay the appropriate Court fee. The plaintiff is not the owner of the suit property and therefore, he is not entitled for declaration and possession from 2nd defendant, who is the owner of the property.

5.The 2nd defendant filed additional written statement and contended that the suit is barred by limitation. After the 6th defendant was brought on record, he filed written statement, stating that the suit against the 6th defendant is barred by limitation and she had perfected the title by long continuous open adverse possession to the plaintiff.

6.Based on the above pleadings, the learned Trial Judge framed necessary issues. The plaintiff examined himself as P.W.1 and one C.Loganathan was examined as P.W.2 and marked 13 documents as Exs.A1 to A13. The 2nd defendant examined herself as D.W.1 and 6th defendant was examined as D.W.2 and marked 8 documents as Exs.B1 to B8. Letter from the Sub-Registrar, Poonamallee to the Additional District Munsif, Poonamallee was marked as Ex.X1.

7.The learned Trial Judge considering the pleadings, oral and documentary evidence, decreed the suit, holding that Maluammal executed settlement deed on 10.08.1989, marked as Ex.A2 and plaintiff accepted the settlement and unilateral cancellation deed dated 28.08.1989 marked as Ex.B3 is not valid and consequently the sale deed dated 11.11.1989 executed in favour of the 2nd defendant, marked as Ex.B5 is also not valid.

8.Against the said judgment and decree dated 29.10.2014 made in O.S.No.2 of 2000, the defendants 1 to 4 and 6 have filed A.S.No.18 of 2015. The learned I Appellate Judge framed necessary points for consideration. Considering the materials on record and the judgment of the Trial Court, the learned I Appellate Judge dismissed the Appeal, confirming the judgment and decree of the Trial Court. Against the said judgment and decree dated 24.02.2017 made in A.S.No.18 of 2015, the appellants have come out with the present Second Appeal.

9.The learned counsel for the appellants contended that the learned Judge failed to consider that settlement deed settled in favour of plaintiff by his adoptive mother was not proved and when the defendants dispute the said settlement deed, the plaintiff has to prove the existence of the settlement deed as per Section 68 of the Evidence Act. Even after the settlement deed, the settler, Maluammal was in possession and enjoyment of the suit property. In view of the same, Maluammal canceled the settlement deed as per Ex.B3. After the said cancellation dated 28.08.1989, the 2nd defendant purchased the property from Maluammal for valuable consideration by a registered deed dated 11.11.1989, marked as Ex.B5. From the date of purchase, the defendants are in possession and enjoyment of the suit property. The Courts below erred in holding that the cancellation deed is not valid and 2nd defendant did not get any title over the suit property.

10.Heard the learned counsel for the appellants and perused the materials available on record.

11.It is an admitted fact that Maluammal executed and registered Ex.A2, settlement deed dated 10.08.1989 in favour of the plaintiff. From the materials on record, it is seen that the Courts below have considered the recitals in the settlement deed wherein, it has been stated that the plaintiff was put in possession of the suit property. The plaintiff has produced tax receipts to show that he is in possession of the suit property. It is not the case of the defendants that plaintiff, by undue influence and misrepresentation, got the settlement deed executed by Maluammal in his favour. The only ground put forth by the learned counsel for the appellant is that Maluammal canceled the settlement deed as the same was not acted upon. This is not a valid ground for unilateral cancellation of irrevocable settlement deed wherein it has been stated that the plaintiff was put in possession of the suit property. The learned I Appellate Judge has considered the evidence of 2nd defendant that she paid Rs.4,00,000/- as sale consideration, whereas the said Maluammal did not require the said amount as she was bed-ridden and there is no necessity for Maluammal to sell the suit property.

12.On consideration of these facts, the learned I Appellate Judge has held that the sale deed in favour of the 2nd defendant is not supported by proper consideration and it is not valid sale deed. As far as unilateral cancellation of settlement deed alleged to have been executed by Maluammal is concerned, the Courts below have considered Sections 122 and 123 of the Transfer of Property Act, Sections 67 and 68 of the Evidence Act and Sections 64 and 65 of the Limitation Act and judgments relied on by the parties and held that cancellation deed is not

valid and Maluammal has no right to cancel the irrevocable settlement deed marked as Ex.A2. There is no error in the reasons given by the Courts below warranting interference by this Court. No question of law much less than the substantial question of law has arisen in this Second Appeal.

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

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The Judge,
Principal District Court, Tiruvallur.

2.The Subordinate Judge,
Poonamallee.

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and C.M.P.No.9573 of 2018

PA (CO)
SP (31/07/2018)

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