

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.10.2018

DELIVERED ON: 01.11.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.1512 of 2002

Subramanian

... Appellant/ 1st Plaintiff

Vs.

1. Gopal Naicker (died)
2. Poongavanam
3. Anbu
4. Arul
5. Ambika

(Respondents 2 to 5 brought on record as legal heirs of the deceased sole respondent vide order of this court dated 18.09.2018 made in CMP No.155 to 157 of 2011 in S.A.No.1512 of 2002.)

.. Respondents/LR's of the Plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 14.03.2002 passed by the Additional District Judge, Fast Track Court, Kallakurichi in A.S.No.5 of 2002 upholding the decree and judgment dated 31.08.1995 passed by the Additional District Munsif, Kallakurichi in O.S.No.513 of 1986.

For Appellant : Mrs. S.Mythili Suresh
for M/s Sarvabhauman Associates

For Respondents : No appearance

JUDGMENT

The appellant Mr.Subramanian is the first defendant in O.S.No.513 of 1986 on the file of the Additional District Munsif, Kallakurichi. He is also the appellant in A.S.No.5 of 2002 on the file of the Additional District Judge, Fast Track Court, Kallakurichi.

2. The first respondent/plaintiff (since deceased) filed the suit in O.S.No.513 of 1986 before the Additional District Munsif, Kallakurichi seeking for a declaration of his title to the suit property and also for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property.

3. During the pendency of the present appeal, the first respondent/ plaintiff died and his legal heirs were brought on record as respondents 2 to 5.

4. The first respondent/plaintiff claims title to the suit property through a settlement deed dated 19.04.1975 (Ex.A1) and the execution of which is not denied by the appellant/first defendant. However, the appellant/ first defendant contended that Ex.A1 was executed in favour of the first respondent only to prevent his wife (appellant's wife) from claiming maintenance from him. According to the appellant, Ex.A1 is a sham and nominal document. It is also contended that when the properties are not partitioned between the first respondent's father and the appellant's father, the appellant cannot execute a settlement deed in favour of the first respondent, especially, when his son was born on the date of execution of the settlement deed.

5. Both the courts below had concurrently held that Ex.A1 is true and valid and that the first respondent/plaintiff has title to the suit property through Ex.A1.

6. Mrs. Mythili Suresh, learned counsel appearing for the appellant drew the attention of this court to the settlement deed Ex.A1, wherein, it is mentioned as 'a common share' and contended that since the property conveyed through Ex.A1, which is an ancestral property, the appellant did not have any right to execute Ex.A1, especially when his son was born.

7. It is admitted fact that the appellant's father Irusan Naicker and first respondent's father Ramasamy Naicker are brothers. They had two more brothers by name Poomalai and Kalvarayan. They are the sons of Appulu Naicker. Poomalai and Kalvarayan got their respective shares in the properties of the family. Since Irusan Naickeer died, when the appellant/first defendant was a small boy, he was taken care of by the first respondent's father Ramasamy Naicker. Irusan Naicker's share was maintained by Ramasamy Naicker. While so, on 19.04.1975, the appellant/first defendant executed a settlement deed (Ex.A2) in favour of the first respondent/plaintiff (since deceased).

8. Both the courts below after analysing the entire evidence on records, had held that

[i] The patta and other documents clearly show that Ex.A1 was acted upon.

[ii] No documents are produced by the appellant to show that he is in possession of the suit property, even after executing Ex.A1, especially, when he claims that Ex.A1 is a sham and nominal document.

[iii] No documentary evidence was adduced by the appellant that he had a son and the birth certificate is also not filed.

[iv] The appellant was in cordial terms with the family of the first respondent, even during the year 1982 and 1986, as evidenced by the

sale deed dated 06.05.1986 (Ex.A6) executed by the first respondent/plaintiff in favour of the appellant/first defendant and the release deed dated 12.04.1982 (Ex.A7) executed by the appellant in favour of Ramasamy Naicker.

[v] The fifth item of the property in Ex.A1 was conveyed back to the appellant through Ex.A6.

[vi] The appellant did not take steps to cancel the settlement deed (Ex.A1) till date.

[vii] When 5th item of the property in Ex.A1 is purchased by the appellant, he did not take steps to get the other properties settled in favour of the first respondent/plaintiff through Ex.A1.

[viii] When Poomalai and Kalvarayan had got their respective share, it cannot be said that the properties were never partitioned.

[ix] Since the first respondent's father was taking care of the appellant, his share in the properties in Ex.A1 shows "common share".

9. All the above observations made by both the courts below are based on evidence and on sound principles of law. Therefore, I do not see any reason to interfere with the concurrent findings of both the courts below and hence, the second appeal is liable to be dismissed.

10. In the result, the second appeal is dismissed.
No costs.

Sd/-

Assistant Registrar(CS ix)

//True Copy//

Sub Assistant Registrar

mst

To

1.The Additional District Judge, Fast Track Court,
Kallakurichi.

2.The Additional District Munsif, Kallakurichi.

Copy to

The section officer,
VR Section,
High court
Madras

+1cc to M/s Sarvabhauman Associates, Advocate SR.No. 76218

S.A.No.1512 of 2002

ASK (24/12/2018)

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