

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.10.2018

Pronounced on : 25 .10.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.1288 of 2001

Kasiammal

... Appellant/Plaintiff

Vs.

1.Nagammal
2.Vedi Gounder
3. Kuppusamy
4. Sekar
5.Chakravarthi

...Respondents/Defendants

Prayer:- Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and decree to set aside the judgment and decree dated 29.11.1999 in A.S.No.2 of 1999 on the file of Court of the III Additional District Judge, Krishnagiri in confirming the judgment and decree dated 26.10.1998 passed in O.S.No.50 of 1995 on the file of Court of the District Munsif-cum-Judicial Magistrate of Oothangarai.

For Appellant : Mr.P.Mani

For Respondents : Mr.S.Saravanakumar
for Mr.R.Jaikumar

J U D G M E N T

This second appeal has been filed by the plaintiff against the judgment and decree passed by the III Additional District Judge, Krishnagiri in A.S.No.2 of 1999 dated 29.11.1999 confirming the judgment and decree passed by the District-Munsif-cum-Judicial Magistrate, Uthangarai in O.S.No.50 of 1995 dated 26.10.1998.

2. The appellant herein has filed a suit in O.S.No.50 of 1995 on the file of the District Munsif-cum-Judicial Magistrate, Uthangarai, to declare that she is entitled to the suit 'B' schedule property and for delivery of possession of the said property. The learned District Munsif-cum-Judicial Magistrate, by the judgment dated 26.10.1998 has dismissed the said suit. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.2 of 1999 on the file of the III Additional District Judge, Krishnagiri. The learned III Additional District Judge, Krishnagiri by the judgment dated 29.11.1999 has dismissed the said appeal confirming the judgment and decree passed by the

trial court. Feeling aggrieved, the plaintiff has filed the present second appeal. For the sake of convenience, the parties are referred to as described before the trial court.

3. The averments made in the plaint are, in brief, as follows:

The suit 'B' schedule property forms part of the 'A' schedule property. The suit property originally belonged to one Sathiammal w/o.Muthu Gounder. The said Sathiammal is the maternal grandmother of the plaintiff. The said Sathiammal had executed a registered settlement deed dated 25.11.1969 in favour of the plaintiff in respect of the suit properties. The plaintiff has accepted the said gift settlement and she has been in possession and enjoyment of the said properties from the date of the said settlement. The defendants are descendants of the brother of Muthu Gounder and they are adjacent land owners. In or about 1972, the first defendant induced the plaintiff to enter into an exchange deed by perpetrating fraud. The plaintiff who is not worldlywise was made to subscribe her signature in the exchange deed. The said fraudulent deed was never acted upon and possession continued with the plaintiff. The fact remains so, during the Tamil month of Avani 1984, the defendants trespassed and dispossessed the plaintiff from the suit 'B' schedule property. The plaintiff, through mediators requested the defendants to deliver possession of suit 'B' schedule property. The defendants had been avoiding delivery of possession by one pretext or the other. Hence, the plaintiff had sent a lawyer's notice on 19.04.1988 to the defendants demanding delivery of possession of the 'B' schedule property. The defendants had received the said notice but they did not send any reply. Hence the plaintiff has filed the above suit for declaration and delivery of possession of the suit 'B' schedule property.

4. The averments made in the written statement filed by the second defendant and adopted by the other defendants are, in brief, as follows:

(a) The allegations that the plaintiff is the absolute owner of the suit properties and that the suit 'B' schedule property forms part of the 'A' schedule properties are all false. It is true that originally the suit 'B' schedule properties belonged to one Sathiammal W/o. Muthu Gounder. But, the plaintiff has to prove that the said Sathiammal had executed a registered settlement deed dated 25.11.1969 in respect of the suit properties in favour of her and in pursuance of the said settlement deed, she has been in possession and enjoyment of the suit properties. It is true that the defendants are the legal heirs of Muthu Gounder's brother and they are adjacent land owners, but it is false to state that the defendants are not having any right over the suit properties. It is also false to

state that the first defendant had perpetrated fraud on the plaintiff and made her to sign in the exchange deed and it has not come into force. It is also false to state that in the year 1984, the defendants have trespassed into the suit 'B' schedule property and dispossessed the plaintiff. It is also false to state that the plaintiff, through mediators requested the defendants to re-deliver the vacant possession of the 'B' schedule property and the defendants have evaded the same. Since the allegation made in lawyer's notice which was sent by the plaintiff are all false, the defendants did not send any reply.

b) In the year 1951, the said Sathiammal had executed a settlement deed in favour of one Iyam Perumal and Pachiammal in respect of her properties. The said Iyam Perumal is the father of the first defendant. Further the said Iyam Perumal is the son of Muthu Gounder's elder brother. Since Sathiammal is not having male issues and Pachiammal is her only daughter, she executed a registered settlement deed dated 10.07.1951 in respect of 'A' schedule properties therein in favour of Iyam Perumal. She retained life interest in respect of 'B' schedule property and after her life time, the said properties should go to Iyam Perumal. Likewise, she retained life interest in respect of 'C' schedule property and after her death, the said property should go to her only daughter Pachiammal. But subsequently Sathiammal was not getting sufficient income for maintaining herself and hence she made a request to the said Iyam Perumal to re-convey the 'A' schedule property. Accordingly, the said Iyam Perumal had executed a settlement deed dated 22.02.1961 in favour of Sathiammal in respect of the property situated in S.No.671 measuring 1.25 acres with specific boundaries with a condition that after her life time, the said property should come back to him, but the said Sathiammal had executed the settlement deed dated 25.11.1969 in favour of the plaintiff including the said property. But subsequently, the said Sathiammal had executed a settlement deed dated 27.09.1973 in favour of the first defendant who is the legal heir of the said Iyam Perumal in respect of the property situated in S.No.671 measuring about 1.25 acres and also delivered possession. From that date onwards, the first defendant is in possession and enjoyment of the said property. The total extent of S.No.671 is 02.18 acres, out of which, 1.25 acres was acquired by the first defendant as per settlement deed dated 27.09.1973 and the remaining 94 cents acquired by the first defendant through her father Iyam Perumal. So, the plaintiff is not having any right in the property situated in S.No.671.

(c) As far as the property measuring 75 cents situated in S.No.8/2 is concerned, it was originally belonged to the first defendant and her mother Pachiammal and as per the exchange deed

dated 07.08.1979, the said property was given to the plaintiff and she is in possession of the same from that date onwards. Under the same exchange deed, the property measuring about two acres with specific boundaries situated in S.No.8/2 which was originally belonged to the plaintiff, given to the first defendant and her mother Pachiammal. From that date onwards, the first defendant and her legal heirs are in possession and enjoyment of the item No.1 of the suit 'B' schedule properties. The plaintiff has not taken any steps to set aside the said exchange deed and after twelve years, she cannot take a plea that the said exchange deed was obtained by fraud. Even assuming that the defendants have not acquired any right in pursuance of the said exchange deed, since the defendants are in possession of the said properties for more than statutory period, they perfected title by adverse possession also. Therefore, the defendants prayed to dismiss the above suit.

5. Based on the aforesaid pleadings, the learned District Munsif-cum- Judicial Magistrate, has framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined herself as PW1 and also examined one more witness as PW2. She has marked Exhibits A1 to A6 as exhibits. On the side of the defendants, the second defendant was examined as DW1 and two more witnesses were examined as DW2 and DW3. They have marked exhibits B1 to B13 as exhibits.

6. The learned District Munsif-cum-Judicial Magistrate, after considering the materials placed before him dismissed the suit with costs. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.2 of 1999 on the file of the III Additional District Judge, Krishnagiri. The learned III Additional District Judge has dismissed the said appeal confirming the judgment and decree passed by the trial court. Feeling aggrieved, the plaintiff has filed the present second appeal.

7. This court at the time of admitting the second appeal has formulated the following substantial question of law:

"Whether in law Exhibit B4 settlement deed is valid when the settlor even long prior to the execution of Exhibit B4 Settlement Deed already settled the very same property in favour of the plaintiff under Exhibit A1 settlement deed and when Exhibit A1 settlement deed was already acted upon prior to the execution of Exhibit B4 Settlement Deed?"

8. Heard Mr.P.Mani, learned counsel for the appellant and Mr.S.Saravanakumar for Mr.R.Jaikumar, learned counsel for the respondents.

9. Substantial Question of Law:

The learned counsel for the appellant/plaintiff has submitted that the Courts below ought to have held that the Ex.B.1, Exchange Deed was not acted upon and hence the plaintiff is entitled for delivery of possession of Item No.1 of the suit 'B' schedule properties. He further submitted that after executing Ex.A.1 Settlement Deed dated 25.11.1969 in favour of the plaintiff, including the Item Nos.2 and 3 of the suit 'B' schedule properties, the said Sathiammal had no right to execute Ex.B4 Settlement Deed dated 27.09.1973 in favour of the first defendant. He further submitted that the Courts below erred in holding that the plaintiff is not entitled to the suit 'B' schedule properties. He further submitted that the Courts below failed to consider that it is for the defendants who claimed adverse possession to establish their possession for more than twelve years prior to the institution of the suit. He further submitted that the plaintiff has proved her case by adducing oral and documentary evidence, but the Courts below had erroneously held that the suit 'B' schedule properties belonged to the defendants and therefore, he prayed to allow the second appeal and set aside the Judgments and Decrees of the Courts below and decree the suit as prayed for.

10. Per Contra, the learned counsel for the respondents/defendants has submitted that the plaintiff has taken a plea of fraud in executing Ex.B1 Exchange Deed dated 07.08.1979 and in such a case, she should have filed a suit within three years to declare that the said document was obtained by playing fraud. He further submitted that she has not filed any such suit within three years and she has filed the present suit after twelve years and even in this suit, she has not asked any declaration that the said exchange deed is not valid. He further submitted that P.W.1 had admitted in her evidence that in pursuance of the said Ex.B.1 Exchange Deed, the properties were exchanged and in such a case, it is not open to her to question the validity of the said Ex.B1 Exchange Deed. He further submitted that as per Ex.B2 dated 10.07.1951, the second Item of the Suit 'B' schedule properties was given to the first defendant's father Iyam Perumal by the said Sathiammal and subsequently as per Ex.B.3 dated 22.02.1961, the said Iyam Perumal had re-settled the said property to the said Sathiammal by giving life interest alone and after her death, the said property should go to the said Iyam Perumal and his legal heirs and that being so, the said Sathiammal is not entitled to include the said property in Ex.A1 Settlement Deed dated 25.11.1969. He further submitted that the said Sathiammal herself executed Ex.B4 Settlement Deed dated 27.09.1973 in favour of the first defendant in respect of Item No.2 of the suit 'B' schedule properties and therefore, the plaintiff is not entitled to ask the said property, by relying upon Ex.A.1 Settlement Deed. He further submitted that in so far as Item

No.3 of suit 'B' schedule property is concerned, the said Sathiammal had clearly stated in Ex.A.1 Settlement Deed dated 25.09.1961 that the said property should be enjoyed by her till her life time and after her death the said property should go to Pachiammal and the said Pachiammal is the wife of Iyam Perumal and after her death, the defendants have inherited the said property and they are in possession and enjoyment of the same. He further submitted that the plaintiff was never in possession of the aforesaid properties and hence, the Trial Court has rightly dismissed the plaintiff's suit and the same has been confirmed by the First Appellate Court and in the said factual concurrent findings, this court cannot interfere and therefore he prayed to dismiss the second appeal.

11. There is no dispute that the suit 'B' schedule properties were originally belonged to one Sathiammal who is the maternal grandmother of the plaintiff. According to the plaintiff, the said Sathiammal under Ex.A.1 Settlement Deed dated 25.11.1969 had settled the said 'A' Schedule properties in favour of her and the suit 'B' schedule properties forms part of the suit 'A' schedule properties and the defendants have trespassed into the 'B' schedule properties in the year 1984 and dispossessed her from the said properties and hence, the defendants should be directed to deliver the suit 'B' schedule properties to her.

12. The case of the defendants is that the said Sathiammal had executed Ex.B2 Settlement Deed dated 10.07.1951 in favour of the first defendant's father namely Iyam Perumal Gounder and one Pachiammal and in the said Settlement Deed, Item No.2 of the suit 'B' schedule properties was absolutely given to the said Iyam Perumal, Item No.3 was given to one Pachiammal. Their further case is that as per Ex.B.1 Exchange Deed dated 07.08.1979, Item No.1 of the suit 'B' schedule properties was given to the first defendant and her mother Pachiammal and in turn 75 cents were given to the plaintiff and therefore, the plaintiff is not entitled to ask any relief in respect of the aforesaid properties.

13. In Paragraph No.5 of the Original Complaint, the plaintiff has stated that the defendants by practicing fraud in or about the year 1972, induced the plaintiff to enter in to an exchange deed whereby, the said deed of exchange was never acted upon. The plaintiff while examining herself as P.W.1. during cross examination, she has admitted the execution of the said exchange deed and hence it was marked through her as Ex.B1. Further, she has admitted in the chief-examination itself that after execution of the said exchange deed, she has handed over the suit property to the defendants. Further, in cross-examination also, she has admitted that as per the said exchange deed, in Survey No.8/2, 75 cents were given to her. So, it is

clear that the Ex.B.1 Exchange Deed was acted upon and only in pursuance of the said exchange deed, the first defendant and her mother Pachiammal gave their 75 cents in Survey No.8/2 to the plaintiff and in turn, the plaintiff gave two acres in the said Survey Number to them. Further, Ex.B1, Exchange Deed was executed on 07.08.1979. If the said document was obtained by the defendants by playing fraud, as per Section 19 of the Indian Contract Act, 1872 it is only a voidable contract and not void contract. She should have filed a suit within three years to set aside the said document as it was obtained by fraud. Even in the present suit she has not asked to set aside the said document. Therefore, the said document will bind upon her. She cannot ignore the said document.

14. In so far as Item No.2 of the 'B' schedule property is concerned, the said property is situated in R.S.No.671 measuring about 1.25 acres. The said property was given to the first defendant's father namely Iyam Perumal under Ex.B.2 dated 07.02.1951 absolutely by the said Sathiammal. Subsequently, the said Iyam Perumal vide Ex.B.3 (Settlement Deed dated 22.02.1961) had settled the said property to the said Sathiammal by giving life interest and after her death, the property should go back to him and his legal heirs. So, in respect of the said property, the said Sathiammal is having only life interest. She cannot alienate the said property. But, she included the suit property also in Ex.A.1 Settlement Deed dated 25.11.1969. Since the said Sathiammal had only a life interest in the aforesaid property, she cannot alienate the said property. Therefore, Ex.A.1 Settlement Deed will not bind upon the said Iyam Perumal in so far as the property situated in R.S.No.671 measuring about 1.25 acres (Item No.2 of 'B' schedule properties).

15. The said Sathiammal had executed a Settlement Deed dated 27.09.1973 (Ex.B4) in favour of the first defendant in respect of the Item No.2 of the suit 'B' schedule properties. As already stated that as per Ex.B.3, only life interest was given to the said Sathiammal and as such, she had no right to alienate the said property. Therefore, the said Sathiammal had no right to execute Ex.B4 in favour of the first defendant. However, as per Ex.B.3, after the death of the said Sathiammal, the said property should go to settlor namely Iyam Perumal and his legal heirs. So, even if it is assumed that as per Ex.B.4, no title was passed on to the first defendant, she is being a legal heir of the Original settlor namely Iyam Perumal, by virtue of Ex.B.3, after the death of Sathiammal, the said property should go to the first defendant. Therefore, the plaintiff cannot claim any right over the said property on the basis of Ex.A.1 Settlement Deed.

16. Item No.3 of the suit 'B' schedule property is the property situated in R.S.No.671 measuring about 40 cents. According to the plaintiff, the suit property was given to her by the said Sathiammal under Ex.A.1 Settlement Deed dated 25.11.1969. According to the defendants, the suit property was given to one Pachiammal under Ex.B.2 Settlement Deed dated 10.07.1951 by the said Sathiammal and after execution of the said Settlement deed, the said Sathiammal had no right to deal with the said property, however, in Ex.A.1, the said property also included and hence that will not bind upon the said Pachiammal. Their further case is that the said Pachiammal is the wife of Iyam Perumal Gounder and after her death, the defendants have succeeded to the said property and they are in possession and enjoyment of the same.

17. A perusal of Ex.B.2, Settlement Deed shows that the said document was executed in favour of one Iyam Perumal, S/o.Surutai Gounder and one Pachiammal wife of Muniya Gounder @ Ramasamy Gounder and daughter of Muthu Gounder. The recitals found in the said document would show that the said Iyam Perumal Gounder is the brother's son of Sathiammal's husband namely Muthu Gounder and the said Pachiammal is the daughter of the said Muthu Gounder and Sathiammal. So, the said Pachiammal would not be the wife of said Iyam Perumal Gounder.

18. A perusal of Ex.B.1 Exchange Deed would show that the wife of Iyam Perumal namely Pachiammal and their daughter Naga Ammal (D1) have executed the said exchange deed with the plaintiff. So, it is clear that there were two women by name Pachiammal, one is Sathiammal's daughter (plaintiff's mother) another one is Iyam Perumal's wife (first defendant's mother). It appears that taking advantage of the similarity found in the names, the defendants have taken a plea that under Ex.B2, Settlement Deed, the original settlor namely Sathiammal had executed the said settlement deed in favour of Iyam Perumal Gounder and his wife Pachiammal. The said defence is fallacious one.

19. As per Ex.B.2, the aforesaid 40 cents were given to plaintiff's mother Pachiammal. So, even assuming that after execution of Ex.B.2 Settlement Deed dated 10.07.1951, the original settlor namely Sathiammal had no right to deal with the aforesaid property, but, as per Ex.B.1 Exchange Deed, the property situated in R.S.No.671/1 measuring 33 cents was given to the first defendant and her mother Pachiammal and in turn, the plaintiff had obtained property in other survey Number. Therefore, the plaintiff cannot claim any right over the said property.

20. The only discrepancy is that in Ex.B.1, it is stated as 33 cents whereas in Exs.A1 and B1, it is stated as 40 cents. But, even in Ex.B.1 itself, separate sub-division has been given for the properties which were exchanged in R.S.No.671, but, the plaintiff instead of mentioning the sub-division number, she has given only the main survey number. Therefore, it appears that the plaintiff is not able to identify the aforesaid property. It is also to be pointed out that in Advocate's Notice (Ex.B.13), the plaintiff has not mentioned any of the items of the suit 'B' schedule properties. On the contrary, she has mentioned only Survey Nos.671/1, 672/3. In the original plaint also, the Item No.2 is mentioned as Survey No.671/1 measuring about 33 cents. Item No.3 is mentioned as Survey No.672/3 measuring about 40 cents, but in the clean copy of the plaint, those items were deleted and some other items have been incorporated. Under the said circumstances, the plaintiff cannot get any relief. The Courts below, after taking into consideration of the entire facts, came to the conclusion that the plaintiff is not entitled to get any relief and in the factual concurrent findings, this Court cannot interfere. Accordingly, the substantial questions of law is answered against the plaintiff.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

gv/vv

To

WEB COPY

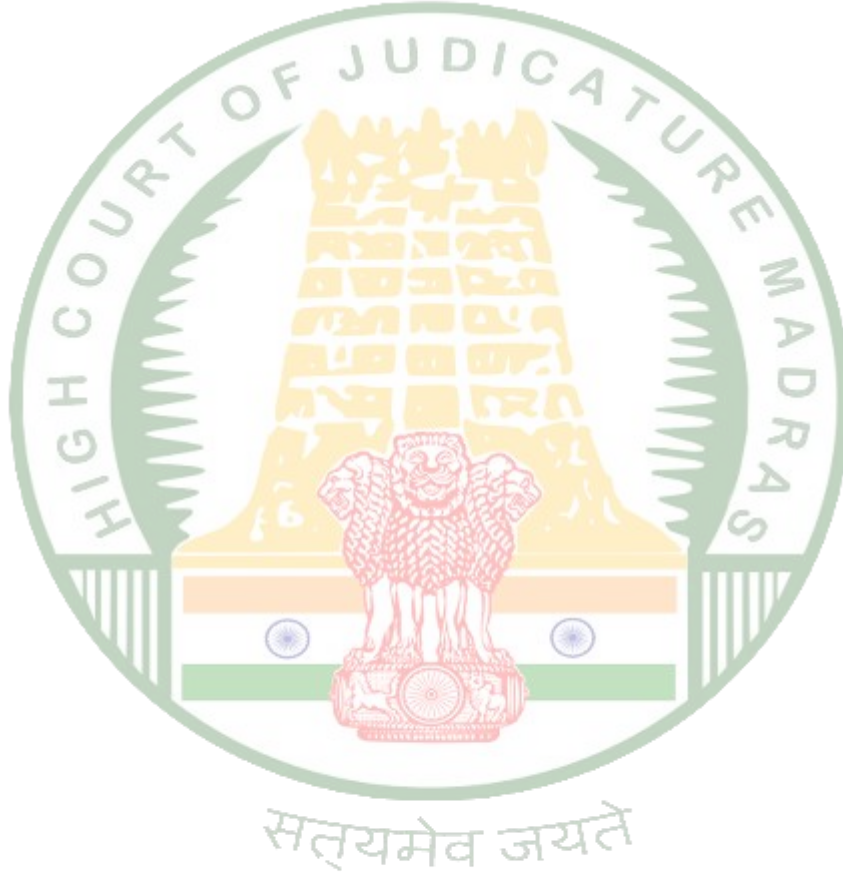
1. The III Additional District Judge,
Krishnagiri.
2. The District Munsif-cum-Judicial Magistrate,
Oothangarai.

3. The Section Officer,
VR Section,
High Court, Madras.(2 copies)

+1cc to Mr.P.Mani, Advocate sr.no.73088

S.A.No.1288 of 2001

nr 27/03/2019



WEB COPY