

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM : THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.No.222 of 2008
and MP.Nos.1 & 2 of 2008

Chinnapaiyan Appellant / Appellant / 4th Defendant

Vs

1.Annamalai
2.Karthikeyan
3.Santhamurthy .. Respondents 1 to 3 /Plaintiffs
4.Aandi
5.Idumban Respondents 4 and 5/Defendants 2&3

Prayer : Second Appeal filed under Section 100 of CPC against the judgment and decree dated 28.09.2007 passed in A.S.No.5 of 2006 on the file of Sub Court, Dharmapuri, in confirming the judgment and decree dated 21.12.2003 passed in O.S.No.286 of 1982 on the file of District Munsif Court, Dharmapuri.

For Appellant : Mr.P.Mani

For Respondents : Mrs.V.Srimathi

JUDGMENT

The fourth defendant in O.S.No.286 of 1982 on the file of District Munsif Court, Dharmapuri, is the appellant herein. The plaintiffs 1 to 3 and defendants 2 & 3 are the respondents. Parties would be referred to by their rank before the trial Court. The suit was laid for declaration of plaintiffs' title based on the settlement deed executed by their paternal grandfather. The trial Court has decreed the suit and the first Appellate Court has confirmed the said decree. Hence, the present second appeal.

2. The brief facts are: The suit property originally belonged to the first defendant, that on 27.07.1981, under Ext.A1, he settled the property in favour of his grand children, the plaintiffs herein. A few days thereafter, he along with his

two sons which included the third defendant, who is the father of the donees under the settlement deed, have executed a sale deed (marked Ext.B-9) with regard to the same property in favour of the fourth defendant. On the same day, the settlement deed earlier executed by the first defendant too was cancelled Vide Ext.B10. Both the documents referred to now were contemporaneously executed on the same day and registered as successive documents. As the plaintiffs faced challenge to their title they filed the suit and has been successful before the Courts below. Aggrieved chiefly is the 4th defendant, the purchaser under Ext.B-9 sale deed, and he has preferred this appeal.

3. This appeal is yet to be admitted. However, notices were served on the respondents and they entered appearance.

4. The learned counsel for the appellant submitted that in the written statement, the appellant has set up a sale agreement anterior to the settlement deed executed by the first defendant in favour of the plaintiffs, and even though the document was not produced before the Court, P.W.2, the maternal grandfather of the minor children through whom the suit was laid, had admitted to the existence of an unregistered sale agreement in the cross-examination. Laying considerable emphasis on this solitary sentence in the cross-examination of P.W.2, the learned counsel submitted that this admission will tilt the scale in favour of the appellant, since if only there is an agreement anterior to Ext.A1 settlement deed, then the execution of the said settlement deed would be hit by Section 53(2) of the Transfer of Property Act. He also brought to the notice of the Court, paragraph No.4 of the written statement, where the appellant has alleged that the execution of the settlement deed was fraudulent.

5. Mrs.V.Srimathi, learned counsel appearing for the respondents would submit that the appellant is not a bonafide purchaser, that Ext.B-9 sale deed under which the appellant claims title to the property, was executed contemporaneously with Ext.B-10, by which, plaintiffs' grandfather had cancelled Ext.A-1 settlement deed executed by him in favour of the plaintiffs, and there is no clause in Ext.A1 that enables the donar to revoke the settlement he had executed. Therefore, when the title is already conveyed to the plaintiffs under Ext.A-1, the settlor thereof cannot transfer title to the 4th defendant under Ext.B-9.

6. The appellant attempted to project a case of fraud, but then if Ext.B9 and Ext.B10 are contemporaneous documents, then the very allegation of fraud may well boomerang against him. Facts on rival sides arrange themselves very naturally to

produce a decision. In order, Ext.B-9 sale deed could be held valid and binding on the plaintiffs, it must be demonstrated that Ext.B-10 cancellation deed under which Ext.A1 was cancelled is valid. Since the latter is not established the Ext.A1 settlement deed stands. Necessarily plaintiffs' prayer for declarataion and possession has to be upheld and this precisely what the Courts below have done.

7. To conclude, there is no merit in this appeal and hence the same is dismissed and the judgment and decree dated 28.09.2007 passed in A.S.No.5 of 2006 on the file of Sub Court, Dharmapuri, confirming the judgment and decree dated 21.12.2003 passed in O.S.No.286 of 1982 on the file of District Munsif Court, Dharmapuri, is hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

ds
To:

- 1.The Sub Court
Dharmapuri.
- 2.The District Munsif Court
Dharmapuri.
- 3.The Section Officer
VR Section
High Court, Madras.

+1cc to Mr.V.Ragavachari, Advocate SR.No. 82854

+1cc to Mr.P.Mani , Advocate SR.No. 8315

CNR (CO)
A.SK(23/04/2019)

S.A.No.222 of 2008

WEB COPY