

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2018

Coram

The Honourable Ms.Justice P.T.ASHA

S.A.No.156 of 2018

and

C.M.P.No.3904 of 2018

E.KuppanAppellant/Plaintiff

Versus

1.Elumalai
2.E.Dharani
3.Ammulu
4.Madan
5.Minor.Srinivasan
6.Minor.Karthi
7.Minor.Manikandan

(R5 to R7 are represented by Mother & natural guardian, 3rd respondent)

...Respondents/Defendants

This Second Appeal is filed under Section 100 of C.P.C praying to set aside the judgment and decree dated 13.12.2017, made in A.S.No.64 of 2015, on the file of the Subordinate Judge, Ranipet in confirming the judgment and decree dated 31.08.2015 made in O.S.No.74 of 2013, on the file of District Munsif cum Judicial Magistrate No.1, Walajapet, Vellore District, by allowing the present Second Appeal.

For Appellant : Mr.A.Gouthaman

J U D G M E N T

This Second Appeal is filed challenging the concurrent judgment and decree passed by the learned Subordinate Judge, Ranipet in A.S.No.64 of 2015 dated 13.12.2017, in and by which the learned Subordinate Judge, Ranipet had confirmed the judgment and decree passed by the learned District Munsif cum

Judicial Magistrate No.1, Walajapet, Vellore District in O.S.74 of 2013 dated 31.08.2015.

2. Parties are referred to in the same array as in the suit. The plaintiff is the appellant before this Court. The first defendant is the father of the plaintiff/appellant and the second defendant. Besides plaintiff/appellant and second defendant, first defendant also had a son named Settu who pre-deceased the first defendant. The said Settu died leaving behind his wife and children viz., defendants 3, 6 & 7 respectively. The defendants 4 & 6 are the children of the second defendant.

Plaintiff's case:

3. It is the case of the plaintiff/appellant that on 08.07.1994, there was a Partition Deed executed between the plaintiff/appellant and defendants 1 & 2 and plaintiff's deceased brother Settu. In the said partition, the first defendant was allotted the suit property and 10 cents to be enjoyed by him till his lifetime and after his death, his property was divided equally upon the plaintiff/appellant, defendants 1 & 2 and the said Settu. While so, on 13.02.2012, the first defendant had unlawfully executed a Settlement Deed bearing Document No.1145 of 2012 on the file of the Sub Registrar, Arni, Thiruvannamalai District in favour of his grandsons viz., defendants 4 to 7. The plaintiff's contention is that he had a 1/3rd share in the suit property and therefore, the Settlement Deed executed by the first defendant is to be declared as null and void.

Defendants' case:

4. A common written statement was filed by the defendants 1 to 7 in which they had admitted about the Partition Deed dated 08.07.1994. However, the defendants would contend that the plaintiff/appellant had threatened and coerced the first defendant into selling 10 cents from out of the property allotted to him in favour of one Mr.P.Parthiban along with the property allotted to the plaintiff/appellant under the Partition Deed dated 13.12.2006. The sale was not informed to the other defendants. On coming to know about this sale, immediately, the defendants had decided to secure the remaining extent of 20 cents since they realized that the intent of the plaintiff/appellant was to claim a share in the remaining 20 cents of land relying upon the terms of the Partition Deed dated 08.07.1994. Therefore, the Settlement Deed was executed in favour of the defendants 4 to 7.

Trial Court:

5. Before the trial Court, plaintiff/appellant had examined himself as P.W.1 and another Loganathan as P.W.2 and marked Exs.A1 to A6. On the side of the defendants, third defendant had entered into a box and marked the Ex.B1, Sale Deed dated 13.12.2006 which was executed by plaintiff/appellant and the first defendant in favour of Mr.P.Parthiban. The trial Court had returned a finding that the plaintiff/appellant by making his father sell 10 cents along with his lands to Mr.P.Parthiban had got his share in the property allotted to the first defendant even during the lifetime of his father and therefore, he could not make any claim in the remaining which even according to the Partition Deed dated 08.07.1994 was to be shared equally between the second defendant and his pre-deceased brother Settu. Therefore, the trial Court had dismissed the suit O.S.No.74 of 2013.

Appellate Court:

6. Challenging the judgment and decree passed by the trial Court, the plaintiff/appellant had filed an Appeal before the Subordinate Judge, Ranipet in A.S.No.64 of 2015. The learned Subordinate Judge had also confirmed the finding of the trial Court and further held that if the plaintiff/appellant is questioning the execution of the Settlement Deed, then the sale deed dated 13.12.2006 is also null and void. The Appellate Court had further held that the plaintiff/appellant does not have any right to question the execution of the settlement deed with respect to the remaining 20 cents of land. The plaintiff/appellant had no interest in the remaining 20 cents, having already taken away his 10 cents even during the lifetime of his father. Challenging this concurrent judgment and decree of the Appellate Court, the plaintiff/appellant had moved this Court with the present Second Appeal.

7. Heard Mr.A.Gouthaman, learned counsel for the plaintiff/appellant.

8. The plaintiff/appellant has not made out any question of law much less a substantial question of law warranting the interference of this Court under Section 100 of C.P.C. Admittedly, the plaintiff/appellant has taken away his share i.e., 10 cents from out of 30 cents that has been allotted to the first defendant under a Partition Deed dated 08.07.1994. The recital in the Partition Deed, as admitted by both sides, would state that after the lifetime of the first defendant, the plaintiff, second defendant and the pre-deceased son Settu each would be entitled to 10 cents of land. Considering the fact that the plaintiff has already taken away the 10 cents of land

entitled to him, I find no infirmity in the order of the learned Subordinate Judge, Ranipet.

9. In the result, this Second Appeal is dismissed and the order passed by the learned Subordinate Judge, Ranipet in A.S.No.64 of 2015 dated 13.12.2017 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Court,
Ranipet.

2.The District Munsif cum Judicial Magistrate No.1,
Walajapet, Vellore District.

3.The Section Officer,
VR Section, High Court,
Madras.

S.A.No.156 of 2018

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