

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.546 of 2018

Ayyandurai

... Appellant/Plaintiff

Vs

Nallappan (Died)

1.Marimuthu

2.Saraswathi

3.Tamilarasi

4.Sampath

5.Saravanan

6.Sivakumar

7.Vijayarani @ Sumathi

8.Mariammal

9.Munusamy

10.Vijayalakshmi

11.Sivagami

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.5 of 2013 on the file of the Subordinate Judge, Mettur, dated 23.01.2015 confirming the Judgment and Decree made in O.S.No.93 of 2009 on the file of the District Munsif Court, Mettur, dated 27.11.2012.

For Appellant

: Mr.B.Kumarasamy

O R D E R

The plaintiff is the appellant in S.A.No.546 of 2018 before this Court and the Second Appeal arises against the Judgment and Decree in A.S.No.5 of 2013 dated 23.01.2015 on the file of the Subordinate Judge, Mettur, confirming the Judgment and Decree of the District Munsif Court, Mettur in O.S.No.93 of 2009. The said O.S.No.93 of 2009 was filed for a declaration and injunction. The appellant is based his claim on a gift deed dated 12.11.1976. It is his case that he is the absolute owner of the suit property on the basis of the said gift deed and that he has been in possession and enjoyment of the same since then. Under the gift deed, property was allotted to the appellant as well as to the 1st respondent herein.

2.It was also his case that in the month of March 1976 he and the 1st respondent had orally partitioned the property and from that day he has been in continuous possession and enjoyment of the same. It was his further case that his father one Lakshmana Gounder died in the year 1980 and his mother also died in the month of January 2009. It is the case of the appellant that after his mother's demise all the defendants/respondents joined together and started giving pin-pricks to the plaintiff's in enjoyment of the suit property. They have also put forward a case that the gift settlement deed dated 12.11.1976 had been cancelled by the appellant's father and never acted upon.

3.The respondents have denied the averments in the plaint and the first defendant another brother of the appellant would contend that the gift deed was obtained through coercion and that the father had cancelled the gift deed by a cancellation deed dated 20.01.1979 and that possession was never handed over to the appellant under the gift deed dated 12.11.1976. It was also the case of the first defendant that all the children of Lakshmana Gounder are jointly enjoying the suit properties.

4.The other person in whose favour the gift deed was created is the 1st respondent herein. In his written statement the 1st respondent/first defendant would contend that the settlement deed has never acted upon and the plaintiff's father had retained possession of the property with him, therefore, the appellant was no entitled to decree. Both the Courts held against the appellant and he is now before this Court.

5.Heard, Mr.Kumarasamy, learned counsel for the appellant.

6.It is seen from the oral evidence of the defendants that was extracted by the Courts below that the gift deed was never

acted upon. It is also seen that the appellant who comes forward with the specific case, that he has been in possession and enjoyment of the suit property from the date of the gift deed has failed to prove the same and the documents filed are only from the year 2006 to 2007, whereas, the gift deed is of the year 1976. On the contrary, the respondents have filed the documents to show the joint possession of the suit properties.

I therefore, find no Substantial Question of law. The Second Appeal is accordingly dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,  
Mettur.

2.The District Munsif Court,  
Mettur.

Copy to  
The Section Officer,  
VR Section,  
High Court, Madras.

+1cc to Mr.B.Kumarasamy, Advocate, S.R.No.80058

S.A.No.546 of 2018

GSP (28/01/2019)

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