

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2017

PRONOUNCED ON : 19.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1520 of 2002

Amanullah ... Appellant/Defendant in O.S

Vs.

1. Elumalai
2. Ramadoss
3. Krishnan
4. Pushpa
5. Saroja

... Respondents/Plaintiff 2 to 6 in O.S

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.12/2001, on the file of Principal Subordinate Judge, Villupuram, dated 26.04.2002 in confirming the judgment and decree in O.S.No.15/1995, on the file of the Additional District Munsif, Villupuram, dated 29.11.2000.

For Appellant : Mr.M.Muruganantham
for M/s. V.Raghavachari

For Respondents: Mr.T.S.Baskaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 26.04.2002 passed in A.S.No.12/2001, on the file of Principal Subordinate Court, Villupuram, confirming the judgment and decree dated 29.11.2000 passed in O.S.No.15/1995, on the file of the Additional District Munsif Court, Villupuram,

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property and other properties originally belonged to Jahirabivi and K.Ansari purchased the suit property from Jahirabivi as per the sale deed dated 15.4.1993 and the deceased first plaintiff purchased the suit property from K.Ansari, as per the sale deed dated 11.03.1994 and thus, the deceased first plaintiff was the absolute owner of the suit property and been in possession and enjoyment of the suit property. Pending suit, the first plaintiff has died and the legal representatives were brought on record as plaintiffs 2 to 6 and the defendant without any iota of right attempted to trespass into the suit property and thereby disturb the plaintiff's possession and enjoyment and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts. Neither the plaintiff nor his vendor have right or title in the suit property. It is false to state that the suit property had been in possession and enjoyment of the plaintiff's vendor and the plaintiff, pursuant to the sale deeds mentioned in the plaint. The sale deed projected by the plaintiff is not true and valid and K.Ansari, from whom the property is alleged to have been purchased, has laid the suit through his power agent against the defendant and his brother in O.S. No.388/94 and the same is pending. Jahirabivi had executed a settlement deed in favour of her five sons and two daughters in respect of the properties owned by her on 24.04.84 and also executed another settlement deed in favour of her younger son, in respect of the ten cents belonging to her and thereafter, the sons and daughters of Jahirabivi had enjoyed the properties in common and thereafter, had partitioned the same in the presence of Panchayatdars equally dividing ten cents amongst themselves as settled upon them, which had been reduced in writing and accordingly, the defendant had purchased the share of his brother Samsudeen for valid consideration and put up a terrace house and therefore, K.Ansari had no right in the suit property and hence, the plaintiff's claim to the suit property from K.Ansari is false and the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 and 2 were examined, Exs.A1 and A10 were marked. On the side of the defendant, DWs 1 and 2 were examined, Exs.B1 to B12 were marked. Exs. X1 to X4 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On

appeal, in support of the case the defendant, further documents have come to be marked as Exs.B13 to B18. The first appellate Court, on an appreciation of the materials placed and the submissions made in the matter, found concurrence with the trial Court and accordingly, dismissed the appeal preferred by the defendant.

8. At the time of admission the second appeal, the following substantial questions of law were formulated for consideration:

(a) Whether the courts below are right in recognizing the sale deeds executed by Jahirabivi under Ex.A1 to A10, when Jahirabivi herself had lost her title by virtue of the settlement deeds under Ex.B1 and B2?

(b) Whether the courts below ought not have appreciated that in the sale deeds the boundaries indicate the name of her children and when Jahirabivi herself had recognized the right of the settlees under Exs.B1 and B2, is it proper on the courts below to assail the settlement deeds?

(c) Whether the courts below are right in holding the settlement deeds have not been acted upon, when the documents under Ex.B3 and B13 and XI to X4 establish its acceptance?

9. It is not in dispute that the suit property and other properties originally belonged to Jahirabivi. According to the plaintiff, the suit property had been purchased from Jahirabivi by K.Ansari and from K.Ansari, he had purchased the suit property and thus, according to the plaintiff, the suit property belong to him. Pending suit, the plaintiff having died, his legal representatives have been brought on record.

10. The defendant has resisted the claim of title to the suit property by the plaintiff on the footing that Jahirabivi had settled the suit property and other properties belonging to her in favour of her sons and daughters, by way of Exs.B1 and B2 and therefore, according to the defendant, Jahirabivi is not competent to alienate the suit property in favour of K.Ansari, as projected by the plaintiff and thus, it is contended that the purchase of the suit property by the plaintiff is not true and valid. It is thus found that the defendant mainly relies upon Exs.B1 and B2 for resisting the plaintiff's claim of title to

the suit property. The plaintiff traces his title to the suit property from the admitted original owner of the suit property, namely, Jahirabivi.

11. It is the contention of the plaintiff that the alleged settlement deeds said to have been executed by Jahirabivi, in favour of her sons and daughters, by way of Exs.B1 and B2 are not true and valid documents, as the same did not come into effect. According to the plaintiff, the settlement deeds effected by the Muslim lady Jahirabivi in respect of the undivided share in favour of her children cannot be termed as valid transactions. In this connection, reliance is placed upon the decision reported in AIR 1960 Madras 447 (Kairum Bi and others Vs. Mariam Bi and another) and from the above said decision, it is seen that inasmuch as by way of Exs.B1 and B2, only the undivided share seems to have been settled by Jahirabivi and when there is no material to hold that the said settlement deeds had been acted upon whereunder possession of the specific share of the settlees have been taken, it is found that the settlement deeds in favour of the undivided share in respect of the children jointly as such, is bad in law. With reference to the claim of the defendant that pursuant to the settlement deed under Exs.B1 and B2, Jahirabivi's children had effected the partition of the properties settled by dividing equally is not substantiated with acceptable and reliable evidence. At the foremost, it is seen that by way of Exs.B1 and B2, the donor has not parted with the complete possession of the properties comprised therein in favour of the settlees and when it is found that the donor, namely, Jahirabivi had not settled the definite shares in favour of the donees and when it is not established that even subsequent to the same, the donees had effected partition of the respective shares settled in their favour, it is found that the settlement deeds projected by the defendant cannot be accepted to uphold the claim of the defendant to the suit properties as such.

12. In so far as this case is concerned there is no material to hold that a specific share had been allotted to the children of Jahirabivi by way of Exs.B1 and B2. Further, there is no material to hold that the children had either by way of Exs.B1 and B2 or subsequent thereof, had obtained separate possession of their respective shares and been in possession and enjoyment of the same. Though in this connection, some documents have come to be projected by the defendant by way of additional evidence marked as Exs.B13 to B18, as rightly found by the first appellate Court, Ex.B13 cannot at all be given any legal approval, as the same is only a plan, by which, it cannot be held that the children of Jahirabivi had, as per law, effected separation and divided all their respective shares settled in their favour under Exs.B1 and B2. Therefore, no

exception could be taken in the determination of the first appellate Court for discarding Ex.B13 and it cannot be construed as a valid partition deed as projected by the defendant. Similarly, it is found that Exs.B14 sale transaction is dated 20.03.1993 and likewise, Exs.B15 and B16 are dated 29.03.1993 and they had come to be registered only after 11.7.1993. On the other hand, as rightly found by the first appellate Court that even prior to the said transaction, K.Ansari had purchased the suit property from Jahirabivi by way of Ex.A2, dated 15.4.1993 and therefore, in such view of the matter, merely from the additional documents projected by the defendant marked as Exs.B14 to B18, on their own, would not be safe to hold that the children of Jahirabivi had been settled the definite shares by the settlor, Jahirabivi, by way of Exs.B1 and B2 and that thereafter, they had been in possession and enjoyment of their specific shares allotted to them. On the other hand, as rightly found by the Courts below, Jahirabivi had thereafter sold her properties in favour of various persons as could be evidenced from Exs.A4 to A10 sale transactions. Similarly, it could also be seen that K.Ansari, after his purchase under Ex.A2 had been in possession and enjoyment of the property i.e., suit property, by way of letting out the same to Loganathan and the rent deed marked as Ex.A3 would point to the same. In such view of the matter, when it is found that as per law the Muslim lady cannot settle the undivided share in the property and when Exs.B1 and B2 do not point out that definite shares had been allotted to the children of the settlor and when it is further seen that even thereafter, the defendant has failed to establish that the children had effected partition as per law and been in possession and enjoyment of their respective shares and the additional documents projected, do not serve the purpose as determined by the first appellate Court, it is found that the contention of the defendant that the plaintiff cannot derive title to the suit property by way of Exs.A1 and A2, as such, cannot be accepted in any manner.

13. In the light of the above position, it is found that the contention of the defendant's counsel that the donees by way of Exs.B1 and B2 had taken only the definite shares and accordingly been in possession and enjoyment of the definite shares and therefore, the settlement deeds Exs.B1 and B2 are true and valid documents, as such, cannot be accepted sans proof vide acceptable and reliable materials pointing to the same and such being the factual position, it is found that the decisions relied upon by the defendant's counsel reported in 2004 (2) CTC 331 (Baby Vs. Thiagarajan and others), (2009) 6 SCC 160 (Abdul Rahim and others Vs. Sk. Abdul zabar and others), 2014 SCC online Bom 1127 (Ultra Merchandise & Retails Limited Vs. In Entertainment India Limited), 2010 (4) CTC 640 (Venkataramana and 6 others Vs. N.Munuswamy Naidu and 4 others), AIR 1962 J & K

4 (Azizi and another Vs. Sona Mir), Manu/OU/0088/1925 (Mt.Zaibun-nisa Vs. Irshad Husain and Anr.), MANU/LA/0076/1934 (Nazir Din and Anr. Vs. Mohammad Shah and Ors.), 73 LW 336 (Kairum Bi and others Vs. Mariam Bi and another), 1996-NRC-10 (M/s.Tribol Engineering Private Limited, Bangalore Vs. M/s. Indian Oil Corporation Limited, Madras) and SA.No.1096 of 2001 dated 11.12.2017 (Anandan and 8 others Vs.Kannaiyan and two others) are found to be not applicable to the facts and circumstances of the case as above discussed. In any event, the principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the case at hand.

14. In addition to that, it is also contended by the Plaintiff's counsel that Exs.B1 and B2, settlement deeds have not been established as per law by the defendant, by examining the attestors to the document and such being the position, on that score also, it is stated that no reliance could be placed upon Exs.B1 and B2 for upholding the defendant's version. The above contention seems to be acceptable. When Exs.B1 and B2 are not acceptable and the plaintiff has thrown a serious challenge to the same and when there is no material to hold that Exs.B1 and B2 are valid documents and thereby, the donees had been in possession and enjoyment of their separate and distinct shares, prima facie to hold that Ex.B1 and B2 had been truly effected by Jahirabivi, as per law, the defendant should have endeavoured to examine the persons associated with the documents for upholding his version. However, it is found that the defendant has failed to establish the validity of the documents marked as Exs.B1 and B2 as above stated also and on that score, it is found that the defendant's version cannot be countenanced.

15. In the light of the above discussions, it is found that the Courts below have rightly found that the settlement deeds projected by the defendant marked as Exs.B1 and B2 had not been acted upon, the same are bad in law, as no definite share is settled in favour of Jahirabivi's children by way of the same and therefore, it is found that the Courts below have rightly held that Jahirabivi had not lost her title to the suit property and the other properties by way of Exs.B1 and B2. The Courts below, therefore, are right in recognising the sale deeds executed by Jahirabivi by way of Exs.A2, A3 to A10. The first appellate Court for valid reasons, did not place acceptance to the additional documents marked as Exs.B13 to B18 and accordingly, it is found that no exception could be taken with reference to the same, as the said documents do not in any manner show that a valid partition had been effected by the donees particularly by way of Exs.B13, so as to entitle them to make further conveyance in respect of the properties alleged to have been settled in their favour and divided by them

subsequently. Therefore, the Courts below were right in not accepting the documents marked on the side of the defendant as well as the documents marked as Exs.X1 to X4. The substantial questions of law formulated in this second appeal are accordingly answered against the defendant and in favour of the plaintiff.

16. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS-ii)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Court, Villupuram.
2. The Additional District Munsif Court, Villupuram.
3. The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.T.S. BASKARAN, Advocate, S.R.No. 3921

+1cc to Mr.V.RAGHAVACHARI, Advocate, S.R.No. 3946
(07.06.2018)

Pre-delivery Judgment in
S. A.No.1520 of 2002

SKV(CO)
TR(16/02/2018)

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