

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2018

PRONOUNCED ON : 28.02.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2199 of 2003

1. Alamelu ammal
2. Peyandi Moopan
3. Annadurai

....

Appellants/Defendants

Vs.

Dharmalingam

....

Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 06.02.2003 made in A.S.No.99 of 2002 on the file of the Principal District Court, Salem confirming the judgment and decree dated 12.06.2002 made in O.S.No.258 of 1993 on the file of the Principal District Munsif Court, Salem.

For Appellants : Ms.P.Sharmila
for M/s. S.Krishnamoorthi

For Respondent : Mr.S.Kalayanaraman

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 06.02.2003 passed in A.S.No.99 of 2002 on the file of the Principal District Court, Salem confirming the judgment and decree dated 12.06.2002 passed in O.S.No.258 of 1993 on the file of the Principal District Munsif Court, Salem.

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

3. Suit for declaration, injunction and possession.

4. The case of the plaintiff, in brief, is that the suit properties comprise of two items and item number 1 of the plaint schedule originally belonged to the first defendant and the first defendant by way of a settlement deed dated 17.03.1997, settled the same in favour of her daughter chinammal and thereby put her in possession and enjoyment of the said item of the suit properties and the said chinammal is the wife of the plaintiff and chinammal thereafter executed a gift deed in favour of the plaintiff in respect of the above said item of the suit properties on 14.09.1989 and thereby put the plaintiff in possession and enjoyment of the said item of the suit properties and thus, the plaintiff is the absolute owner and in possession and enjoyment of the first item of the suit properties and similarly item 2 of the suit properties was purchased by the plaintiff from the second defendant on 29.08.1990 and accordingly, enjoying the same and thus, the defendants have no right, title or interest over the suit properties. The lands of the defendants are situated on the northern side of the suit properties and the defendants are the close relatives of the plaintiff, demanded the plaintiff to sell his lands to them and as the plaintiff refused to accede to their requests, started giving troubles to the possession and enjoyment of the suit properties by the plaintiff by attempting to grab the suit properties and hence, left with no other alternative, the plaintiff has been necessitated to lay the suit for the appropriate reliefs of declaration and permanent injunction and further, according to the plaintiff, after the institution of the suit, the defendants trespassed into the first item of the suit properties and obtained wrongful possession of the same in the month of July 1993 and thereby, the plaintiff had been deprived of the use and enjoyment of the said item of the suit properties and hence, according to the plaintiff, he had been forced to amend the reliefs sought for and accordingly, seeks the relief of possession also of the first item of the suit properties from the defendants and hence, the suit.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. It is true that the suit properties consists of two items and that the first item of the suit properties originally belong to the first defendant and it is true that she had executed a settlement deed in favour of her daughter chinammal on 17.03.1987. However, it is false to state that the possession of the said item was handed over to the chinammal by virtue of the above said settlement deed. It is false to state that chinammal thereafter settled the said item in favour of the plaintiff on 14.09.1989 and it is false to state that by way of the said document, the plaintiff has been in possession and enjoyment of the first item of the suit properties as such. In fact, chinammal, the daughter of the first defendant, had not taken care of the first defendant as well as not taken care of the properties settled in her favour

and never took possession and enjoyment of the same, despite the settlement deed and as she had not evinced interest over the said item of the suit properties, the first defendant cancelled the settlement deed executed in her favour on 28.01.1993, by way of another deed and accordingly, it is only the first defendant, who is in possession and enjoyment of the first item of the suit properties by paying necessary kist etc., and it is admitted that the plaintiff had purchased the second item of the suit properties and however, the plaintiff has no right, title or interest in the first item of the suit properties. The plaintiff is residing far away from the suit village and it is false to state that the defendants attempted to interfere with the possession and enjoyment of the plaintiff in respect of the suit properties and it is false to state that the defendants after the institution of the suit, forcibly took the possession of the first item of the suit properties as alleged in the plaint and hence, the plaintiff is entitled to seek the recovery of the same and therefore, according to the defendants, the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 to 3 were examined, Exs.A1 to A12 were marked. On the side of the defendants, DW1 was examined, Exs.B1 to B8 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly, decreed the suit in favour of the plaintiff as prayed for. Aggrieved over the same, the present second appeal has come to be laid.

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

On the facts pleaded and established, have not the Courts below committed an error of law in not appreciating Ex.A1 in its proper perspective, which had resulted in miscarriage of justice.

9. Chinnammal is the wife of the plaintiff. Chinnammal is the daughter of the first defendant. It is not in dispute that the first item of the suit properties originally belonged to the first defendant and it is also seen that parties are not in dispute that the first defendant had settled the first item of the suit properties in favour of chinnammal by way of a settlement deed 17.03.1987, which document has come to be marked as Ex.A1. On a perusal of Ex.A1, it is found that as rightly determined by the Courts below, the first defendant had delivered the possession of the properties comprised therein to chinnammal and accordingly, it is found that chinnammal had taken the possession of the said item of the suit properties and

enjoying the same. The defendants have not thrown any challenge to the factum of the execution of the settlement deed marked as Ex.A1. Further, it is found that the plaintiff has also examined the attestors to the settlement deed, Ex.A1, as PW2 and accordingly, PW2 has also clearly spoken about the execution of the settlement deed in favour of chinnammal by the first defendant. From the materials placed by the plaintiff and through the evidence of PW2, it is found that the first defendant had executed a settlement deed out of her own will and consent and accordingly, handed over the possession of the same in favour of chinnammal. In the light of the above position, the subsequent defence projected by the defendants, during the course of evidence, that Ex.A1 settlement deed had come to be obtained by committing fraud and misrepresentation, cannot be accepted as such and when the above said nature of the defence thrown against the settlement deed, Ex.A1, has not been pleaded by the defendant in the written statement and also not detailed by the defendants, during the course of their evidence and further, when such recitals are not even found in the cancellation deed projected by the defendants marked as Ex.A12, it is found that the above new defence projected by the defendants during the course of evidence that Ex.A1 had come to be secured by playing fraud and misrepresentation, has been rightly rejected by the Courts below. No interference is called for with reference to the above said determination of the Courts below.

10. According to the plaintiff's case, chinnammal after obtaining the title of the first item of the suit properties by way of Ex.A1, settled the same in favour of her husband by way of the settlement deed dated 14.09.1989, which document has come to be marked as Ex.A2 and according to the plaintiff, by way of Ex.A2, he had obtained possession of the settled properties and enjoying the same. It is also the case of the plaintiff that he had purchased the second item of the suit properties by way of a sale deed dated 29.08.1990 marked as Ex.A3 and Ex.A3 has not been impugned by the defendants.

11. The parties are disputing only as regards the first item of the suit properties. As rightly found by the Courts below, from the documents placed by the plaintiff marked as Ex.A4 to A7, it is found that it is only the plaintiff who has been in possession and enjoyment of the suit properties pursuant to Exs.A1 to A3 by paying kist, obtaining patta etc., and in addition to that, it is also found that the plaintiff has also secured loan from the co-operative bank by mortgaging his properties i.e., the suit properties which have come to be established by the documents marked as Exs.A9 to A11 and on a perusal of the above said documents, it is evident that only the suit properties had been mortgaged by the plaintiff for the

purpose of securing loan and the above documents go to show that it is only the plaintiff who has been in possession and enjoyment of the suit properties as the absolute owner thereof.

12. As earlier noted, the defendants have not raised any defence as regards the item number 2 of the suit properties. Now, according to the defendants, inasmuch as chinnammal had not taken care of the first defendant and also not evinced interest to enjoy the properties settled on her by the first defendant under Ex.A1, it is contended that the first defendant had later cancelled the settlement deed on 28.1.1993 and the said cancellation deed has been marked as Ex.A12. Therefore, according to the defendants, inasmuch as Ex.A1 had been cancelled by the Ex.A12, chinnammal had no legal authority to settle the first item of the suit properties in favour of her husband by way of Ex.A2 deed. On the other hand, according to the plaintiff, after the settlement of the first item of the suit properties in favour of chinnammal, the first defendant had no legal competency to cancel the same and therefore, according to the plaintiff, Ex.A12 would not in any manner deprive the plaintiff from claiming title to the first item of the suit properties by way of Ex.A2 deed. As rightly determined by the Courts below, on a perusal of the materials placed by the plaintiff, both oral and documentary, it is found that the settlement deed Ex.A1 had been accepted and acceded upon by chinnammal and it is found that she had taken possession of the said properties and the recitals with reference to the same are also clearly mentioned in Ex.A1 and in addition to that, the first defendant had not reserved any right of revocation of the settlement deed under the said document and also not imposed any condition, on the part of chinnammal in the enjoyment of the properties settled and when, as per law, the first defendant would not be entitled to revoke the settlement deed after its execution, except as provided under law and when the reasons given by the first defendant for the cancellation of Ex.A1 settlement deed found to be not in consonance with the legal requirements and when it is further seen that after the execution of Ex.A1, the first defendant ceases to have any right, title or interest over the first item of the suit properties, it is found that the cancellation deed executed by first defendant would have no legal force, as such and not binding upon the plaintiff in any manner.

13. The case of the defendants that chinnammal had not taken possession of item number 1 of the suit properties and the same continues to be in possession and enjoyment of the first defendant also could not be accepted. The documents placed in the matter, as rightly determined by the Courts below, the documents Exs. B5 and B6 have come to be effected after the execution of Ex.A12 and in such view of the matter, by way of the same, it cannot be held that the first defendant had

retained the possession and enjoyment of the said properties even after the execution of Ex.A1. Similarly, Ex.B4 is found to have come into existence prior to the execution of Ex.A1 and would be of no use to sustain the defence projected. The patta document marked as Ex.B1 would not lead to the conclusion that chinnammal continues to retain the title, possession and enjoyment of the first item of the suit properties, even after Ex.A1 deed and accordingly, it is found that the kist receipts produced by the defendants would have been issued based on the patta originally standing in the name of the first defendant and in such view of the matter, the Courts below did not place acceptance with the above said documents for upholding the defence projected by the defendants.

14. I am unable to find any error or infirmity in the above said rejection of the defendants' version by the Courts below, when it is found that the Courts below have given sound reasons for the same and it is thus found that the defendants have failed to establish that they had retained title, possession and enjoyment of the first item of the suit properties even after Ex.A1 deed.

15. It is the specific case of the plaintiff that after the institution of the suit, the defendants had forcibly obtained the possession of the first item of the suit properties illegally and hence, he has been necessitated to seek the relief for possession. Once it is noted that, it is the plaintiff, who is having title to the first item of the suit properties, as above discussed and the defendants have no right to remain in possession of the said item, it is found that the Courts below had rightly granted the relief of possession of the first item of the suit properties, as prayed for, including the other reliefs sought for by the plaintiff.

16. In support of her contentions, the defendants' counsel placed reliance upon the decision reported in 2011 (2) CTC 1 (Latif Estate Line India Ltd., Vs. Hadeeja Ammal and two others) (Habib Abdul Latif and another Vs. Syeda Aamina Raheem and another). The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the case at hand.

17. In the light of the above discussions, it is found that the Courts below have properly appreciated the oral and documentary evidence placed in this matter in the right perspective, both factually and legally and on giving proper reasons, rightly come to the conclusion, that it is only the plaintiff, who has title to the suit properties and thereby entitled to obtain the reliefs sought for as such. The determination of the case by the Courts below in favour of the plaintiff do not warrant any interference in any manner and accordingly, the substantial question of law formulated in this

second appeal is answered in favour of the plaintiff and against the defendants.

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

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Principal District Court, Salem
 2. The Principal District Munsif Court, Salem.
 3. The Section Officer, V.R.Section,
High Court, Madras.(2 copies)
- + 1 cc to M/s.Zeenath Begum Advocate,SR.15300
- + 1 cc to M/s.S.Pavithra Praba Advocate,SR.15263

S. A.No.2199 of 2003

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nr 19/04/2018

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