

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:22.01.2019

Coram:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1467 of 2004

Palaniammal
W/o.Ranganathan

.. Appellant/Appellant/Plaintiff

/versus/

1.Madheswari
2.Chiddeswaran
3.Chinnaponnu

.. Respondents/Respondents/Defendants

Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 23.07.2002 made in A.S.No.124 of 1999 on the file of the Sub Court, Mettur confirming the judgment and decree dated 22.07.1997 made in O.S.No.341 of 1990 on the file of the District Munsif Court, Mettur.

For Appellant :Mr.R.Vinoth Raja for
Mr.N.Manokaran

For Respondents :Mr.A.Mahesnath for
Mr.G.Sankaran for R1 and R3
R2-not ready notice

J U D G M E N T

This appeal is preferred against the concurrent findings of the Courts below dismissing the suit for injunction initially, filed by the father of the appellant and later appellant has got herself impleaded to continue litigation based on the settlement deed executed by the deceased first plaintiff Rangasamy Naidu.

2. Short facts involved in this case is that, Rangasamy Naidu the plaintiff claiming title and possession over the suit property had filed the suit alleging that the defendants, who are none other than the second wife's daughter and son-in-law are trying to interfere with the peaceful possession and enjoyment of the suit property in which he was initially cultivating under one Varadhan. Later, on cancellation of patta in the name of Varadhan, he applied to the Government for grant of patta. Since he is in occupation of the property and paying kists regularly. It is also contended in the plaint that the plaintiff Rangasamy Naidu has improved the land investing around

Rs.77,000/- digging well and engaging 5HP diesel motor pump set.

3. The said averments in the plaint had been denied and disputed by the defendants through the written statement filed by the third defendant and adopted by other defendants. According to them, the suit property is a poromboke land previously in possession of Chinnasamy, S/o Varadhan. Subsequently, Chinnasamy entered into the sale agreement with the third defendant on 09.01.1976 and handed over the possession of the the property to the third defendant. Since then the third defendant is paying kists to the Government. The well in the suit property was dug by her and the land was improved by her spending around Rs.50,000/-. Thus, the parties proceeded on the premise that they are in possession of the property and cultivating the same investing their money. Pending suit, the plaintiff Rangasamy Naidu died and thereafter, his daughter born through his first wife Palaniammal got herself impleaded and continued the suit to claim exclusive right over the suit property both regarding title and enjoyment. The said Palaniammal has relied upon the registered settlement deed executed by the deceased Rangasamay Naidu.

4. The Courts below, after considering the kist receipts produced by both the parties and other documents relied by them, has specifically pointed out that the suit was laid by Rangasamy Naidu on 04.06.1990 claiming that he is in possession of the property and paying kists. While so his second wife along with his daughter born through her and the husband of his daughter are trying to interfere with the peaceful possession. Whereas he had already settled the property in favour of his daughter born through his first wife by way of registered settlement deed and the recital of the settlement deed dated 19.03.1990, indicates that his property has been vested with Palaniammal. Therefore, by suppressing the said fact, Rangasamy Naidu has filed the suit as if he is in possession and enjoyment of the property on the date of filing the suit which is factually incorrect and contrary to the claim of the plaintiff regarding possession.

5. Further, the Courts below have also pointed out that when Palaniammal, who is the appellant herein has already initiated the suit for partition against the respondents herein in respect of a residential premises recognizing the right of other legal representatives of the deceased Rangasamy Naidu. She cannot claim exclusive right over the suit property based on the settlement deed which was not acted upon and has not been tested in the manner known to law. The view expressed by the trial Court for dismissing the suit has been confirmed by the appellate Court. Aggrieved by the concurrent findings of the Courts below, the appellant Palaniammal has preferred the Second Appeal.

6. At the time of admission, this Court has formulated the following Substantial questions of Law:

1. Whether the findings of the Courts below are correct in law in holding that the suit filed by the deceased 1st plaintiff is not maintainable after the execution of the settlement deed dated 19.03.1990 (Ex.A6) in favour of the 2nd plaintiff?

2. Whether the settlement deed had been accepted and acted upon or not can be decided only on the basis of possession and can the second plaintiff protect her possession based on the settlement deed Ex.A6 especially when the genuineness of the same has not been questioned by the defendants?

7. In a suit for injunction based on title, the plaintiff has to necessarily make out prima facie case on the date of filing the suit to show the title is with him and also he is in possession of the property. The reading of the plaint filed by the deceased Rangasamy Naidu would show that on the date of filing the suit, he is in possession and enjoyment of the property. He has applied to the Government for grant of patta, since the Government has cancelled the patta issued to one Varadhan.

8. However, a very vital fact that three months prior to the suit, he has settled the property in favour of his daughter born through his first wife, has not been disclosed by the deceased Rangasamy Naidu. Further, when he laid the suit alleging that the property was in his possession and enjoyment suppressing the fact of the settlement deed Ex.A6 in favour of his daughter, it cuts the root of his case. Therefore, the finding of the Courts below pointing out the suppression of the Ex.A-6-settlement deed at the time of filing the suit is very fatal to the plaintiff's case. Therefore, this Court finds no error in the finding of the Courts below regarding maintainability of the suit laid by Rangasamy Naidu on 04.06.1990 after settling the property in favour of Palaniammal on 19.03.1990.

9. Regarding the genuineness of the settlement deed, the appellant has stepped into the shoes of her father, after the death of her father. As pointed out by the Courts below, the appellant herein has initiated a suit in O.S.No.204 of 1992 against the respondents herein claiming share in other properties left by her father Rangasamy Naidu. While so, either as one of the legal heirs of Rangasamy Naidu or by virtue of the settlement deed, if the appellant feels that she has right over the suit property or any other property, the same has to be established by her independently in the courts of law.

10. In the suit for bare injunction filed by her father merely by stepping into shoes of her deceased father, she cannot collaterally get validity of the settlement deed Ex.A-6. Therefore, this Court finds no error in the judgment of the Courts below to interfere in the second appeal stage. According, this Second Appeal is dismissed. No order as to costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge, Mettur

2.The District Munsif Judge, Mettur.

3. The Section officer
VR Section, High Court, Madras 104.(2 copies)

+1 CC to Mr.G.Sankaran, Advocate sr 4945.

+1 CC to Mr.N.Manokaran, Advocate sr 4891.

S.A.No.1467 of 2004

BR(CO)
SP(26/04/2019)

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