



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.01.2019	Pronounced on: 23.01.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Second Appeal No.529 of 2004

1. Arjuna Padayachi,
S/o.Kulandaivel Padayachi

2. Angammal,
W/o.Arjuna Padayachi

Both residing at
Kattu Kottagai,
Karadichithur Village,
Kallakurichi Taluk,
Villupuram District.

3. Baggiyammal,
W/o.Late Natarajan,

4. Minor Saravanan,
S/o.Late Natarajan,
Rep by next friend & mother
the 3rd Appellant

No.3 & 4 residing at
Palrampattu Village,
Kallakurichi Taluk,
Villupuram District.

... Appellants/Defendants

/versus/

Valliammal,
W/o.Arjuna Padayachi,
Palrampattu Village,
Kallakurichi Taluk,
Villupuram District.

... Respondent/Plaintiff

PRAYER: This Second Appeal has been filed under Section 100 of Civil Procedure Code, praying against the judgment and decree of the Subordinate Judge's Court at Kallakurichi dated 27.09.2002 in A.S.No.138/1998 confirming judgment and decree of the Principal District Munsif, Kallakurichi dated 10.09.1998 in O.S.No.889 of 1995.

For Appellants : Mrs.Mythili Suresh
for Sarvabhauman Associates

For Respondent : No appearance

J U D G M E N T

The Appellants herein are the defendants and the representatives of the deceased defendants. The respondent herein is the plaintiff in O.S.No.889 of 1995 on the file of District Munsif Court, Kallakurichi. The relief sought by the plaintiff is to declare title to the plaintiff in respect of the suit property and for permanent injunction restraining the defendants from interfering with her peaceful possession.

2. According to the plaintiff, the suit property is her absolute property which she got through her husband/first defendant by way of registered settlement deed dated 04.05.1965. While so, the first defendant had developed illicit intimacy with the 2nd defendant and on her bad advice, the first defendant through the other defendants trying to interfere her peaceful possession of the suit property and claiming right over the property based on some fabricated documents. According to the plaintiff, as per the settlement deed executed by the first defendant, she has right to enjoy the property till her lifetime. After her demise, the property should devolve upon her legal heirs absolutely.

3. The first defendant who is none other than the husband of the plaintiff has filed the written statement, which has been adopted by the other defendants. According to the first defendant, the settlement deed alleged to have been executed by him in favour of the plaintiff is not a valid document. It did not come into force since the plaintiff has deserted the first defendant and living separately. Only to bring her into the matrimonial fold, he executed the settlement deed with a fond hope that she will join with him and live together.

4. The settlement deed relied by the plaintiff is a conditional settlement. The first defendant settled some of his properties in favour of plaintiff vesting interest till life without right of alienation on condition that she will live with plaintiff and take care of him. The plaintiff has failed to comply the condition. The patta obtained by the plaintiff through fraudulently mode has been objected and Appeal is pending before the Revenue Officials.

5. The settlement deed was executed as per the advice of the Panchayathar but the plaintiff was not willing to join with the first defendant and did not accept the settlement made in her favour. Thus, the deed has not come into force. Thereafter, the first defendant settled the property in favour of the 3rd defendant on 04.05.1966. After the plaintiff deserted him and got separated, he married the 2nd defendant and living with her. Even under the alleged settlement deed, the entire suit property has not been settled in favour of the plaintiff. The properties which does not fall under the settlement deed are also included in the suit.

6. The trial Court has framed the following issues based on the pleadings.

(i). Whether the plaintiff is entitled for the relief sought for?

(ii). What is the order to be passed regarding cost?

7. The plaintiff Valli (PW.1) and Govinda Mudaliar (PW.2) were examined on the side of the plaintiff. In support of the plaintiff, 5 exhibits were marked. On the side of the defendant DW.1 examined 2 Exhibits were marked on the side of the defendants.

8. The trial Court, after considering the recital of the Settlement Deed (Ex.A.1), the deposition of PW.1 and PW.2 has held that the first defendant has executed the Settlement Deed (Ex.A.1) in favour of the plaintiff (i). 46 ½ cents, out of 93 cents in S.No.53/3, (ii). 31 cents out of 46 cents in S.No.53/4 and (iii) 37 cents out of 2 Acres 46 cents in S.No.54/2 giving life interest to her without right of alienation and the absolute right with her legal heirs. In the settlement deed, the first defendant has also mentioned that the plaintiff is having one female child. The settlement deed has been attested by Krishna Mudaliar and Govinda Mudaliar. One of the attesting witness Govinda Mudaliar has been examined as PW.2 so, based on the document and the evidence of the attesting witness, the trial Court has allowed the suit for declaration and injunction.

9. Aggrieved by that the defendants have preferred the Appeal Suit before the Subordinate Court, Kallakurichi in A.S.No.138 of 1998.

10. The Appellate Court has framed the following point for consideration.

(i). Whether the settlement deed dated 04.05.1965 is true, valid binding on the defendants.

(ii). Whether the judgment and decree of the trial Court is in accordance with law.

11. The First Appellate Court had re-appreciated the evidence by considering the Ex.A.1 the settlement deed, Ex.A.3 Patta issued in favour of the plaintiff, Ex.A.4 Kist receipts and Ex.A.5 Adangal as well as Ex.B.1 subsequent settlement deed executed by the first defendant in favour of the 3rd defendant and Ex.B.2 Kist receipts in the name of the 2nd defendant and dismissed the appeal confirming the trial Court judgment. It held that the plaintiff has accepted the settlement and taken possession of the property by effecting mutation in the Revenue records. The plaintiff has proved their possession through Kist receipts (Ex.A.4) and Adangal (Ex.A.5). Therefore, the case of the defendants that the plaintiff has not accepted the settlement found disproved through mutation of Revenue Records, payment of kist and Adangal.

12. While advertng to the subsequent settlement deed Ex.B.1, the Lower Appellate Court has held that the first defendant having settled the property in favour of the plaintiff, cannot settle the same property in favour of the third defendant subsequently without setting aside the earlier settlement. So, the first defendant while executing Ex.B.1 in favour of 3rd defendant had no right to convey the property. Hence, the settlement deed Ex.B.1 is void and not binding on the plaintiff.

13. The Lower Appellate Court also negatived the plea of the first defendant that the plaintiff ought to have lived with him has wife and taken care of him in order to enjoy the fruits of the settlement deed. Since, she has failed to comply the conditions found in the settlement deed Ex.A.1, the plaintiff is not entitled for the property.

14. Regarding the plea raised by the defendants in respect of identity of the suit property, the Lower Appellate Court has held that Adangal and Kist receipts indicates that the plaintiff has demarcated the 31 cents of the un-divided portion, out of 46 cents.

15. Aggrieved by the concurrent finding of the Courts below, the present Second Appeal is filed. At the time of admission, the following Substantial Questions of law has been framed.

(i). When the identity of the suit property is in dispute and Ex.A-1 Settlement deed does not contain suit (2) item, whether the relief can be granted on the basis of Ex.A-1

Settlement deed dated 04.05.1965?

(ii). When undivided 31 cents has been mentioned as suit first item, whether there can be an Order of injunction against the co-owners?

16. Ex.A.1 settlement deed dated 04.05.1965 has been executed by the first defendant in favour of the plaintiff. PW.2 Govinda Mudaliar is one of the attesting witness to the document. PW.1, PW.2 and DW.1 had spoken about this document. While, PW.1 and PW.2 supports the genuinity of the settlement deed, DW.1 who is the settlor denies the validity of his settlement deed which he has executed in favour of the plaintiff. According to the first defendant, he executed the settlement deed, on the compulsion of the plaintiff parent. However, the plaintiff had not taken possession of the property.

17. It is also the specific case of the first defendant that the plaintiff is his 2nd wife and the 2nd defendant/Angammal is his 1st wife. He has executed a settlement deed in favour of 3rd defendant, who is the son born through 2nd defendant. However, in the cross examination, he admits that in the settlement deed executed in favour of 3rd defendant, giving life interest to 2nd defendant, he did not mention about the earlier settlement deed executed in favour of the plaintiff. He also admits that before executing the settlement deed Ex.B.1 for the very same property covered into Ex.A.1, he did not issue any notice to the plaintiff expressing his intention to cancel the settlement deed for violation of the condition in the suit property. He also admits that he has not produced any documents to show the property is enjoyed by Angammal the life interest holder as per Ex.B.1.

18. In the settlement deed, the condition imposed on the plaintiff that she should live with him and take care of him is not a pre-condition or a condition which will dis-entitled the plaintiff from enjoying the property. Even if the plaintiff had failed to comply the condition, this will not take away the plaintiffs life interest in the properties. The first defendant admits that there is a female child born to him through the plaintiff. She is the absolute owner of the property vested on her, as per the settlement deed. In such circumstances, having settled the property in favour of plaintiff for life interest and the plaintiff having accepted the settlement and acted upon it by taking possession of it, the first defendant cannot again settle the same property in favour of 3rd defendant after one year. If the contention of the 1st defendant is to be accepted that the plaintiff has failed to comply the condition and therefore, the settlement deed did not come into force. Then,

the first defendant ought to have first taken measures to cancel the First settlement deed (Ex.A.1) before executing the 2nd settlement deed Ex.B.1 in favour of the 3rd defendant.

19. Having failed to do so, he cannot now question the validity of Ex.A.1. In the suit schedule the plaintiff has included (2) items of the properties. (i). In Survey No.53/4, 31 cents out of 46 cents & (ii). In Survey No.54/2C, 37 cents out of 65 cents. In the settlement deed, Ex.A.1 Survey Nos. 53/4 and 54/2 finds place. The 2nd item of the property is the sub-division of S.No.54/2. The total extent of un-divided S.No.54/2 was 2 acres 46 cents. After Sub-division, the extend in S.No.54/2C is 65 cents. The plaintiff is claiming only 37 cents, out of 65 cents, which is covered in the settlement deed falling under the un-divided S.No.54/2.

20. As far as the Second Question of law is concerned, it is not a rigid-rule that injunction cannot be granted against the co-owner in an un-divided property. When a strong case of encroachment on the settled portion of the plaintiff is made out, in an extraordinary circumstances, to protect the peaceful enjoyment of the plaintiff who had given the portion in the un-divided share exclusively, the peaceful possession can be protected by way of injunction. In this case, the Patta, Adangal and Revenue receipts which are marked as Ex.A.3 to Ex.A.5 clearly indicates that the plaintiff is in possession of a particular piece of land in the un-divided portion. While so, there is no illegality in granting injunction restraining the defendant from interfering with the peaceful possession. Furthermore, the defendants herein has failed to prove his right over the 1st item property either as a owner of the remaining portion of the un-divided share or co-owner of the suit portion. Therefore, the Second Question of Law is also not sustainable.

21. In the result, the Second Appeal is dismissed. No costs.

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Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

bsm

To,

1.The Learned Subordinate Judge, Kallakurichi.

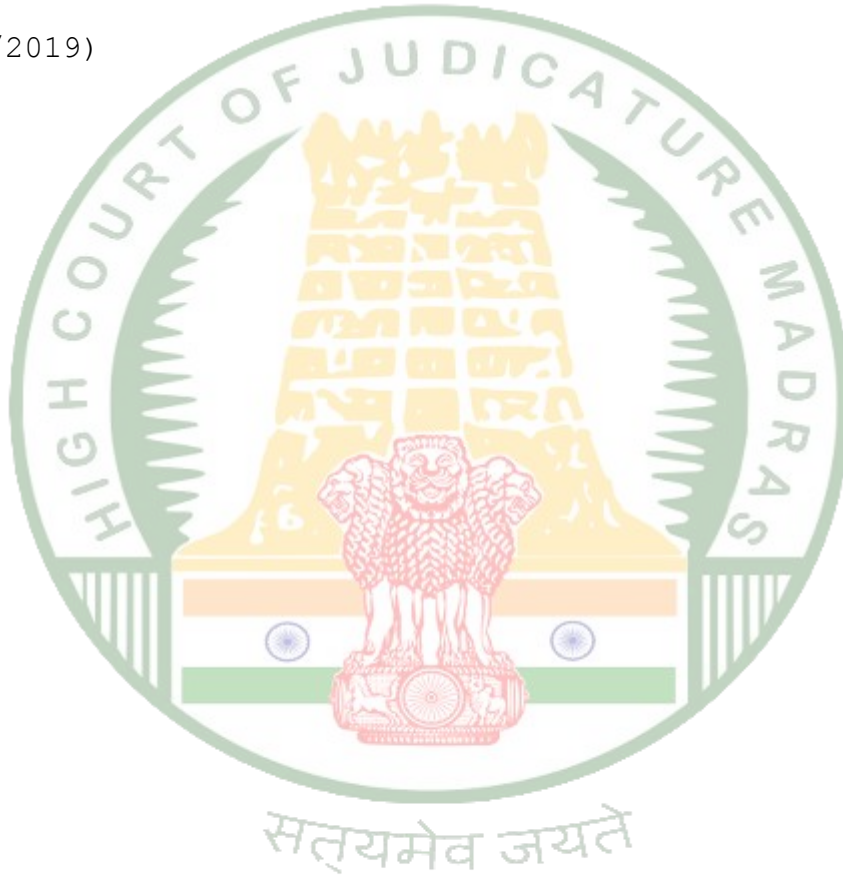
2.The Learned Principal District Munsif, Kallakurichi.

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

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.5385

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CNR (CO)
GMY (13/03/2019)



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