

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.09.2019
CORAM:
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
S.A.No.37 of 2014

Balasaraswathy

..Appellant/Plaintiffs

Vs.

1.Rajamani
2.Durai

..Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 10.10.2013 made in A.S.No.106 of 2012 on the file of Principal Sub Court, Mayiladuthurai, dismissing the Appeal and confirming the judgment and decree dated 16.10.2012 made in O.S.No.62 of 2012 on the file of Additional DMC, Mayiladuthurai.

For Appellant : Mr.Umapathy for
Mr.N.A.Nissar Ahmed

For Respondents: Mrs.Srividhya
for Mr.A.Muthukumar

J U D G M E N T

The plaintiff, whose suit for recovery of possession in O.S.No.62 of 2012 was dismissed by the trial court and the said dismissal was upheld by the lower appellate court in A.S.No.106 of 2012, has come forward with this Second Appeal.

2. The claim of the plaintiff was that the property belonged to her father Chellaperumal. He had executed a settlement deed on 02.10.1985 settling the property in her favour. According to her the 1st defendant who is her brother had trespassed into the property and had put up a thatched shed and is carrying on business. The 2nd defendant is his son. It is also claimed that the 1st defendant is one of the attesting witness to the settlement deed dated 02.10.1985.

3. The 1st defendant resisted the suit contending that the suit property did not belong to Chellaperumal, it actually belonged to Sembanarkoil Swarnapuriswarasamy temple. Therefore,

according to the 1st defendant, their father Chellaperumal had no right to execute a settlement deed in respect of the property belonging to the temple. He would also claim that after the death of the father, he had been paying lease amount to the temple and he has been in occupation of the suit property.

4. The courts below had also found that the settlement deed dated 02.10.1985 was not acted upon since mutation of revenue records was effected only in the year 2007. It was also pointed out that the plaintiff herself has admitted that the defendants 1 and 2 are paying the lease amount to the temple. The courts below also took note of the fact that the plaintiff as PW1 had admitted that the land in question belongs to the temple and that she had also deposed that her father was paying the lease amount till his death. The defendants had produced the pagudhi receipts and patta issued to the 1st defendant even in the year 1996. considering the totality of the circumstances the courts below rejected the claim of the plaintiff. Aggrieved the plaintiff has come forward with this Second Appeal.

5. Notice of motion was ordered on 28.02.2014, pursuant to which the respondents have entered appearance through counsel. I have heard Mr.N.A.Nissar Ahmed, learned counsel assisted by Mr.Umapathy for the appellant and Mrs.Srividhya, learned counsel for Mr.A.Muthukumar for the respondents.

6. The learned counsel appearing for the appellant would vehemently contend that once the 1st defendant had attested the settlement deed Ex.A7, he is estopped from setting up independent title. What is now sought to be projected is estoppel by attestation. It is the settled law in order to plead estoppel by attestation, it should be established that the attester had knowledge of the document that he chose to attest. Even in the evidence the 1st defendant had said that he is a obedient son and he had signed wherever his father directed him to sign. Nothing has been brought about to establish that the 1st defendant had knowledge of the contents of the document dated 02.10.1985 at the time when he attested the said document. Therefore, there is no question of invoking the principle of estoppel by attestation.

7. Even otherwise the plaintiff herself has admitted that the property belongs to the temple and her father had no right to execute the settlement deed in respect of the same. Therefore, the execution of the settlement deed by her father and its attestation by the 1st defendant will not confer any title on the plaintiff to enable her to recover possession. The courts below also found that the 1st defendant and his son 2nd

defendant are in possession of the property paying rents to the temple. Hence, I do not find any question of law much less a substantial question of law enabling me to entertain this Second Appeal.

8. Hence, this Second Appeal is dismissed without being admitted. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The learned Principal Sub Judge,
Mayiladuthurai
2. The learned Additional District Munsif,
Mayiladuthurai.

+1 cc to Mr.N.A.Nissar Ahmed Advocate sr77829

+1 cc to Mr.A.Muthukumar Advocate sr77577

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सत्यमेव जयते

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