

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1169 of 2019
and
C.M.P.No.25530 of 2019

1.Madurai
2.Duraibabu
3.Baskaran

... Appellants/
Defendants No.1, 2 & 4

Vs

1.Bhuvaneswari
2.Mallika

... 1st & 2nd Respondents/Plaintiffs

3.Ganapathy

... 3rd Respondent/3rd Defendant

Prayer:-

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree dated 09.02.2018 made in A.S.No.37 of 2015 on the file of the Principal Sub Judge, Chengalpattu in confirming the judgment and decree dated 11.08.2015 in O.S.No.342 of 2008 on the file of the District Munsif, Chengalpattu.

For Appellants : Mr.Kamaraj.J

For Respondents : Mr.Rajendran Raghavan

JUDGMENT

The second appeal arises out of the concurrent findings passed in O.S.No.342 of 2008 confirmed in A.S.No.37 of 2015. The defendants 1, 2 and 4 are the appellants before this Court.

2. The case of the plaintiffs/respondents 1 and 2 herein is that the suit scheduled property was originally owned by one Sigamani S/o.Arumugam and he sold the same to Kuppammal W/o.Kanniappan, through a registered sale deed dated 05.05.1997, registered as Doc.No.715/1997. It is the further case of the plaintiffs that the said Kuppammal purchased the property out of her own funds and the plaintiffs became absolute

owners of the property by virtue of settlement deed dated 09.02.1998. Since then, they have been in possession and enjoyment of the property and they are paying Kist to the Government. It is further stated that on 24.12.2007, when the plaintiffs ploughed the land to raise crops, it was objected by the defendants and hence, the suit.

3. In the written statement filed by the defendants 1, 2, 4/appellants it is stated that the suit scheduled property was purchased out of the joint family funds and hence, they are also entitled for partition. It is further stated that none of the defendants have been attested the settlement deed and they are in possession of the property.

4. The Trial Court after framing necessary issues permitted the parties to lead their evidence. On the side of the plaintiffs, P.W.1 was examined and Exs.A1 to A13 were marked. On the side of the defendants D.W.1 was examined and Ex.B1 was marked. After considering both the oral and documentary evidence, the Trial Court decreed the suit by judgment and decree dated 11.08.2015. Aggrieved over the same, the defendants 1, 2 and 4/Appellants preferred an appeal before the Principal Sub Judge, Chengalpattu in A.S.No.37 of 2015. The Appellate Court on independent appreciation of the evidence adduced by the parties concurred with the findings of the Trial Court and dismissed the appeal on 09.12.2018. Challenging the same the Second Appeal.

5.Mr.Kamaraj J., learned counsel for the appellants would submit that the suit property was purchased by the contribution made by the family members and the purchaser Kuppammal did not have any independent income on her own. Further, the property was under joint possession of the plaintiffs and the defendants. The plaintiffs taking advantage of the fact that the settler, was residing with them obtained a settlement deed. It is further contended that the settlement deed was not proved in accordance with law. In support of his contention, the learned counsel for the appellants relied upon the decisions of the Hon'ble Supreme Court made in H.Siddiqui Vs. A.Ramalingam, reported in (2011) 4 SCC 240 and Rakesh Mohindra Vs. Anita Beri And Others, reported in (2016) 16 SCC 483.

6.Per contra, Mr.Rajendran Raghavan, learned counsel for the respondents would submit that admittedly, the property was purchased by the mother of the respondents namely Kuppammal and in view of Section 14 of Hindu Succession Act, she is the absolute owner of the property. It is further contended that to prove the execution of the settlement deed by Kuppammal in favour of the plaintiffs, a certified copy of the document was produced through P.W.1, which was marked as Ex.A2. At the time

of marking of the documents no objection was raised by the appellants. According to the respondents, the documents were proved in accordance with law.

7. In the case on hand, it is not in dispute that the suit property was purchased by Kuppammal. According to the plaintiffs, the suit property was purchased out of the joint family funds, which has been disputed by the defendants/appellants herein. The Trial Court and the Appellant Court held that the said Kuppammal has become the absolute owner of the property in view of Section 14 of Hindu Succession Act, which says that the property of a female Hindu will be treated as her absolute property.

8. In the decisions relied upon by the learned counsel for the appellants in (2011) 4 SCC 240, the tenant of the property filed a suit for specific performance on the basis of the agreement of a sale. In that case, original sale agreement was not produced, however, a copy was marked. In those facts, the Hon'ble Supreme Court has held that admitting the signature in the photo copy of the document does not amount to admitting the contents of the document. It is also held that on the secondary evidence, relating to the contents of the document is inadmissible, until non-production of original is accounted for.

9. In the second case in (2016) 16 SCC 483, the plaintiffs were permitted to mark the secondary evidence, but, it was observed that mere admission of the secondary evidence does not amount to its proof. The relevant paragraph is extracted hereunder :

".....

16. The High Court in the impugned order noted the following :

"9. There is no averment about Ext.DW 2/B in the written statement. The written statement was filed on 19.2.2007. Ext.DW 2/B in fact is only a photocopy. The plaintiffs are claiming the property on the basis of a registered gift deed executed in her favour in the year 1984. It was necessary for the defendant to prove that in what manner the document dated 24.8.1982 was executed. The defendant while appearing as AW 1 has admitted in his cross-examination that except in his affidavit. Ext. AW 1/A, he has not mentioned in any document that the letter of disclaimer was executed by Justice late Shri Tek Chand in his presence. The statement of DW 2 does not prove that Ext.DW 2/A, ever

existed. DW 2 Shri Gurucharan Singh, has categorically admitted in his cross-examination that he has not brought the original of Ext. DW 2/B. He has also admitted that on Ext. DW 2/B, the signatures of P.C. Danda were not legible. Volunteered that, those were not visible. The learned trial Court has completely misread the oral as well as the documentary evidence, while allowing the application under Section 65 of the Evidence Act, 1872, more particularly, the statements of DW 2 Gurucharan Singh and DW 3 Deepak Narang. The applicant has miserably failed to comply with the provisions of Section 65 of the Evidence Act, 1872. The learned trial Court has erred by coming to the conclusion that the applicant has taken sufficient steps to produce document, Ext. DW 2/B."

10. In the case on hand, a certified copy of the settlement deed has been marked through P.W.1, but admittedly no objection was raised at the time of marking the documents. Both the Trial Court and the Appellate Court on proper appreciation of evidence held that the plaintiffs have proved their title and they are entitled for decree sought for in the suit. In my considered opinion, no question of law raises for consideration in the present appeal and the factual findings of the Courts below cannot be interfered. Accordingly, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub Judge, Chengalpattu.
2. The District Munsif, Chengalpattu.

+lcc to Mr.Kamaraj.J, Advocate, S.R.No.101249

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CP(CO)
CS/10/09/2020