

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Second Appeal No.731 of 2017

R.Meena ... Appellant/ Respondent/ Plaintiff

Vs.

Saraswathi ... Respondent/ Appellant / Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 07.03.2014 passed in A.S.No.450 of 2012 on the file of the I Additional City Civil Court reversing the judgment and decree dated 03.09.2012 in O.S.No.5302 of 2011 on the file of the VIII Assistant City Civil Court, Chennai.

For Appellant : Mr. P.Senthil Kumar

For Respondent : Mr. Harikrishnan,

JUDGEMENT

The plaintiff, who has lost the suit before the first Appellate Court, is the appellant herein. He has filed a suit for permanent injunction restraining the defendant from interfering with the suit schedule property. The trial Court decreed the suit and the First Appellate Court reversed it and dismissed the suit. Against which, the Second Appeal has been filed.

2. The case of the plaintiff is that, the suit schedule property belongs to one Ramamoorthy, who is the husband of the plaintiff, and by virtue of settlement, the suit schedule property has been settled in favour of the plaintiff. Originally the suit schedule property belongs to one Nataraja Naicker, who is the father-in-law of the plaintiff. By way of partition dated 01.08.1981, the said Nataraja Naicker, and his 3 sons divided the property between themselves, accordingly the plaintiff's husband, who is one of the sons of Nataraja Naicker got an extent of 2044 sq.ft . Thereafter, the plaintiff's husband executed a settlement deed in favour of the plaintiff and by virtue of the same, she has been in possession and enjoyment of the property. Now, the defendant, who is the sister of the

plaintiff's husband, has no right or interest over the suit property interfering with her possession of the suit property, and hence, she has filed the suit.

3. The defendant filed a written statement stating that she is the unmarried daughter of Nataraja Naicker. The suit property has been purchased by the mother of the defendant in the name of her father and hence, she is also entitled to equal share and as such, she also has a right over the suit schedule property. The plaintiff, who is a stranger, is challenging the lawful possession and enjoyment of the defendant. As the defendant is one of the daughters of the Nataraja Naicker and she has been in possession and enjoyment of the suit schedule property, the suit itself is not maintainable. It is further contended by the defendant that even though the plaintiff claiming right to the suit property based on partition, there is no evidence to establish the fact that partition has been taken place.

4. The trial Court, based on the settlement deed said to have executed by the husband of the plaintiff in her favour under Ex.A.8 and also Electricity Bill receipts vide ExA9, filed by the plaintiff, has come to a conclusion that the plaintiff is in possession and enjoyment of the property and decreed the suit by a judgment and decree dated 03.09.2012 . Challenging the same, the defendant filed an appeal in A.S.No.450 of 2012 on the file of the I Additional city Civil Court, Chennai. The First Appellate Court, after considering the entire materials , has come to a conclusion that the property originally belongs to Nataraja Naicker and in the absence of any proof of partition between Nataraja Naicker and his sons, the plaintiff, claiming to be the daughter-in-law of Nataraja Naicker cannot maintain the suit. Apart from that Ex.A.8, settlement deed is also not proved by the plaintiff and hence, allowed the appeal by a judgment and decree dated 07.03.2014, thereby dismissed the suit. Now, challenging the same, the present Second Appeal has been filed.

5. In the grounds of appeal, the appellant has raised the following substantial questions of law :-

a. Whether the Court below misconstrued and in correctly interpreted settlement deed dated 25.02.2008 Ex.A8 document by wrong application of principle of law ?

b. Whether the Court below considered the crucial document before the Court reached final conclusion?

c). Whether the legal effect of the terms of the Settlement Deed dated 25.02.2008 was property appreciated by the Lower Appellate Court ?

<https://hcservices.ecourts.gov.in/hcservices/>

d) Whether there was any appreciation regarding the construction of the settlement deed dated 25.02.2008 under

the guise of the Transfer of Property act ?

e) Whether there was any consideration of the material piece of evidence of the trial Court ?

f) Whether the Lower Appellate Court findings were perverse and contrary to the evidence of the trial Court judgment and decree dated 03.09.2012 ?

g) Whether the Lower Appellate Court properly appreciated the recitals of deed of settlement dated 25.02.2008 wherein it deals about partition and title is perfected by the appellant's husband ?

h) Whether there was any reversal of a finding of fact arrived at by the First Appellate Court ignoring the vital documents Ex.A.8 settlement deed of partition koorchit dated 01.08.1981 ?

6. I have heard both sides and perused the materials available on record carefully.

7. The case of the plaintiff is that the suit property originally belongs to Nataraja Naicker and he has three sons. On 01.08.1981, the said Nataraja Naicker and his 3 sons partitioned the suit property between themselves, and an extent of 2044 sq.ft has been given to the share of the plaintiff's husband. Thereafter, he executed a settlement deed in favour of the plaintiff under Ex.A.8 and claiming right under the settlement deed, she has filed the suit. Admittedly, the defendant is the daughter of Nataraja Naicker. According to her, she is unmarried and she has been born and brought up in the suit schedule property and she is residing there and there is no partition between the family members. She, being the legal heir of Nataraja Naicker, also entitled for a share in the suit property. According to her, against the co-owner, the plaintiff cannot maintain a suit for injunction. Though the plaintiff claiming right under the settlement deed, she has not proved the settlement and hence, the suit is not maintainable.

8. The plaintiff claims that there was a family partition between the Nataraja Naicker and his sons by means of a deed of partition dated 01.08.1981, by which, the suit property has been given to the share of the plaintiff's husband. But, to establish the same, absolutely, there is no evidence and the alleged partition koorchit was also not marked in evidence, and no witnesses has been examined to prove the alleged partition. In the absence of any proof for the partition, the defendant being a daughter of the Nataraja Naicker, also entitled for a share in the suit schedule property, and against the co-owner, the plaintiff cannot maintain the suit for injunction.

9. That apart, it is now stated that during his life time, Nataraja Naicker has sold the entire extent of 9620 sq.ft. in favour of one Ravikumar and his family members and they have filed a suit in C.S.No.198 of 2006 against the husband of the plaintiff and others and the same is pending. The husband of the plaintiff also filed a suit against the said Ravikumar and others for injunction in C.S.No.526 of 2006 and that suit is also pending. Considering all the materials, the Lower Appellate Court rightly dismissed the suit filed by the plaintiff. I have also gone through the materials and find no perversity or illegality in the judgment passed by the Lower Appellate Court, and the substantial questions of law is answered against the appellant.

10. In the result, the second appeal is dismissed and the judgment and decree of the First Appellate court reversing the judgment and decree of the trial court is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrp
To

1. The I Additional, City Civil Judge,
Chennai.

2. The VIII Assistant City Civil Judge,
Chennai.

Copy to:
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.Yuvaraj , Advocate SR.No. 35896

+2ccs to Mr.K.Hari krishnan , Advocate SR.No. 35537

S.A. No.731 of 2017

A.SK(03/10/2019)