

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.790 of 2018
and C.M.P.No.22247 of 2018

G.Murthi

..Appellant/Defendant

Vs.

G.Shantha Kumari

..Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the XIX Additional City Civil Court, Chennai, dated 03.07.2017 in A.S.No.325 of 2006, confirming the judgment and decree of the learned VIII Assistant City Civil Court, Chennai, dated 01.02.2006 in O.S.No.1771 of 2003.

For Appellant : Mr.T.S.N.Prabhakaran

For Respondent : Mr.M.Rajasekar

J U D G M E N T

The defendant in O.S.No.1771 of 2003 having suffered a decree for recovery of possession on it is being confirmed in A.S.No.325 of 2006 has come up with this second appeal.

2. The plaintiff/respondent sued for possession contending that the suit property was allotted to her husband G.Venkataiah by the Government of Tamilnadu on 13.10.1986. The said G.Venkataiah was in possession and enjoyment in the property right from the date of the allotment having put up a construction. According to the plaintiff, her husband G.Venkataiah settled the property on her by virtue of a settlement Deed dated 20.08.2001. Even during his life time, G.Venkataiah has vacated the suit property in order to carry out certain repair and renovation works. Before taking up the repair and renovation work, G.Venkataiah fell sick and eventually died on 17.11.2001. According to the plaintiff, the

defendant who is the step brother of G.Venkataiah trespassed into the property during his absence and occupied the same. Since the defendant did not come forward to vacate and hand over the possession despite repeated requests, the plaintiff was constrained to file the suit for recovery of possession.

3. The suit was resisted by the defendant contending that the suit property was not allotted to G.Venkataiah and he was in possession of the property in his own right. The status of the plaintiff as wife of said G.Venkataiah was also denied. Truth and validity of the settlement deed dated 20.08.2001 was denied and it was claimed that G.Venkataiah was inpatient in TB Sanatorium at Tambaram, on the said date and hence he could not have executed the settlement deed as alleged.

4. The trial Court upon consideration of the evidence on record, concluded that the plaintiff has established her title and that she is entitled to decree for recovery of possession of the property. Aggrieved, the defendant preferred an appeal in A.S.No.325 of 2006.

5. The lower appellate Court found that the plaintiff has not proved the settlement deed dated 20.08.2001 by examining the attesor in compliance with Section 68 of the Indian Evidence Act. The lower appellate Court also faulted the trial Court for receiving the xerox copy of the original allotment order dated 13.10.2007 as Ex.A6(B). On the above findings, the lower appellate Court allowed the appeal and dismissed the suit.

6. Aggrieved, the plaintiff had filed a second appeal in S.A.No.491 of 2008. By a judgment dated 23.09.2016, this Court had allowed the second appeal and remanded the matter to the lower appellate Court, affording an opportunity to the parties to let in evidence in proof of the settlement deed as well as to produce the original allotment order dated 13.10.1986.

7. Pursuant to the remand, the plaintiff examined one Suresh, the attesor of the settlement deed dated 20.08.2001 as P.W.2, one Chandra Sekar as P.W.3. The original land allotment order dated 13.10.1986 was summoned from the office of the District Collector, Chennai and the same was marked as Ex.A8.

8. Upon a consideration of the evidence that was on record as wells as evidence that was placed before the before the lower appellate Court after remand made in second appeal No.491 of 2008, the lower appellate Court concurred with the findings of the trial Court and upheld the title of G.Venkataiah. The lower appellate Court also found that the plaintiff has

established the execution of Ex.A1 settlement deed by examining the attestor whose evidence was found reliable. On the said conclusions, the lower appellate Court dismissed the appeal, confirming the judgment and decree of the trial Court. Aggrieved, the defendant has come up with this Second appeal.

9. I have heard Mr.T.S.N.Prabhakaran, learned counsel for the appellant and Mr.M.Rajasekar, learned counsel for the respondent.

10. Mr.T.S.N.Prabhakaran, learned counsel for the appellant would vehemently contend that the plaintiff has not established that she is the wife of Venkataiah and therefore she is not entitled to recovery of possession. The additional evidence that was produced before the lower appellate Court pursuant to the remand order, particularly Ex.A8, the original allotment order puts the title of Venkataiah beyond doubt. From Ex.A8, it could be safely concluded that Venkataiah had unimpeachable title to the property, the same having been allotted to him by the Government. The lower appellate Court has also concluded that the settlement deed dated 20.08.2001 is true and valid and the evidence of the attestor who was examined as P.W.2 is cogent and convincing.

11. Mr.T.S.N.Prabhakaran would however contend that Venkataiah was actually inpatient at the T.B Sanatorium, Tambaram and died on 17.11.2001. Therefore, he could not have executed the settlement deed on 20.08.2001. The document is a registered instrument. The Registering Officer has made an endorsement to the effect that G.Venkataiah was present in the Office of the Sub Registrar on 20.08.2001 and acknowledged the execution of the document. The endorsements made under Sections 58 and 59 of the Indian Registration Act are entitled to a presumption under Section 60 (2) of the Indian Registration Act. Therefore, the burden is on the defendant/appellant to let in sufficient evidence capable of rebutting the statutory presumption. The learned counsel for the appellant is unable to point out any evidence, worth mentioning which would rebut the statutory presumption.

12. The next contention of the learned counsel for the appellant is that the plaintiff has not proved that she is a legally wedded wife of Venkataiah. Since the plaintiff bases her claim of settlement deed, her status falls into insignificance, as rightly observed by the lower appellate Court. Therefore, the question as to whether there was a marriage between the plaintiff and the deceased Venkataiah is only academic and the same cannot in any manner affect the title

of the plaintiff since she claims title under a valid instrument executed in accordance with law. Therefore, I am unable to find any question of law much less a substantial question of law, based on the arguments of the learned counsel for the appellant. The appeal therefore fails and it is liable to be dismissed without being admitted.

13. The learned counsel for the appellant would seek time to vacate and hand over the possession of the property.

14. Mr.M.Rajasekar, learned counsel for the respondent would oppose the said request pointing out that the suit is of the year 2003 and already 16 years have passed. However, taking note of the fact that there was a remand order, I am of the considered opinion that the appellant should be granted reasonable time to hand over possession.

15. Hence, the appellant is granted 6 months time to vacate and hand over possession of the property to the respondent. The appellant shall file an additional undertaking to vacate and handover the possession of the property to the respondent on or before 01.05.2020. The affidavit shall be filed within a period of 15 days from today i.e., on or before 15.11.2019. If no affidavit is filed by 15.11.2019, the respondent decree holder will be free to execute as if no time has been granted.

16. In the result, the second appeal is dismissed without being admitted. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The XIX Additional City Civil Court,
Chennai.
2. The VIII Assistant City Civil Court,
Chennai.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to Mr.M.Rajasekar, Advocate SR.90351

S.A.No.790 of 2018 and
C.M.P.No.22247 of 2018

SR(CO)
CB(13/11/2019)



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