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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.Nos.420 and 421 of 2020  
and  
C.M.P.Nos.8837 and 8839 of 2020

S.A.No.420 of 2020

1.Padma W/o.Late Vedaiya Mudaliar  
(Rep.by Power Agent Natarajan)

2.Kumara raj

3.Natarajan

..Appellants/DD 2 to 4 in Trial Court

Vs.

Vijayalakshmi

..Respondent/Plaintiff/Plaintiff

S.A.No.421 of 2020

Kumara raj

..Appellant/Plaintiff

Vs.

1.Vijayalakshmi

2.Selvaraj

..Respondents/Respondents 1,2

PRAYER in S.A.No.420 of 2020: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Sub Court at Myladuthurai in A.S.No.73 of 2018 dated 19.03.2020 and confirming the judgment and decree of the District Munsif court at Sirkali in O.S.No.99 of 2006 dated 23.04.2018 by allowing the second appeal and for costs of the appeal.

PRAYER in S.A.No.421 of 2020: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Sub Court at Myladuthurai in A.S.No.69 of 2018 dated 19.03.2020 and confirming the judgment and decree of the District Munsif court at Sirkali in O.S.No.113 of 2006 dated 23.04.2018 by allowing the second appeal and for costs of the appeal.

For Appellants : Mr.N.Thiagarajan

for Mr.K.Harikrishnan in both the S.As



## J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

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2. The defendants in O.S.No.99 of 2006 and the plaintiff in O.S.No.113 of 2006 have come up with these Second Appeals challenging the concurrent judgments decreeing O.S.No.99 of 2006 and dismissing O.S.No.113 of 2006. The suit in O.S.No.99 of 2006 was filed by the 1<sup>st</sup> respondent herein as plaintiff seeking recovery of possession of the suit property, for declaration that the alleged agreement dated 20.01.1976 entered into between husband of the plaintiff and the 1<sup>st</sup> defendant is not binding on the plaintiff, for a declaration that the settlement deed executed by the 1<sup>st</sup> defendant in favour of the 3<sup>rd</sup> defendant is invalid and not binding on the plaintiff and for future mesne profits.

3. The claim of the plaintiff was that the suit properties originally belonged to one Veerabathira Mudaliyar who had executed a Will on 16.04.1950 directing the income from the suit properties to be used for the performance of certain charities viz., feeding 20 poor persons during the day of the karthigai star in each month. Under the Will Veerabathira Mudaliyar had directed one Pavadai Mudaliyar S/o. Vinaitheertha Mudaliyar, a resident of Seergali town to perform the charities and if the wife of Veerabathira Mudaliyar was not satisfied with the performance of charities by Pavadai Mudaliyar, she can take over the performance by herself.

4. It is claimed that Veerabathira Mudaliyar died on 04.03.1951 and Pavadai Mudaliyar was performing the charities as per the Will. The 2<sup>nd</sup> wife of Veerabathira Mudaliyar viz., Alamelu Ammal had adopted the husband of the plaintiff on 18.04.1951 under a registered Adoption Deed. Finding that the charities were not properly performed by Pavadai Mudaliyar, Alamelu Ammal took over the charities. Alamelu Ammal had executed a Will on 01.09.1964 bequeathing the properties to her adopted son Govindaraju. Certain properties were also allotted to her brother Arumuga Mudaliyar under the said will.

5. It is claimed that Alamelu Ammal died 30 years prior to the filing of the suit and Govindaraju was performing annadhana dharmam. Since he was a resident of Keelaperumpallam Village the 1<sup>st</sup> defendant who is the paternal uncle of the plaintiff i.e., wife of Govindaraju was requested to perform the dharmam and reside in a portion of the house for a rent of Rs.50 per month. Taking advantage of the death of Govindaraju Mudaliyar, the 1<sup>st</sup> defendant is claiming to be the owner of the property and had also executed the settlement deed in favour of the 3<sup>rd</sup> defendant.



The execution of the settlement deed by the 1<sup>st</sup> defendant in favour of the 3<sup>rd</sup> defendant sparked the present suit.

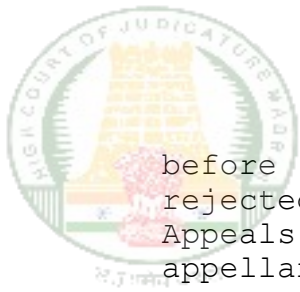
6. The suit was resisted by the defendant contending that he was not permissive occupant or tenant. It was claimed that the 1<sup>st</sup> defendant entered into an agreement with Govindaraju Mudaliyar for purchase of the property on 20.01.1976 for a sum of Rs.14,000/- and paid the entire consideration on the same day. It is also claimed that he was put in possession of the property pursuant to the said agreement and therefore the possession is referable to the agreement and the defendant cannot be evicted. He had also filed a suit in O.S.No.113 of 2006 seeking a permanent injunction restraining the plaintiff in O.S.No.99 of 2006 from interfering with his possession of the property.

7. Both the suits were tried together. The plaintiff in O.S.No.99 of 2006 viz., suit for recovery of possession was examined as PW1. Three other witnesses were examined as PW2 to PW4. Ex.A1 to Ex.A12 were marked. The 4<sup>th</sup> defendant viz., Power agent of the 2<sup>nd</sup> defendant was examined as DW1 and Ex.B1 to Ex.16 were marked.

8. The learned trial Judge upon consideration of the evidence on record concluded that the plaintiff had established title to the property and that the defendant who claims under the agreement of sale dated 20.01.1976 cannot claim adverse possession. It was also pointed out that the agreement dated 20.01.1976 was not produced before the trial court. The learned trial Judge also found that the defendant who claims under Govindaraju Mudaliyar cannot question the title of Veerabathira Mudaliyar. On the above findings, the learned trial Judge decreed the suit for possession and dismissed the suit for injunction.

9. Aggrieved the defendants in O.S.No.99 of 2006 and the plaintiff in O.S.No.113 of 2006 filed two appeals in A.S.Nos.69 of 2018 and 73 of 2018. Since the 1<sup>st</sup> defendant in the suit in O.S.No.99 of 2006 viz., Vedhaiya Mudaliyar died pending suit, his legal representatives were brought on record as defendants 2 to 4. They are the appellants in A.S.No.73 of 2018 and the plaintiff in O.S.No.113 of 2006 who figured as 3<sup>rd</sup> defendant in O.S.No.99 of 2006 was the appellant in the other appeal viz., A.S.69 of 2018.

10. The learned Principal Sub-Judge, Mayiladuthurai who heard the appeal upon re-consideration of the evidence concurred with the findings of the trial court and dismissed the Appeals. An application was filed by the appellant seeking permission to produce the agreement dated 20.01.1976 as additional evidence



before the appellate court. The learned appellate Judge rejected the said application also. Hence, these Second Appeals. I have heard Mr.N.Thiagarajan, learned counsel for the appellants.

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11. Mr.N.Thiagarajan, learned counsel appearing for the appellants would vehemently contend that in Ex.P1, Will dated 16.04.1950 Veerabathira Mudaliyar had not allotted the property to the plaintiff it was reserved for doing certain charities. Neither Govindaraju Mudaliyar nor the present plaintiff can claim title over the same.

12. I am afraid that such a contention cannot lie in the mouth of the appellants. The basis of the defence of the appellants itself is that Govindaraju Mudaliyar had executed an agreement dated 20.01.1976 agreeing to convey the property. Having admitted the title of Govindaraju Mudaliyar and having claimed to have entered into an agreement of sale with him the appellants are estopped from denying his title. The learned counsel for the appellant would also further contend that the claim of the tenancy and permissive possession has not been proved.

Possession of the appellant is admitted. The plaintiff has come to court with a specific plea that the appellant was let in possession as tenant and permitted to reside in a portion of the suit property. This claim is resisted contending that there was an agreement dated 20.01.1976 under which the appellant came into possession of the property. The said agreement has not been produced before this court. An application for receipt of the said agreement has been dismissed by the appellate court on the ground of non-production of the same before the trial court has not been properly explained. Therefore, the very basis of the claim of the deceased 1<sup>st</sup> defendant that he was let into possession under the agreement dated 20.01.1976 has not been established.

Therefore, the courts below were right in concluding that the defendants are bound to surrender possession. I do not see any question of law much less a substantial question of law enabling me to entertain the appeals. The appeals therefore fail and are accordingly dismissed without being admitted. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



dsa

To

1. The learned Sub-Judge, Myladuthurai.

2. The learned District Munsif, Sirkali.

+1cc to Mr.K.Harikrishnan, Advocate, S.R.No.41247

S.A.Nos.420 and 421 of 2020

PP (CO)  
CB(22/09/2021)