

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA. No.554 of 2020

and

CMP No.11840 of 2020

Palanisamy

..Appellant/Defendant

Vs.

Chenniammal

..Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment dated 28.11.2019 passed in A.S.No.17 of 2017 on the file of the Sub Court, Gobichettipalayam, Erode District confirming the decree and judgment dated 28.2.2017 passed in O.S.No.242 of 2012 on the file of the District Munsif Court, Gobichettipalayam, Erode District.

For Appellant : Mr. J.Titus Enoc
for M/s.I.C.Vasudevan

J U D G M E N T

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

The defendant in OS No.242 of 2012 has come up with this Second Appeal, challenging a decree for possession granted in favour of the plaintiff in the said suit, upon its confirmation in Appeal by the Appellate Court in AS No.17 of 2017.

2. The plaintiff sued for recovery of possession contending that the suit property originally belonged to her husband Karupagounder, who had executed a Settlement Deed in her favour on 26.05.1995, claiming that the defendant, who is brother's son of Karupagounder, had trespassed into the property, the plaintiff sued for recovery of possession.

3. Earlier the plaintiff had filed a suit in OS No.297 of 2008 seeking permanent injunction against the defendant restraining him from interfering with her possession of the suit property. After trial, the said suit was dismissed. While upholding the title of the plaintiff in the said suit, the Trial Court had held that the plaintiff ought to have sued for recovery of possession, since she was not in possession of the property on the date of the said suit. Taking advantage of the liberty given by the Trial Court, the plaintiff filed the present suit for recovery of possession.

4. The suit was resisted by the defendant contending that he has been in possession of the property even during the lifetime of Karupagounder. While admitting the title of Karupagounder, the defendant would contend that the Settlement Deed Ex.A1 dated 26.05.1995 is not valid, since Karupagounder was terminally ill and he was not in a position to execute any document even 15 years prior to his death. The claim of the plaintiff that she is the second wife of Karupagounder was admitted with a rider that the marriage between them took place even during the lifetime of the first wife and therefore she is not a legally wedded wife.

5. At trial, the plaintiff was examined as P.W.1 and Exhibits A1 to A6 were marked. The defendant examined himself as D.W.1 and examined one another Palanisamy S/o. Ramalinga Gounder, as D.W.2. Exhibits D1 to D3 were marked.

6. The Trial Court, on a consideration of evidence on record concluded that the defendant cannot deny the execution of the Settlement Deed by Karupagounder, in view of the categorical findings recorded by the Trial Court in OS No.297 of 2008. Even in the evidence tendered in the suit, the defendant had accepted the findings in OS.No.297 of 2008 and had claimed that they were wrong findings. The Trial Court concluded that it is not open to the defendant to contend that the findings in OS No.297 of 2008 are wrong in a subsequent suit. The Trial Court also found that the claim of the defendant that he has been in possession of the property in his own right even during the life time of Karupagounder was not true. On the above findings, the learned Trial Judge decreed the suit. Aggrieved, the defendant preferred an Appeal in AS No.17 of 2017 on the file of Sub Court, Gobichettipalayam.

7. The learned Subordinate Judge on a reconsideration of the evidence on record concurred with the findings of the Trial Court and dismissed the Appeal. Hence the Defendant has come with this Second Appeal.

8. I have heard Mr.J.Titus Enoc, learned counsel appearing for Mr.I.C.Vasudevan, for the appellant.

9. Mr.J.Titus Enoc, learned counsel, appearing for the appellant would vehemently contend that the suit itself is not maintainable, since there is no prayer for declaration of title. He would also further contend that the defendant could not have challenged the findings rendered in OS No.297 of 2008, in as much as, the suit was dismissed eventually. He would further point out that while the plaintiff is pleaded that Karupagounder had purchased the property in the year 1954, the Settlement Deed traces the title of Karupagounder, to a different source viz., through his first wife. I have considered the submissions of the learned counsel for the appellant.

10. Both the Courts have found that the Settlement Deed dated 26.05.1995 Ex.A1 has been proved in accordance with law in the earlier suit and the finding recorded therein will be binding on the defendant in the present suit. The absence of prayer for declaration of title will not affect the case of the plaintiff as the present suit is one for possession, where the plaintiff has paid the Court fee on the Market Value of the property under Section 30 of the Court Fees and Suit Valuation Act and the Court is not precluded from going into the question of title in a suit for possession unlike suit for injunction. Therefore, the legal objection of the learned counsel cannot be sustained.

11. As regards the source of title, the plaintiff claims under Settlement Deed executed by Karupagounder, so long as the title of Karupagounder is admitted, the source of title of Karupagounder, may not be very relevant in deciding the issue. I also find that the said contention was not raised either before the Trial Court or before the Appellate Court. I therefore do not propose to allow the appellant to raise a disputed question of fact for the first time in the Second Appeal.

12. I do not find any question of law much less substantial question of law in order to enable me to entertain the Second Appeal. The Second Appeal therefore fails and it is accordingly dismissed without being admitted. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

jv

To

1.The Subordinate Judge,Gobichettipalayam.

2.The District Munsif,
Gobichettipalayam, Erode District.

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KK (CO)
GN(23/03/2021)