

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.07.2020
CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.400 of 2014

Dhanapal ..Appellant/ Appellant /Defendant
Vs.
Bhoopathi ... Respondent/ Respondent/ Plaintiff

Prayer: The Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 16.09.2013 made in A.S.No.43 of 2012 on the file of the learned Subordinate Judge, Kallakurichi, confirming the judgment and decree dated 17.02.2012 as against in O.S.No.203 of 2008 on the file of the III Additional District Munsif, Kallakurichi and allow this second appeal.

For Appellant : Mr.V.Manohar
For Respondent : No Appearance

JUDGMENT

The defendant in O.S.No.203 of 2018 who suffered a decree for bare injunction upon its confirmation by the appellate Court, in A.S.No.43 of 2012 has come up with this second appeal.

2 Notice of motion was ordered and despite service none appears for the respondents.

3 The plaintiff sued for injunction contending that the defendant, who is her father, settled a suit property on her under a registered settlement deed dated 16.08.2007. The said settlement deed is a irrevocable instrument. However, by a document dated 26.02.2008, the defendant/father of the plaintiff cancelled the said settlement deed and attempted to interfere with her possession.

4 The suit was resisted by the appellant/defendant contending that the document namely the settlement deed was obtained by playing fraud on him and he did not execute the document with an intention to benefit the plaintiff. It is also claimed that the settlement deed was not acted upon. The cancellation deed was executed by way of abundant caution.

5 At trial , the plaintiff was examined as P.W.1 and Exs.A1 to A4 were marked, one Periyasamy was examined as P.W.2. The appellant/defendant was examined as D.W.1 and one Indira was examined as D.W.2 and Exs.B1 to B5 were marked.

6 The trial Court on a consideration of the evidence on record, concluded that the cancellation of the settlement deed is invalid. Once cancellation of the settlement deed is held as invalid, the settlement deed executed by the defendant in favour of the plaintiff on 16.08.2007 becomes valid. It also found that the settlement deed was acted upon. On the said finding, the trial Court decreed the suit. Aggrieved, the defendant preferred an appeal in A.S.No.43 of 2012. The learned Subordinate Judge, concurred with the finding of the trial Court and dismissed the appeal. Aggrieved, the defendant has come up with this second appeal.

7 Mr.V.Manohar, the learned counsel for the appellant would vehemently contend that the plaintiff should have sought for declaration of a title and suit for bare injunction was not maintainable.

8 I am unable to agree with the submission of the learned counsel for the appellant. Once the validity of the settlement deed dated 16.08.2007 is upheld and the cancellation deed is found to be bad, the plaintiff would be entitled to decree for injunction. The document namely the settlement deed dated 16.08.2007 clearly states that the plaintiff has been put in possession of the property. Both the Courts have on facts proved, come to a conclusion that the settlement deed dated 16.08.2007 is true and valid and the same has been acted upon. The mutation of the revenue record in the name of the plaintiff after the settlement deed was also taken into account by the Courts below to conclude that the plaintiff has been in possession of the property. The learned counsel for the appellant is unable to show that there is any perversity in the findings recorded by the Courts below.

9 I do not find any question of law, much less substantial question of law to enable me to entertain this second appeal. Hence the appeal fails and it is accordingly dismissed without being admitted. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

1.The Subordinate Judge, Kallakurichi.

2.The III Additional District Munsif, Kallakurichi.

S.A.No.400 of 2014

A.SK(22.04.2021)



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