

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2020

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1301 of 2019
and
C.M.P.No.28059 of 2019

Lathif ... Appellant/Defendant

Vs

Shamshath Begum ... Respondent/Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 19.12.2018 passed in A.S.No.43 of 2017 on the file of the III Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 24.02.2015 in O.S.No.1862 of 2011 on the file of the XIV Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.H.Mohammed Ghouse

For Respondent : Mr.S.Vijayanand

J U D G M E N T

The unsuccessful defendant in O.S.No.1862 of 2011 on the file of the XIV Assistant Judge, City Civil Court, Chennai, is the appellant in this appeal. The suit was filed for declaration of right over the property and recovery of possession.

2.According to the plaintiff, the suit property was purchased by one Noorunissa Begum vide sale deed dated 08.02.2007. Since then she had been in possession and enjoyment of the same. The said Noorunissa Begaum had settled the property in favour of the plaintiff by a registered settlement deed dated 10.04.2007. In pursuance of the same, revenue records were mutated in her name and she has been enjoying the suit property. The plaintiff would further submit that she got employment in U.A.E., and hence, she left the property to the defendant in the month of October 2007 and after returning the defendant refused to hand over the possession and hence, the suit.

3. The suit was resisted by the defendant contending that the property was purchased from and out of his money and he had put up a construction over the suit property. It is further stated that the said Noorunnisa Begum, the settlor had given an undertaking to the defendant's mother that she will hand over the property to the legal heirs of the defendant's mother. But, the property was settled in favour of the plaintiff and hence, prayed for dismissal of the suit.

4. Based on the pleadings, the trial Court framed necessary issues. On the side of the plaintiff P.Ws.1 and 2 were examined and Exs.A1 to A9 were marked. On the side of the defendant no oral and documentary evidence were adduced. The trial Court upon consideration of evidence decreed the suit and the findings of the trial Court was confirmed by the Appellate Court.

5. Mr. H. Mohammed Ghouse, learned counsel for the appellant would submit that the suit property originally belonged to a Trust namely Pavalai Kalyana Sundara Mudali Trust. The property was occupied by Noorunnisa Begum, the settlor. So many persons have encroached the property and put up a construction, however, the property was sold in favour of Noorunnisa Begum. It is further contended that the original owner Noorunnisa Begum had already settled the suit property in favour of the appellant and his brother in the year 1979 and hence, the said Noorunnisa Begum had no right to settle the same in favour of the respondent.

6. Per contra, Mr. S. Vijayanand, learned counsel for the respondent would submit that though the appellant is now contended that the suit property was settled in his favour in the year 1979, but, no document was filed to establish the same. It is further contended that the respondent had produced the sale deed, settlement deed and other documents to show that the said Noorunnisa Begum was the absolute owner of the property and it was settled in favour of the respondent. The factual findings of the trial Court do not warrant any interference of this Court.

7. In the matter on hand, the plaintiff/respondent herein filed the suit for declaration and recovery of possession. It is an admitted fact that Noorunnisa Begum, the settlor had purchased the suit property vide Ex.A1 Sale deed dated 08.02.2007 and within a period of two months, the property was settled in favour of the plaintiff on 10.04.2007 under Ex.A2 Settlement Deed. Ex.A4-Name Transfer Application and Ex.A5-Letter from the Electricity Board, would show that the electricity connection was transferred in favour of the plaintiff. Ex.A6-Family Card reveals that the plaintiff was in

possession and enjoyment of the property. The original owner was examined as P.W.2 and in her evidence, she deposed that she purchased the property from the Trust and settled in favour of the plaintiff. As rightly contended by the learned counsel for the respondent that no document was produced to prove that the alleged settlement deed executed in his favour in the year 1979.

8. In my considered opinion, the Courts below rightly, came to the conclusion that the plaintiff is entitled for the decree sought for in the suit. Hence, I find no valid ground warranting interference in this appeal.

9. In fine the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1.The III Additional Judge,
City Civil Court,
Chennai.

2.The XIV Assistant Judge,
City Civil Court, Chennai.

+3cc to Mr.S.Vijayanand, Advocate SR.No.1707

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