



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.(MD) No.118 of 2019

and

C.M.P.(MD) No.3024 of 2019

WEB COPY

Shobana Jacqueline ...Appellant/appellant/2nd defendant

vs.

1.Rosely Siluvaimuthu ...1st respondent / 1st respondent
plaintiff

2.D.S.Jenaris ...2nd Respondent / 2nd respondent /
1st defendant

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, to allow the appeal by setting aside the judgment and decree passed in A.S.No.49 of 2016 on the file of the II Additional Sub Court, Nagercoil, dated 24.10.2017 confirming the judgment and decree in O.S.No.15 of 2012 on the file of the Principal District Munsif Court, Nagercoil, dated 26.10.2016

For Appellant : Mr.A.Chidambaram for Mr.N.GA.Natraj

For R1 : Mr.S.Louis

JUDGMENT

The second defendant in O.S.No.15 of 2012 having suffered a decree for possession at the hands of the Courts below has come up with this second appeal.

2. The suit was filed by the plaintiff / first respondent herein seeking recovery of possession on the ground that the suit property belongs to her having been settled on her by her son / first defendant under settlement deed, dated 31.03.2003. It is the claim of the plaintiff that after the settlement, she has put up a construction and she had permitted his son and daughter-in-law to reside in the suit property. Contending that she had revoked the permission and required the defendants to vacate and hand over possession to her and the defendants have failed to comply with the demand, the plaintiff had come up with the suit.

3. The first defendant, who is the son of the plaintiff remained ex-parte.

4. The suit was resisted by the second defendant contending that the suit property was allotted to her husband in a partition that took place on 22.10.1998. After partition, the first defendant constructed the building out of her savings, sale of her jewels and Sreethana properties. The settlement deed, dated 31.03.2003 was



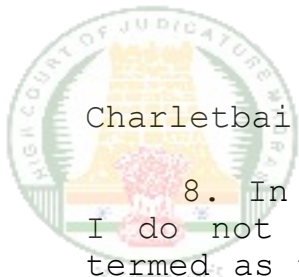
denied as false. It appears that there are certain disputes between the first defendant and the second defendant and I.D.O.P.No.217 of 2010 is also pending. According to the second defendant, the suit has been engineered by the first defendant through his mother.

4. At trial, the plaintiff was examined as P.W.1 and one Lakshmanapillai was examined as P.W.2 and Exs.A1 to A25 were marked. On the side of the defendants, the second defendant was examined as D.W.1 and one Gnanamani was examined as D.W.2 and Wxs.B1 to B3 were marked.

5. The trial Court upon appreciation of the evidence, concluded that the second defendant has not proved her claim that the construction in the suit property that was put up by her. The evidence, that was produced by the plaintiff to show that construction put up by her out of her own funds, was accepted by the Courts below based on documentary evidence in the form of Exs.A7, A8, A9 A10, A11 and A12. Having concluded that the construction was put up by the plaintiff, the trial Court rejected the case of the second defendant and decreed the suit. Aggrieved the second defendant preferred an appeal in A.S.No.49 of 2016. The lower appellate Court on reconsideration of the evidence on record concurred with the findings of the trial Court. The right claimed by the second defendant was negatived. On the above findings, the lower appellate Court dismissed the appeal confirming the judgment and decree of the trial Court. Aggrieved, the second defendant came forward with this second appeal.

6. A weak attempt is made by the second defendant to contend that the settlement deed, dated 31.03.2003 marked as Ex.A1 is fraudulent instrument. Admittedly, the relationship between the parties at the time of execution of settlement deed, Ex.A1 was cordial and the portion of the property that was allotted to the first defendant under a partition that took place between the first defendant his mother and sister in 1998 was settled on the mother by the son as early as on 31.03.2003. The second defendant has not taken any steps to have the document cancelled or set aside. The settlement deed has not been denied by the person, who has executed it. The first defendant, the executant of the settlement deed, had remained exparte.

7. The claim of the second defendant, that it is she who had put up the construction in the suit property, was negatived by the Courts below, since there was no evidence to prove the said contention. On the other hand, the Courts below found that the plaintiff has proved that she had put up the construction through valid documentary evidence in the form of Exs.A7 to A12. The validity or truth of these documents was not denied by the second defendant. It is also seen from the documents that the plaintiff had sold her property under Ex.A9 and paid money to the builders for



Charletbai under Ex.A12 for the purpose of said construction.

8. In the light of the above impeachable documentary evidence, I do not find that the conclusion of the Courts below could be termed as perverse or said to be against documentary evidence that is on record. Admittedly, the first defendant owns a portion of the property, in which there is residential house. It is always open to the second defendant, who is the wife of the first defendant to claim right of residence in the property of her husband. The daughter-in-law, who has no right over the mother-in-law's property cannot claim right of residence against the wish of the mother-in-law. I do not find any question of law, much less a substantial question of law enabling me to entertain this second appeal. Accordingly, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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To

1.The II Additional Sub Court,
Nagercoil.

2.The Principal District Munsif Court,
Nagercoil

Copy to:

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.N.GA.NATRAJ, Advocate (SR-5160[F] dated 07/02/2020)

+1 CC to M/s.S.LOUIS, Advocate (SR-5258[F] dated 07/02/2020)

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