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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.806 of 2021

K.Eswaran,
Son of C.Kandasamy Gounder,
Door No.16/4, Anaikulimedu,
Sivanmalai Village,
Kangayam Taluk,
Tiruppur District.

... Appellant/Appellant/Plaintiff

.Vs.

S.Kandasamy (died)
Samiathal (died)

1.Saraswathi,
Wife of Late Govindasamy Gounder,
Theneeswaranpalaym,
Uthukuli Post,
Perundurai Taluk,
Erode District.

2.The Sub Registrar,
Kangayam.

3.D.Palanisamy,
Son of K.Duraisamy Gounder,
Door No.2/12, K.Ayyampalayam,
Karaipudur Village,
Palladam Taluk,
Tiruppur District.

... Respondents 1 to 3/
Respondents 3 to 5/Defendants 3 to 5

PRAYER: Second Appeal filed under Section 100 of CPC against the Judgment and Decree passed in A.S.No.3 of 2019 dated 13.12.2019 on the file of the Subordinate Judge, Kangayam, Tiruppur District, confirming the Judgment and Decree passed in O.S.No.273 of 2011 dated 03.02.2018 on the file of the District Munsif Court, Kangayam, Tiruppur District.



For Appellant : Mr.S.Saravanan

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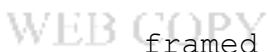
J U D G M E N T

The Second Appeal is filed challenging the judgment and decree passed in A.S.No.3 of 2019, dated 13.12.2019 passed by the learned Subordinate Judge, Kangayam.

2.The Appellant as a Plaintiff filed the Suit, seeking relief that (a)settlement deed executed by the 1st Defendant in favour of the 3rd Defendant on 20.06.2011 to be declared as null and void; (b)to declare that the Suit property belongs to him; (c)for permanent injunction restraining the Defendants 1 to 3 from interfering with possession and enjoyment and not to alienate the suit property and (d)restraining the 4th Defendant from registering the documents produced by the Defendants 1 and 3 and for costs.

3.The case of the Appellant/plaintiff is that he is the son of deceased 1st Defendant and his Mother is 2nd Defendant Ms.Samiathal. The 3rd Defendant is his sister. It is his case that he was working in a Baniyan Company and earning good income and he was alone taking care of his parents/Defendants 1 and 2. With the amount earned by him, he purchased the suit property in his father's name on 29.05.2000. Though he contributed money for the purchase of the suit property, his father being elder member of the family, the property was purchased in his name. He is in possession and enjoyment of the suit property from the date of purchase. Without the knowledge of the Plaintiff, the 1st Defendant had executed settlement deed dated 20.06.2011. The 1st Defendant has no right to execute the settlement deed and therefore, the Suit was filed.

4.The 3rd Defendant/1st Respondent has filed a written statement and totally denied the case of the Plaintiff. It is the case of the 3rd Defendant that the suit property was purchased by the 1st Defendant from his earning. There was a partition in the family on 05.07.2000 and after the partition, suit property was in possession and enjoyment of the 1st Defendant. In respect of the suit property, the 1st Defendant had executed a settlement deed on 20.06.2011 in faovur of the 3rd Defendant and allowed the 3rd Defendant to enjoy the property. Plaintiff is a drunkard and compelled his parents to give the property to him. When the Defendants 1 and 2 went to hospital, Plaintiff forcibly occupied the suit property and drove the Defendants 1 and 2 out of the



5. On the basis of the above pleadings, the trial Court framed the following issues for consideration:

"1. Whether the settlement deed dated 20.06.2011 executed by the 1st defendant in favour of the 3rd defendant is not valid and genuine, is correct?

3. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

6. During the trial before the trial Court PW1 to 3 were examined on the side of the Appellant/Plaintiff. DW1 and 2 were examined on the side of the 1st Respondent/3rd Defendant and Exs.A.1 to A.13 and Ex.B.1 to B.7 were marked. On considering the oral and documentary evidence produced before the trial Court, the learned trial Judge found that the Appellant/Plaintiff is not entitled for any of the reliefs claimed and dismissed the Suit with costs. Challenging the said judgment and decree of the trial Court, the Appellant has preferred an Appeal in A.S.No.3 of 2019 on the file of the Subordinate Judge, Kangayam. Learned Subordinate Judge on hearing the submissions of the learned counsel appearing on behalf of the parties and after going through the oral and documentary evidence produced in the case found no reason to differ with the judgment of the learned trial Judge and dismissed the Appeal. Therefore the Second Appeal.

8. It is the submission of the learned counsel for the Appellant that when the property was purchased, his father was an aged man and he had no income on his own to purchase the property. On the other side, the Appellant was an able bodied person and working in a Baniyan company. He was earning sufficient income to meet the regular family expenses and purchase the suit property. The Suit property was purchased in his father's name for the reason that he want to pay respect to his father and that he is the eldest member of the family. As already stated this contention of the appellant is denied and disputed by the 1st Respondent. What we have to consider now is



whether the Appellant purchased the suit property in his father's name with his income is proved or not. From the finding recorded by the trial Court after going through the evidence, it is seen that the Appellant/Plaintiff has failed to establish the fact that he has got adequate income to purchase the suit property in his father's name. It is observed that he has not produced a scrap of paper to prove his case, rather he admitted that he has no document to show his income and expenditure. It is also admitted by the appellant that his father earned sufficient income from agriculture and he performed 1st respondent/3rd Defendant's marriage. It is also noted in the judgment of the trial Court that alleged benami transaction in favour of his father cannot be entertained as per Sections 3 & 4 of the Benami Transactions (Prohibition) Act, 1988. Sections 3 & 4 of the Benami Transactions (Prohibition) Act, 1988 read as hereunder:

"3. Prohibition of benami transactions:

(1) No person shall enter into any benami transaction.

* * *

³[(2)] Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

⁴[(3)] Whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016 (43 of 2016) shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII]

5 * * *

4. Prohibition of the right to recover property held benami:

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property."

Thus, it is clear from these sections that no person shall enter into any benami transaction and no suit, claim or



action to enforce any right in respect of any property held benami shall lie.

9.The learned Appellate Judge also found from the evidence that the Appellant gave a complaint to the police through Ex.A7 on 26.08.2013, subsequent to the filing of the suit. In which the appellant has claimed $\frac{1}{2}$ share in the suit property, thereby appellant admitted that his father is the owner of the property. There is absolutely no evidence produced by the appellant to show that he contributed the money for the purchase of the suit property in his father's name and therefore, this Court finds no reason to interfere with the findings of the Courts below that the Appellant has failed to establish that he contributed money for the purchase of the suit property in his father's name.

10.Learned counsel for the Appellant submitted that the appellant is in possession and enjoyment of the property and that is admitted by the 1st Respondent. Even in the written statement, the possession of the appellant in the suit property is admitted but it is claimed that it is a forcible possession taken by the Appellant. When there is no legal claim to the title of the suit property, on the basis of forcible possession of the suit property, appellant cannot claim any right.

11.Thus this Court is of the considered view that there is no substantial questions of law involved for adjudication in this case and this Second Appeal has no merits. Accordingly, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

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To

1.The learned Subordinate Judge,
Kangayam,
Tiruppur District.

2.The District Munsif,
Kangayam,
Tiruppur District.



3.The Section Officer,
V.R.Section,
High Court, Madras-104.

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+1cc to Mr.S.Saravanan, Advocate SR.No.58641

S.A.No.806 of 2021

AJB (CO)
CB (23/02/2022)