



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Judgment Reserved on : 05..10..2021

Judgment Pronounced on : 17/12/21

CORAM

THE HON'BLE MRS.JUSTICE S.KANNAMMAL

Second Appeal No.703 of 2019

and

C.M.P.No.13487 of 2019

Natarajan

...Appellant/Defendant

-Versus-

Mahalingam

...Respondent/Plaintiff

This second appeal is filed against the judgment and decree dated 21.02.2019 passed in A.S.No.47 of 2016 by the learned Principal Subordinate Judge, Mayiladuthurai, confirming the judgment and decree dated 24.08.2016 passed in O.S.No.216 of 2014 by the learned Additional District Munsif, Mayiladuthurai, Nagapattinam District.

For Appellant

: Mr.A.Muthukumar

For Respondent

: Mr.S.Sounthar

JUDGMENT

This defendant is the appellant in this second appeal filed against the concurrent decree of possession and mesne profits passed by the courts below.

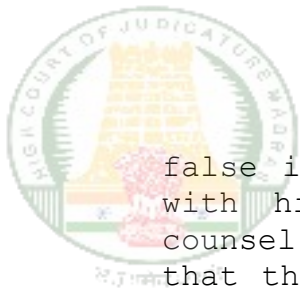
2. The respondent is the plaintiff in the suit. The suit was filed by the respondent herein for a decree of permanent injunction restraining the appellant/defendant from cultivating and from harvesting the crops raised in the suit property or in the alternative, for a decree directing the appellant/defendant to handover the possession of the suit property to the respondent/plaintiff and for mesne profits from the date of plaint till date of delivery of possession. For the sake of convenience, the parties in this second appeal will hereinafter be referred to as per their array before the trial court.



3. The plaint was filed on the pleadings inter alia that the plaintiff and the defendant are the brothers and sons of Kalyanasundaram. They have one sister named Saraswathi.. The plaintiff and his sister Saraswathi have been residing in Chennai along with their father. As adoptive son, the father of the plaintiff inherited the suit properties from his adoptive father Vaithiyanatha Sasthri. Till 2009, the father of the plaintiff was managing the properties. Thereafter, as the mother of the plaintiff namely Lakshmi Ammal fell ill, for the purpose of treatment, the father of the plaintiff had to settle with the plaintiff and the medical expenses of Lakshmi Ammal were borne by the plaintiff only. The mother of the plaintiff died in 2010.

4. After the father of the plaintiff settled in Chennai along with the plaintiff, the defendant, had started managing the suit properties. Even when the mother of the plaintiff was alive, the defendnat had approached the father and demanded to settle the house property in his name and therefore, without any other option, the father of the plaintiff had to settle the house property in the village in the name of the defendant. Though the father of the plaintiff had settled in Chennai, at times, he used to visit the village and the suit properties and cultivating the properties through the defendant. The defendant has been enjoying the suit properties since 2010 and the proceeds derived from cultivating. Considering the relationship, the father of the plaintiff had not taken any action against him. When the father of the plaintiff suffered from kidney disease and undergone a surgery, it was this plaintiff who settled the medical bills to the tune of Rs.1,00,000/- from his pocket. The defendant never visited the father during the period when he was taking treatment.

5. Due to his health condition, the plaintiff's father had not visited the village for the last four months. The defendant has raised crops in a portion of the suit properties and the remaining portions are kept uncultivated. The plaintiff came to know that the defendant has been acting with an intention to create encumbrance over the suit property. Since the father and mother are being maintained well by this plaintiff, on 30.04.2014, the father of the plaintiff had settled the entire properties in favour fo the plaintiff by a registered settlement deed. The defendant also knew the above fact. Therefore, the plaintiff has become the absolute owner of the suit properties in view of the settlement deed. In those circumstances, the defendant had filed a caveat petition with



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false informations for which on 23.08.2014, the plaintiff along with his father sent a reply to the defendant through his counsel. In that notice itself, the plaintiff had clearly stated that the defendant had no right over the suit properties and if he continued to cultivate the properties, it would only amount to an encroachment. Further more, in that reply notice, the father of the plaintiff had given details about his jeweleries and he is going to take action separately against the defendant. After the settlement of the properties in favour of the plaintiff, the defendant had no right or claim over the suit properties. Legally he is not entitled to cultivate the lands in question. He should not harvest the crops which he has raised in a portion of the properties. Therefore, the suit for permanent injunction. In the event, the court comes to a conclusion that the possession of the properties is with the defendant, in the alternative, the plaintiff prayed the court to pass a decree directing the defendant to hand over the possession of the properties and to pay mesne profits.

6. The defendants resisted the suit inter alia contending that the the possession of the suit properties has been with the defendant for several years and therefore, it is in correct to state that the same with in the possession of the father till 2009. The alleged settlement was not true and it is not valid in law. The suit properties are not the self acquired properties of the father and therefore, he had no right to settle the same. The settlement deed said to have been executed by the father was not at all given effect. Suit without declaration of title to the suit properties is not maintainable and therefore, the plaintiff is not entitled for a decree of permanent injunction or in the alternative, possession and mesne profits.

7. Based on the above pleadings of either parties, originally the trial court had framed the following issues and additional issues for trial:-

(1) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

(2) Whether the plaintiff is entitled for alternative relief of recovery of possession as prayed for?

(3) Whether the plaintiff is entitled for mesne profit as prayed for?

(4) To what relief the parties are entitled to?



During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1, apart from examining one Saravanan as P.W.1 and Kalyanam as P.W.3 in support of his case and proved as many as 3 documents as Ex.A1 to A3 and on the side of the defendant, the defendant examined himself as D.W.1 and proved as many as 12 documents as Ex.B.1 to Ex.B.12.

8. The learned Additional District Munsif after having considered the oral and documentary evidence adduced by either parties, the trial court held that the settlement deed was purportedly executed by Kalayanasundaram, the father of the plaintiff and the defendant and it is valid in law, however, the plaintiff had failed to prove his possession pursuant to such settlement deed. Therefore, while refusing to grant permanent injunction against the defendant, the trial court had granted the alternative relief of delivery of possession and partly decreed the suit for possession and mesne profits. Aggrieved by the same, the defendant preferred an appeal in A.S.No.47 of 2016 which was dismissed by the first appellate court. Further aggrieved by the judgment and decree of the first appellate court dismissing the appeal suit, the defendant has come up with his second appeal.

9. Based on the above, the following substantial questions have been framed for the disposal of this second appeal:-

(1) Whether the Courts below erred in law in granting the relief of possession when the plaintiff had not claimed that the suit properties were the self acquired properties of his father?

(2) In the absence of any materials to show that the suit properties are self acquired properties of his father of the parties whether the Courts below erred in law in granting the relief of possession?

(3) Whether the father of the parties was competent to execute the settlement deed, Ex.A1, beyond his share in the suit properties?

(4) When Ex.A1 does not recite that the suit properties were self acquired properties of the father of the parties and the defendant had clearly stated in Ex.B4 that the properties are joint family properties whether the Courts below erred in law in not considering the character of the suit properties?

(5) Whether a mere admission or proof of execution of settlement deed is enough when the



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plaintiff neither claimed that the suit properties were self acquired properties of his father nor placed any materials?

(6) When the competency of the settlor to deal with the entire properties is in question whether the Courts below erred in law holding that no relief of declaration needs to be asked for?

(7) Whether the Courts below have misconstrued and mis appreciated the evidence on record?

(8) When the plaintiff's case is that the suit properties were inherited by the settlor, father of the parties, from his adoptive father whether the settlor is entitled to settle the entire properties under Ex.A1?

Substantial Questions of Law Nos.1 to 8:-

10. The suit was for permanent injunction restraining the appellant/defendant from cultivating the suit properties and from harvesting the crops raised in the suit property or in the alternative, for a decree directing the appellant/defendant to handover the possession of the suit property to the respondent/plaintiff and for mesne profits from the date of plaint till date of delivery of possession.

11. The plaintiff and the defendant are brothers and they have one sister named Saraswathi. They are all biological children of Kalyanasundarm, who is the adoptive son of Vaithiyanatha Sasthri. The suit properties were the properties of the said Vaithiyanatha Sasthri. It is not in dispute that the said Vaithiyanatha Sasthri died intestate leaving behind his adoptive son, grand sons who are the plaintiff and the defendants and grand daughter Saraswathi.

12. The learned counsel for the appellant/defendant submitted that since suit properties were not the self acquired properties of the father of the plaintiff and the defendant, their father had no right to deal with the entire suit properties and he was having only a share in the same. The defendant, plaintiff and their sister are entitled to equal share along with their father. When the defendant questioned the competency of the settlor to make settlement in favour of the plaintiff and claimed a share in the suit properties, the trial court ought not to have decreed the suit for injunction or for the alternative relief of delivery of possession and for mesne profits without the prayer for declaration of title. Even after filing the written statement denying the right of the father to

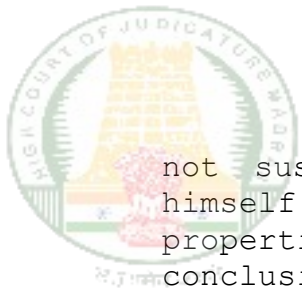


make settlement in respect of the entire properties, the plaintiff did not come forward to amend the plaint.

13. The learned counsel for the respondent/plaintiff on the other hand contended that the both the trial court and the first appellate court have rightly decreed the suit for possession and mesne profits in favour of the respondent/plaintiff. The suit properties were the properties inherited by the father of the plaintiff from his adoptive father. Therefore, the father of the plaintiff had every right to deal with the same. The settlement in question was validly executed by the father in favour of one of his son, the plaintiff and the same cannot be questioned by the defendant.

14. I have considered the rival submissions carefully.

15. It was never the case of the plaintiff that the suit properties were the self acquired properties of his father. No doubt, an adopted child has the right to claim his right in the property just as the biological child would. The plaintiff himself admitted that the suit properties are not the self acquired properties of his father and they were of the adoptive father of his biological father who died intestate leaving behind his adoptive son, the father of the plaintiff. Ex.A1 also does not show that the suit properties are self acquired properties of the father of the plaintiff. Thus, the plaintiff and the defendant and their sisters being biological children of Kalyanasundaram are entitled to equal share from the properties left behind by Vaithiyanatha Sasthri along with his father, the adoptive son of Vaithyanatha Sasthri. In other words, the plaintiff and the defendant and their sisters are co-sharers. The defendant questioned the competency of the settlor, the father of the plaintiff and the defendant to make settlement in respect of the entire properties left behind by his adoptive father. Even though the settlement deed was a registered document and the execution has been proved by oral and documentary evidence, mere registration would not confer any title on the settlee when the settlor had no right to deal with the properties left behind by his deceased adoptive father and he is entitled only a share in the same. The plaintiff has failed to prove that the properties settled on him were the self acquired properties of his father. Thus, the settlement deed is not valid in the eye of law. The trial court decreed the suit merely on the ground that the defendant knew the settlement made in favour of the plaintiff and he did not challenge the settlement deed by filing appropriate suit. Such finding in the considered opinion of this court is not only perverse but also



not sustainable in law. When the father of the plaintiff himself had no absolute right to deal with the entire suit properties, the trial court ought not to have come to a conclusion that the defendant should have challenged the settlement deed by filing appropriate suit, but failed to do so. Further, the trial court has failed to appreciate the fact that mere registration of settlement deed would not confer any title on the settlee when the settlor had no absolute right over the properties in question to make settlement. When the right of the settlor to make settlement in respect of the entire suit properties is questioned, the settlor is bound to prove the title of the settlor. In the instant case admittedly, the plaintiff's father did not have absolute right over the suit properties and he is one of the co-sharers. Therefore, as rightly, contended by the defendant, the settlement deed (Ex.A.1) is not valid in the eye of law. The plaintiff, defendant, their sister and the father are entitled to equal share in the suit properties and the defendant being one of the co-sharers, no injunction could have been granted against him. The trial court had concluded that the defendant has been in possession and enjoyment of the suit properties by cultivating the same.

16. Coming to the proposition laid down by the Honourable Supreme court in D.M.Despande and others v. Janardhan Kashinathan Kadam (Dead) by LRs and others, (1998) 8 SCC 315, which has been relied upon by the learned counsel for the respondent/plaintiff, in the considered view of this court, the same is not applicable to the facts of the instant case as that was a case where an issue of tenancy was raised without sufficient pleadings in respect of the issue of tenancy and the Honourable Supreme Court held that the issue of tenancy cannot be raised on a vague plea. The said judgment is not applicable to the facts of the present case. In the instant case, the defendant in his written statement questioned the right and the competency of the settlor to make the settlement in respect of the entire suit properties, as the settlor being the adoptive son, entitled to a share along with his biological children in the properties left behind by his adoptive father. When the right of the settlor to make the settlement has been questioned, nothing more is required to plead, that too, in a suit for injunction.

17. For the foregoing discussions, this court concludes that the suit properties are not the self acquired properties of the father of the plaintiff and the defendant and therefore, he had no absolute right to deal with the same and therefore, the



transfer made under Ex.A.1- settlement deed is not valid in the eye of law for want of competency. In such view of the matter, this court is of the view that there is no need to give any finding on the oral compromise alleged to have been entered into between the defendant and the plaintiff. When the settlement deed itself is invalid, the plaintiff is not entitled for possession of the suit properties based on Ex.A.1 and at the most he file a suit for partition and for other reliefs. Therefore, the judgment and decree of both the courts are liable to be set aside and the suit is liable to be dismissed. The substantial question Nos.1 to 8 are answered accordingly in favour of the appellant/defendant and as against the respondent/plaintiff.

In the result, the Second Appeal is allowed and the judgment and decree of both the courts below are set aside and the original suit stands dismissed. However, considering the facts and circumstances of the cases, both parties are directed to bear their respective costs throughout.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1.The Principal Subordinate Judge, Mayiladuthurai,
Nagapattinam District.

2.The Additional District Munsif, Mayiladuthurai,
Nagapattinam District.

Copy to

The Section Officer
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High Court, Madras 104.

+1 CC to Mr.A.Muthukumar, Advocate sr 68148

+1 CC to Mr.S.Sounthar, Advocate sr 67858.

Second Appeal No.703 of 2019

RSI (CO)
SP(22/03/2022)