

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.477 OF 2014

AND

MP NO.1 OF 2014

M.Pauline

...Appellant / Plaintiff

Vs.

P.V.George (Deceased)

1.M.A.Luciya

2.Miss.Minna

3.Tr.Premi

...Respondents / Defendants 1, 3 & 4

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 05.11.2013 made in A.S.No.466 of 2011 on the file of V Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 17.09.2010 made in O.S.No.597 of 2006 on the file of V Assistant Judge, City Civil Court at Chennai.

For Appellant : Mr.R.Thiagarajan

For Respondents : Mr.Davidson Devashish
for Mr.Thomas T. Jacob

J U D G M E N T

This Second Appeal has been preferred by the plaintiff against the concurrent findings of the Courts below.

2.The appellant/plaintiff filed a Suit for recovery of possession on the basis of a registered Settlement Deed executed by her father on 31.10.2003 vide Document No.2908/2003 at the Office of the Sub Registrar, Mylapore, Chennai. According to the plaintiff, the defendants are her sisters and they were permitted to occupy a portion of the property in view of the blood relationship. She sent a notice on 30.06.2005 requesting them to vacate and hand over possession. However, the defendants did not even reply the notice but continue to be in possession which necessitated her to file the Suit.

3. In the written statement, the first defendant had taken a stand that the defendants are filing a Suit for declaration to declare the Settlement Deed dated 31.10.2003 was obtained by coercion, duress, intimidation, undue influence and fraud and to cancel the same and that Late Maria Jegam, the father of the parties, has no authority or absolute right to settle the property which was settled to him by his brother, which would come under the purview of ancestral property. The defendants were living in the property since 1985 even after the marriage, on the insistence of their father Late Maria Jegam. The first defendant, being a Teacher in a Private School and the second defendant being a Teacher in another School and their income was pooled to run the family and to maintain the house. Therefore, the statement of the plaintiff that they were inducted as permissible occupiers is false. The legal notice dated 30.06.2005 does not divulge material facts and therefore, the plaintiff is not entitled to the relief sought for.

4. The Trial Court framed the following issues:

"1. Whether the plaintiff is entitled the possession for the defendants as prayed for?

2. To what relief the plaintiff is entitled?"

5. On the side of the plaintiff, she examined herself as P.W.1 and marked Exs.A1 to A8. On the side of the defendants, the first defendant examined herself as D.W.1 and marked Exs.B1 to B7. On the basis of the oral and documentary evidence, the Trial Court dismissed the Suit.

6. The Trial Court, exhibiting only four documents, dismissed the Suit. On appeal, the First Appellate Court has confirmed the decree and judgment passed by the Trial Court. Aggrieved over the same, the plaintiff preferred the above Second Appeal.

7. This Second Appeal was admitted on 14.07.2020 on the following substantial questions of law:-

"(i) In the absence of challenge to Exhibit A4 / Settlement Deed dated 31.10.2003, are the Courts below right in dismissing the suit, holding that the Settlement Deed has not been acted upon ?

(ii) Whether the Courts below are right in holding that despite the revocation of the permission granted under Exhibit A4 dated 30.06.2005, the continuance and occupation of the contesting 1st respondent is valid, legal and permissible in law?

(iii) In the absence of challenge to the

Settlement Deed, whether the conclusion reached by the Courts below are sustainable in law?"

8. Heard the submissions made on either side.

9. Even though the Trial Court has framed the issue as to whether the plaintiff is entitled to possession from the defendants as prayed for, it proceeded on the basis that the plaintiff has not examined the mother and has not spoken anything about the Settlement Deed in the legal notice and whether the Suit property is ancestral property or self acquired property is not explained and has given a finding that the first defendant being the legal representative, who is entitled to reside in the Suit property and as to why she was not given share in the property was not explained in the Settlement Deed. Therefore, the said Settlement Deed was executed in suspicious circumstances and that the plaintiff has not proved that the first defendant was a permissible occupier in the Suit property and therefore, she is not entitled to the relief.

10. However, on appeal, the First Appellate Court has given a finding that when the title of the plaintiff is questioned, the duty of the plaintiff is to file a Suit for declaration of title and seek for recovery of possession. Since the Suit is not filed for declaration of title, the plaintiff is not entitled to the relief sought for and thereby, confirmed the decree and judgment of the Trial Court.

11. On perusal of the concurrent judgments of both the Courts, it is noted that both the Courts have proceeded on the basis that the property originally belonged to the brother of Maria Jegam and that he inherited the same from his brother and thereby, it is an ancestral property. The concept of ancestral property will not arise in respect of Christians.

12. From the evidence of D.W.1, it is noted that in the cross examination, she would categorically depose that originally the property belonged to her senior paternal uncle and he had conveyed it in favour of his brother namely, the father of the parties. The father of the parties had executed a Settlement Deed dated 31.10.2003 which was marked as Ex.A4 is categorically admitted. During cross examination, D.W.1 categorically depose that the Suit was filed on the basis of the Settlement Deed and the plaintiff is claiming her right through the Settlement Deed. Further, she has not filed any Suit challenging the Settlement Deed as averred in the written statement. From the perusal of the written statement, chief examination and cross examination of D.W.1, it is inferred that D.W.1 categorically admitted the execution of the Settlement Deed by her father at the Office of the Sub Registrar, Mylapore, Chennai. Once the Settlement Deed

is admitted, it automatically leads to an inference that the plaintiff is the title holder. On the other hand, without framing any issues as to the title, the Trial Court proceeded into the issue of title and presumed that it is an ancestral property and each and every legal heir is entitled to a share in the property. Such a finding is absolutely unwarranted and illegal.

13.The learned counsel for the respondents would rely on a judgments of the Hon'ble Supreme Court in ANATHULA SUDHAKAR VS. P.BUCHI REDDY (DEAD) BY LRS. AND OTHERS [2008 (4) SCC 594]. In the said judgment, the Hon'ble Supreme Court has categorically discussed the issue as to when the cloud over the title is raised, mere averments that the document is fraudulent and obtained by undue influence and coercion and there should be specific pleading as to how it was fraudulent and how fraud was played in getting the documents executed and that the issue was raised touching upon the title to discuss the same in a Suit for bare injunction.

14.In the instant case, the Suit is for the relief of possession and the Court, after admission of the Settlement Deed by the defendants, ought not to have ventured into the issue of title. If at all the Settlement Deed - Ex.A4 was obtained by fraud, coercion and undue influence, duty is cast upon the defendants first to prove that it was obtained by fraud and however, there is no specific pleading with regard to the fraud and undue influence and no oral and documentary evidence produced towards the same. In that event, the Courts below ought to have gone on the basis of the registered Settlement Deed, which is admitted by the parties. Therefore, the judgment and the decree passed by the Courts below is contrary to the rationale laid down by the Hon'ble Supreme Court. Hence, the concurrent findings that the Suit property is an ancestral property, in respect of the parties, who are Christians is erroneous. Further, it is categorically admitted by the defendants that the property was conveyed by the senior paternal uncle to his brother, namely, the father of the parties and the father had executed the Settlement Deed in favour of the plaintiff, the issue of ancestral property even if it applies to the Christians, will not arise.

15.Secondly, when the Settlement Deed is a registered document and it was admitted by the defendants, the question of proving the title does not arise. By issuing a legal notice dated 30.06.2005 marked as Ex.A1, division of status has arisen between the siblings and when the recovery of possession is sought for, the issue should have been proceeded on that basis. But the Courts below absolutely have not decided the issue in the manner known to law, which is evident from Ex.A5 - name

transfer order in respect of the property and Ex.A8 - property tax assessment, Ex.A6 and A7 - tax assessment by Chennai Metro Water Supply and Sewerage Board. However, the Trial Court, without considering Exs.A7 and A8 has decided the issue. These documents categorically show that the Settlement Deed was acted upon and the donee has accepted the same and continues to be in possession of the property even during the lifetime and hence, after the death of the settlor. Therefore, it cannot be said that the Settlement Deed was not acted upon. The property was vested in favour of the settlee namely the plaintiff. Therefore, she is entitled to claim the relief of recovery of possession from the siblings. On the basis of the above discussions, the questions of law are answered in favour of the appellant.

16.Accordingly, the judgment and decree dated 05.11.2013 passed in A.S.No.466 of 2011 by the learned V Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 17.09.2010 passed in O.S.No.597 of 2006 by the learned V Assistant Judge, City Civil Court, Chennai stands set aside and the suit is decreed as prayed for.

17.In fine, the Second Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

TK

To

1.The V Assistant Judge,
City Civil Court, Chennai.

2.The V Additional Judge,
City Civil Court, Chennai.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

+2ccs to Mr.R.Thiagarajan, Advocate Sr.No.53789

S.A.NO.477 OF 2014

BR(CO)
RVM(27/07/2022)