



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.Nos.180 & 181/2017 and
CMP.Nos.3820 & 3821/2017

1.T.Elango
2.Periakka

.. Appellants in SA.No.180/2017

Periakka

.. Appellant in SA.No.181/2017

Vs.

1.N.Narasimma Raja
2.R.Senthil Raja

.. Respondents in both Appeals

Prayer:- Second Appeals filed under Section 100 of the Code of Civil Procedure to set aside the judgment and the decree of the learned Principal Subordinate Judge, Krishnagiri, made in AS.Nos.45 & 46/2014 dated 07.12.2016 confirming the judgment and decree of the learned Additional District Munsif of Krishnagiri made in OS.Nos.227 & 187/2013 dated 17.10.2014.

For Appellants in both Appeals	:	Mr.A.R.Suresh
For Respondents in both Appeals	:	No appearance

COMMON JUDGMENT

1. The plaintiff in OS.No.187/2013 on the file of the learned District Munsif Court, Krishnagiri, is the appellant in SA.No.181/2017. The defendants in the suit in OS.No.227/2013 are the appellants in SA.No.180/2017.
2. These two appeals arise out of two different suits. These Second Appeals are taken up together and are disposed of by this common judgment as the issues are common.
3. The case of the appellant/plaintiff in SA.No.181/2017 in OS.No.187/2013 is as follows:-
4. The suit property measuring to an extent of 4.26 acres in Survey No.293/3 is the absolute property of the appellant. It is stated that under the Sale Deed dated 18.01.2010 for a valuable consideration of Rs.92,000/-, the above property was purchased from one Elango and Kaveri, who are brothers.



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The appellant did not produce parent documents to establish her title except the document of Sale dated 18.01.2010. The suit in OS.No.187/2013 is for declaration of title and for permanent injunction restraining the defendants from trespassing into the suit property. The burden lies on the appellant to prove how she is entitled to the entire property in Survey No.293/3.

5. In the written statement filed by the defendants, validity of the Sale Deed dated 18.01.2010 was specifically denied. It is the case of the defendants that the suit property belongs to them by virtue of a registered Gift Settlement Deed dated 02.12.2002 executed by one Ponnammal, who is none other than the mother of the 1st defendant and grandmother of the 2nd defendant. It is further stated that the entire suit property measuring to an extent of 4.26 acres in S.No.293/3 was owned by the said Ponnammal and that she sold an extent of 3.31 acres in favour of one T.Elango, who is none other than the husband of the appellant in SA.No.181/2017 and one Kaveri, brother of T.Elango. According to the defendants, the said Ponnammal did not sell the total extent in the said survey number and that she was holding remaining 95 cents of land after executing the Sale Deed in favour of the appellant in SA.No.181/2017. It is further stated that the said Ponnammal out of love and affection for her son and grandson namely the defendants, executed a registered Gift Settlement Deed in respect of the suit schedule property. It is also stated that remaining extent of 5 cents in the suit survey number was still in the name of the deceased Ponnammal, but as far as the possession of 95 cents is concerned, it is with the defendants.
6. After filing of the suit in OS.No.187/2013, defendants in OS.No.187/2013 filed another suit in OS.No.227/2013 against one Elango and Periyakka, who are the appellants in SA.No.180/2017.
7. The case of the plaintiffs in OS.No.227/2013 is that the entire property measuring to an extent of 4.26 acres belongs to Ponnammal and she executed a Sale Deed in favour of the 1st defendant and his brother namely Kaveri by Document dated 09.02.1993 in respect of an extent of 3.31 acres. It is the further case of plaintiffs that the said Ponnammal, out of love and affection, executed a Gift Deed in favour of her grandson dated 02.12.2002. It is also the case of the respondents/appellants that 5 cents still remains in the name of said Ponnammal, who is no more. It is the case of the respondents/appellants that the 1st defendant and his brother Kaveri executed a registered Sale



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- Deed dated 18.01.2010 as if they are the absolute owners of the entire extent of 4.26 acres, contrary to the prior document of title. It is also the case of the plaintiffs/respondents that the Sale Deed dated 18.01.2010 is null and void.
8. Having regard to the facts narrated in the plaint, the plaintiffs in OS.No.227/2013 prayed for declaration of their title to the suit property measuring an extent of 95 cents out of the extent of 4.26 acres and for permanent injunction restraining the defendants/appellants in SA.No.180/2017 and their men from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property. The suit is also for declaration that the Sale Deed dated 18.01.2010 executed by the 1st appellant in favour of the 2nd appellant in SA.No.180/2017 is null and void.
 9. Before the Trial Court, the plaintiffs in OS.No.227/2013, namely the respondents herein, examined the 1st plaintiff as P.W.1. One Loganathan was examined as P.W.2. On behalf of the appellants, the appellant in SA.No.181/2017 was examined as DW1 and the 1st appellant in SA.No.180/2017 was examined as DW2. The Village Administrative Officer was called and examined as DW3.
 10. From the pleadings, it is seen that the appellants claimed title only on the basis of the document, namely, Sale Deed which is marked as Ex.B1 dated 18.01.2010. The document Ex.B1 is the Sale Deed executed by the 1st appellant in favour of the 2nd appellant in SA.No.180/2017. Even, in the plaint in OS.No.187/2013 there is no reference to any prior document to show that the 1st appellant was holding more than the extent purchased by him under Ex.A2 dated 09.02.1993. The 1st appellant and his brother purchased only an extent of 3.31 acres out of 4.26 acres under the Sale Deed Ex.A2. However, the 1st appellant has conveyed an extent of 4.26 acres by the subsequent document dated 18.01.2010.
 11. The suit filed by the appellant in SA.No.180/2017 was dismissed and the suit filed by the respondents in OS.No.227/2013 was decreed as prayed for. Aggrieved by the findings of the Trial Court, the appellants in both the appeals have preferred AS.Nos.45 and 46/2014 respectively on the file of the Principal Sub Court, Krishagiri. Both the appeals were dismissed confirming the judgment and decree of the Trial Court. Aggrieved by the same, the above Second Appeals have been filed.
 12. The document Ex.B1 was executed by the 1st appellant and his



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brother Kaveri in favour of the 2nd appellant in SA.No.180/2017. It is brought to the notice of this Court that the appellants derived title through the document, which is marked as Ex.A2. The document Ex.B1 was not shown before this Court at the time of hearing. Both the Courts below held that the appellants have no right to the total extent of 4.26 acres in S.No.193/3.

13. This Court perused the records and pleadings available in the bundle.
14. The 1st appellant along with his brother purchased the property measuring an extent of 3.31 acres in S.No.193/3 under the Sale Deed, which is marked as Ex.A2. Except the document Ex.A2, no other document has been produced by the appellants to show that they had more extent in Survey No.193/3. The appellants and the respondents claim title only through the said Ponnammal. While appellants relied upon the Sale Deed under Ex.A2, the respondents relied upon the Gift Deed executed by Ponnammal in favour of the respondents on 02.12.2002 under Ex.A3. No other document of title was produced by the appellants in support of their case. In the absence of any reliable materials, this Court is unable to accept the case of the appellants regarding the title to the property over an extent of 4.26 acres in Survey No.193/3. When the 1st appellant in SA.No.180/2017 along with his brother purchased only an extent of 3.31 acres, they sold 4.26 acres under Ex.B1. Courts below found that Ponnammal is the original owner in respect of the above extent of 4.26 acres. Without reference to the source of title, the appellants have created the document under Ex.A4, which is also marked as Ex.B1. The 2nd appellant is the wife of the 1st appellant in SA.No.180/2017. It appears that the document Ex.B1 has been executed to grab the remaining extent from the respondents.
15. As a matter of fact, there was no pleadings as to how the entire extent in S.No.193/3 was conveyed to the appellant in SA.No.181/2017 under the document Ex.B1. The first question of law is meaningless as the Courts below have concurrently held that the respondents are the owners of the property based on the document Ex.A3. The previous title of Ponnammal was also upheld by the Courts below.
16. An attempt was made by the appellants to mislead the Trial Court. In the written statement filed in OS.No.227/2013, the appellants specifically stated that the 1st appellant got the property from Ponnammal under the Sale Deed dated 09.02.1993, Ex.A2. However, during trial, arguments were



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advanced that the previous Settlement Deed under which Ponnammal got title, is not one in respect of suit property by referring to the survey number and extent. This argument is not supported by pleadings. Having purchased portion of the property owned by Tmt.Ponnammal, a feigned attempt was made disputing the title of Tmt.Ponnammal. Having admitted the title of Ponnammal and claiming title under Ex.A2, the appellants are estopped from denying the title of Tmt.Ponnammal. The 2nd and 3rd questions of law have been framed to question the title of Tmt.Ponnammal. Since the title of Tmt.Ponnammal is admitted, no amount of evidence contrary to the pleadings can be admitted. Hence, the 2nd and 3rd questions of law need not be gone into.

17. The 4th question of law does not survive in view of the specific findings of Court below based on documents. Though the Appellate Court has not framed the points for consideration, the Appellate Court has applied its mind to all issues and rendered findings after considering the pleadings and documents. Hence, this Court is unable to hold that the judgment of the Lower Appellate Court is vitiated. This Court does not find any error or illegality in the decisions of the Courts below.
18. In the result, the Second Appeals are dismissed confirming the judgments and the decrees passed by the Courts below. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

tta/AP

To

1.Principal Subordinate Judge, Krishnagiri.

2.Additional District Munsif of
Krishnagiri.

+2cc to Mr.A.R.Suresh,Advocate SR.Nos.24106 & 24107

SA.Nos.180 & 181/2017

JP II(CO)
GN(7/02/2022)