



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

A.S. No. 863 of 2018

1. A.Boopathy
2. B.Dhanasekaran ..Appellants/Defendant

Vs.

M.Neela ..Respondents/Plaintiff

Appeal Suit filed under Section 96 C.P.C., to set aside the appeal against the judgment and decree dated 30.08.2018 passed in O.S. No.16 of 2011 by the Additional District Judge, Chengalpattu.

For Appellants : Mr. M.Mohideen Pitchai
For Respondent : Mr. K.V.Baabu

JUDGMENT

This appeal suit is filed as against the judgment and decree passed in O.S. No.16 of 2011 by the Additional District Court, Chengalpattu.

2. The respondent in this appeal, as plaintiff, filed a suit in O.S. No.16 of 2011, for declaration of title to the suit property and consequential permanent injunction restraining the defendants in any way interfering with the plaintiff's peaceful possession and enjoyment of the property. The prayer in the suit is also to declare the cancellation deed dated 19.11.2010, registered as document No.9823 of 2010, cancelling the previous settlement deed dated 05.08.2010, as null and void and not binding on the plaintiff. A further declaration was also sought for to declare the subsequent settlement deed dated 22.11.2010 executed by the first defendant in favour of the second defendant as null and void and not binding on the plaintiff.

3. The plaintiff contended that she is the absolute owner of the suit property by virtue of a registered settlement deed dated 05.08.2010 executed by her brother, the first defendant. Though the suit property originally belonged to the first



defendant, it is stated by the plaintiff that the property was conveyed in favour of the plaintiff by way of the settlement deed dated 05.08.2010. It is the specific case of the plaintiff that the settlement deed is irrevocable as settlor has not reserved any right to revoke or cancel the settlement deed. It is also the specific case of the plaintiff that the settlement deed was accepted and acted upon. It is stated that pursuant to the settlement deed, the plaintiff took possession of the property and that the revenue records have been mutated. The plaintiff also indicated that the settlement deed was an outcome of a family arrangement. Based on the terms of assurance regarding division of properties among the plaintiff and defendants, it is stated that the first defendant agreed to execute a settlement deed in respect of the suit property on condition that the plaintiff should execute a release deed in respect of the properties mentioned in the previous notice issued by the plaintiff to her brother. Pursuant to the compromise, it is stated by the respondent plaintiff that she executed the release deed in favour of the first defendant in respect of several properties to which the plaintiff herself had right to seek partition. After the release deed was registered as document No.5910 of 2010 before S.R.O. Guduvancherry, it is stated that the first defendant executed the settlement deed dated 05.08.2010 which was also registered as document No.5912 of 2010 at the same registering office namely S.R.O. Guduvancherry. Subsequently, it is stated by the plaintiff that she came to know that patta that was transferred originally in the name of plaintiff was changed in the name of second defendant. After finding the change in revenue record, it is the case of the plaintiff that she applied for encumbrance certificate and found that the first defendant had unilaterally cancelled the settlement deed dated 05.08.2010, by way of a cancellation deed dated 19.11.2010. It is also stated that the plaintiff came to know about the subsequent settlement deed that was executed by the first defendant in favour of second defendant on 22.11.2010. Since the plaintiff was not a party to the cancellation of the settlement deed in her favour, it is the case of the plaintiff that the unilateral cancellation of settlement deed is void and that she is entitled to claim title to the property on the basis of original settlement deed. The suit was contested by the defendants mainly on the ground that the settlement deed dated 05.08.2010 was neither accepted nor acted upon.

4. In the written statement, it is the case of the defendants that the plaintiff was never in possession of the



suit property at any point of time and that possession was always with the first defendant before and after the settlement deed dated 05.08.2010. The other allegations with regard to the compromise and the execution of release deed were also denied by the defendants. Based on their possession and enjoyment of the suit property, the defendants / appellants contested the suit.

5. The trial Court after framing necessary issues, held that the first defendant had no right to unilaterally cancel the settlement deed. Before the trial Court, the plaintiff examined herself as P.W.1 and marked Exs. A1 to A12. The appellants examined the first defendant as D.W.1 and marked Ex.B1 to B16. From the documents that are produced before the trial Court, the trial Court found that the settlement deed under Ex.A1 executed by the first defendant in favour of the plaintiff was accepted and acted upon. Since there was mutation of revenue records in favour of plaintiff following the first settlement deed dated 05.08.2010, the trial Court came to the conclusion that the gift deed was accepted and acted upon. The trial Court considered the oral and documentary evidence and held that the unilateral cancellation of the document Ex.A1 is neither valid nor binding on the plaintiff. Since the plaintiff was given relief of declaration, the trial Court also granted consequential relief of permanent injunction after holding that the property was handed over to the plaintiff pursuant to the settlement deed. Aggrieved by the judgment and decree of the trial Court, the defendants have preferred the above appeal.

6. Learned counsel for the appellants tried to convince this Court by referring to the evidence of the plaintiff. It was admitted by the plaintiff during cross examination that subsequent to the settlement deed that was executed by the first defendant in favour of the second defendant, the patta was transferred in the name of second defendant. Similarly the plaintiff has also admitted that the first defendant had cancelled the settlement deed by deed of cancellation dated 19.11.2010. The portion of the evidence pointed out by the counsel for the appellants is nothing but fact. The unilateral cancellation of settlement deed is admitted and it is borne by record. Similarly the subsequent settlement deed executed by the first defendant in favour of the second respondent is not disputed. It is the case of the plaintiff that the subsequent settlement deed executed by the first defendant in favour of the second defendant is void.

7. Having regard to the pleadings and the contentions put forward by counsel on either side, the point for consideration in this appeal are as follows:



i) Whether the settlement deed under Ex.A1 was accepted and acted upon;

ii) whether the first defendant can unilaterally cancel the settlement deed under Ex.A1;

iii) whether the settlement deed dated 22.10.2010 executed by the first defendant in favour of the second defendant is valid.

8. From the recitals of the document Ex.A1 it is seen that the settlement deed is stated to be irrevocable and accepted by the plaintiff. It is stated that the possession was also handed over to the plaintiff under this document. The first defendant had declared that he has no right and shall not revoke or modify the settlement deed. When the recitals clearly indicate that the first defendant had admitted the plaintiff's possession under the document Ex.A1, it is for the defendant to prove that the document was not acted upon. Pursuant to the subsequent settlement deed in favour of second defendant, there is no evidence let in by the defendant to prove that possession was with the plaintiff. When it is admitted that the revenue records were mutated in favour of plaintiff pursuant to the settlement deed under Ex.A1, this Court is unable to interfere with the finding of the trial Court that the settlement deed under Ex.A1 was accepted and acted upon.

9. With the recitals as well as the documents produced by the plaintiff, this Court has no hesitation to hold that the settlement deed was accepted and acted upon. When the document under Ex.A1 is held to be valid and it is acted upon, there is transfer of title in favour of the plaintiff and therefore, the first defendant is not competent to deal with the property. In other words, after execution of the settlement deed, the first defendant has no right to cancel the document as the transfer in favour of plaintiff is complete by registration. It is well settled that a person who has no title or right, cannot deal with the property. In the present case, the first defendant has unilaterally cancelled the settlement deed under Ex.A1 as if it was not acted upon. This Court has found that the document Ex.A1 was accepted and acted upon. The unilateral cancellation of settlement deed under Ex.A1 is void and not binding on the plaintiff. Similarly the subsequent settlement deed executed by the first defendant in favour of the second defendant is void for the same reason that the first defendant has no right or title to deal with the property pursuant to the document Ex.A1.



10. For the reasons stated above, this Court finds no merit in the appeal. The plaintiff under document Ex.A1 gets absolute title and therefore, the trial Court has rightly declared her title and granted consequential relief. The oral and documentary evidence clearly supports the case of the plaintiff on the basis of Ex.A1. Accordingly, this appeal suit is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bkn

To:

The Additional District Judge,
Chengalpattu.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr. K.V.Baabu, Advocate sr 62674.

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BS (CO)
SP(21/01/2022)