



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 03.12.2021

JUDGMENT PRONOUNDED ON : 22.12.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD) No.180 of 2005

Vappakani
S/o.Kulam Maideen ...Appellant/Appellant/Plaintiff

Vs

Seik Mohammed Abbas
S/o.Ismail ...Respondent/Respondent/Defendant

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 06.02.2004 made in A.S.No.54 of 2002 on the file of the Subordinate Judge, Aruppukkottai by confirming the judgment and decree dated 19.06.2002 made in O.S.No.237 of 1999 on the file of the District Munsif Court, Aruppukkottai.

For Appellant : Mr.S.Sethuraman
Advocate
For Respondent : Mr.C.Karthick
Advocate
for Mr.K.Chelladurai

JUDGMENT

The plaintiff is the appellant herein.

2.The plaintiff filed O.S.No.237 of 1999 before the District Munsif Court, Arupukkottai for declaration of title and permanent injunction. The suit was dismissed. As against the same, the plaintiff filed A.S.No.54 of 2002 before the Subordinate Court, Arupukkottai and the same was also dismissed. As against the same, the present second appeal has been filed.

3.The plaintiff had contended that the suit schedule property originally belonged to his grandfather namely Thaipu Rawthar. According to the plaintiff, the said Thaipu Rawthar had two sons by name Kulam Maideen and Mohammed Maideen. After the death of both sons, the plaintiff who is the son of Kulam Maideen is in enjoyment of the suit schedule property. According to the plaintiff, his father's brother Mohammed Maideen had died without any issue. The plaintiff further contended that a portion of property is



Kabaristhan for the plaintiff's grandfather's guru namely Maideen Masthan. According to the plaintiff, he has constructed the said Kabaristhan and he is performing the fathiya every year. He was granted patta on 16.08.1999 and he had paid kist on 19.08.1999.

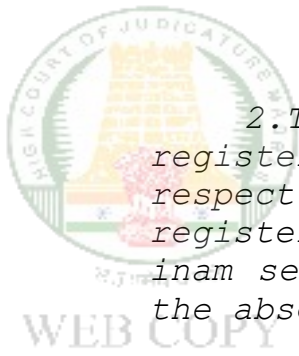
4.The defendant filed a written statement contending that originally the suit schedule property was owned by Thaipu Rawthar. During his life time, he has executed a registered settlement deed in favour of one Aminammal Beevi and Mohammed Abdul Kather Rawthar for the purpose of maintaining and administering the Dharga and Kabaristhan in the suit schedule property. Hence, the contention of the plaintiff that the suit schedule property devolved upon him by succession is not legally sustainable.

5.The trial court disbelieved Exhibits A1 and A2 patta and kist receipts on the ground that they have been obtained a few days prior to the filing of the suit. The trial court also held that Exhibit B1 settlement deed has been executed on 12.02.1921 by the donor of the property namely Thaipu Rawthar in favour of Dharga to be maintained by Aminammal Beevi and Mohammed Abdul Kather Rawthar. The said document has not been disputed by the plaintiff. The trial Court also found that the plaintiff has admitted in his plaint and during his deposition that the Kabaristhan is located in the suit schedule property. Just because the revenue records are continued to be in the name of the plaintiff, a prayer for declaration of title and permanent injunction cannot be granted ignoring Exhibit B1 settlement deed. Based upon the said findings, the suit was dismissed by the trial Court.

6.The First Appellate Court concurred with the findings of the trial Court and dismissed the appeal holding that the suit schedule property belongs to Dharga and the plaintiff is attempting to make a claim over the Dharga based upon some revenue records. Challenging the said concurrent findings, the present second appeal has been filed.

7.The second appeal has been admitted on the following substantial question of law:

"1.Whether the judgement and decree of the lower Appellate Court is in conformity with the order 41 Rule 31 C.P.C. The mandatory provision of order 41 Rule 31 C.P.C having not been complied with, whether the judgment and decree of the appellate Court is sustainable in law?. The Hon'ble High Court of Madras has decided in 1991(1) C.T.C page 26 that failure of Appellate Court to conform to order 41 Rule 31 renders judgment as no judgment in law. Hence, the judgment and decree of the Appellate Court has to be set aside.



2.The admission of Ex.B1 in the absence of inam fair register is contrary to law. No reliance can be placed in respect of inam settlement in the absence of inam fair register. Whether the reliance can be place in respect of a inam settlement in the absence of inam fair register and in the absence of the nature and type of inam?"

8.The learned counsel for the appellant had contended that the First Appellate Court has not framed proper issues and has not complied with the provisions under Order 41 Rule 31 C.P.C. The learned counsel further contended that in the absence of inam fair register, Exhibit B1 settlement deed cannot be relied upon.

9.Per contra, the learned counsel for the respondent contended that the suit schedule property has been settled in favour of the Dharga and the plaintiff himself has admitted in his pleadings and in the deposition that a Dharga is functioning in the suit schedule property. When the property belongs to Dharga, the plaintiff cannot claim title or possession over the suit schedule property.

10.I have considered the submissions on either side.

11.It is admitted by both the parties that the suit schedule property originally belonged to one Thaipu Rawthar. It is also admitted by both the parties that during the life time of the said Thaipu Rawthar, he has constructed a Dharga in memory of his guru in the suit schedule property. During his life time, the said Thaipu Rawthar has executed a registered settlement deed in favour of the Dharga to be administered by one Aminammal Beevi and Mohammed Abdul Kather Rawthar. The plaintiff has relied upon Exhibit A1 patta and Exhibit A2 kist paid in the suit schedule property. Exhibit B3 is the patta transfer order dated 02.11.1996 in favour of the defendant. Though the said order has been passed in the year 1996, it has not been carried out in the revenue records and this has helped the plaintiff in obtaining Exhibits A1 and A2. Hence, no reliance can be placed upon Exhibits A1 and A2 revenue records. That apart, these two documents have been obtained by the plaintiff a few days prior to the filing of the suit. It is evident that under Exhibit B1 settlement deed the property has been gifted to Dharga and the defendant is in administration of the said Dharga. The plaintiff being a grandson of the original donor is attempting to make a claim over the suit schedule property based upon the defects in the revenue records. Hence, the trial Court as well as the Appellate Court have carefully considered the oral and documentary evidence and dismissed the suit. Though the First Appellate Court has not framed any separate issue, has considered all the contention raised by the defendant and answered them in detail. Hence, the contention of the appellant that Order 41 Rule 31 of C.P.C has not been complied in letter and spirit, is not legally sustainable. That apart, Exhibit B1 is of the year 1921. A private person has executed



a gift deed in favour of Dharga and it does not require an inam register to support the gift.

12. In view of the above discussions, both the substantial questions of law are answered as against the appellant. The judgment and decree of the Courts below are confirmed and the second appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

msa

To

1.The Subordinate Judge,
Aruppukkottai

2.The District Munsif
Aruppukkottai

3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai

+1 CC to M/s.S.SETHURAMAN, Advocate (SR-40084[F] dated 22/12/2021)

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KB(16.02.2022) 4P 6C