



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A. (MD)No.188 of 2021

and C.M.P. (MD)No.2765 of 2021

Karuppasamy @ Velladurai

... Appellant/Appellant/
Defendant

versus

Daniel

... Respondent/Respondent/
/Plaintiff

Second Appeal filed under Section 100 of C.P.C. against the Judgment and Decree dated 05.03.2019 made in A.S.No.38 of 2015 on the file of the Additional Sub Court, Tenkasi, confirming the Judgment and Decree dated 27.01.2015 made in O.S.No.130 of 2011 on the file of the Principal District Munsif Court, Tenkasi.

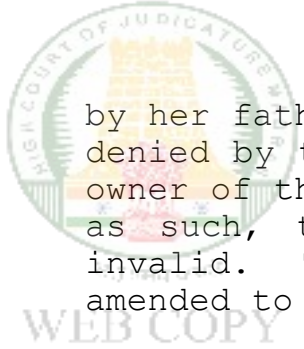
For Appellant : Mr.B.Prahalad Ravi

JUDGMENT

The defendant in O.S.No.130 of 2011 is on appeal. Challenge is to the Judgment and Decree of the Appellate Court in A.S.No.38 of 2015 in and by which the appellate Court confirmed the Judgment and decree of the trial Court in O.S.No.130 of 2011.

2. The suit was launched by the respondent seeking declaration that the sale deed executed by his sister on 06.10.2008 is not valid and for recovery of possession.

3. The plaintiff would contend that the suit property belonged to his father late Ratnaswamy, who purchased the same under a sale deed dated 27.09.1963 from one Thiruvankada Konar. According to the plaintiff, the said Rathnaswamy and his mother had executed a settlement deed dated 17.08.1981 settling the suit property in favour of the plaintiff. Since the plaintiff settled in Bombay, the sister of the plaintiff Yogamani was in-charge of the management of the property. After the death of the sister on 23.02.2010, the plaintiff discovered that his sister Yogamani had sold the suit property claiming under an alleged Will said to have been executed



by her father on 05.12.1990. Execution of the Will was specifically denied by the plaintiff. The plaintiff thus claimed that he is the owner of the property under the settlement deed dated 17.08.1981 and as such, the sale deed executed by his sister on 06.10.2008 is invalid. Though the suit was filed for injunction, the plaint was amended to include the relief of recovery of possession.

4. Subsequently, the suit was resisted by the defendant contending that the settlement deed dated 17.08.1981 is not true and valid and the same was not executed by the parents of the plaintiff. The defendant would claim that the father of the plaintiff had executed a Will on 05.12.1990 in favour of his daughter Yogamani, who in turn sold the property to him on 06.10.2008. Therefore, according to the defendant, the plaintiff has no title over the property. The defendant also claimed that the plaintiff had not produced the original settlement deed dated 17.08.1981 and therefore, he cannot seek recovery of possession.

5. At trial, the plaintiff was examined as P.W.1 and one Gunasekaran, who is the son of the Attestor to the settlement deed dated 17.08.1981 was examined as P.W.2. Exs.A1 to A10 were marked. The defendant examined himself as D.W.1 and Exs.B1 and B2 were marked.

6. The trial Court, upon consideration of the evidence, concluded that the plaintiff had proved the execution of the settlement deed as required under Section 69 of the Evidence Act accepting the evidence of P.W.2, who is none other than the son of the Attestor of the settlement deed, which was marked as Ex.A2. The trial Court also found that the plaintiff had satisfactorily explained the non-production of the original settlement deed. Since the same was produced by the husband of the sister in another suit filed by him, namely, O.S.No.31 of 2005. The Court also referred to the production of the plaint in the said suit as a document in this suit as Ex.A4 to show that the original of the settlement deed is in the hands of the husband of the sister of the plaintiff. In view of the said unimpeachable evidence offered for non availability of the settlement deed in the hands of the plaintiff, the Courts below accepted his explanation and received the copy of the document as secondary evidence. The trial Court also accepted the evidence of P.W.2, the son of the attesting witness, who had spoken about the signature of the executant as well as the attestor found in the settlement deed that was marked as Ex.A2. The trial Court also faulted the defendant for not even attempting to prove the Will said to have been executed by the father of the plaintiff in the year 1990 in favour of the sister of the plaintiff. In fact, the Will was also not produced in evidence. On the above findings, the learned trial Judge decreed the suit as prayed for. Aggrieved, the defendant preferred an appeal in A.S.No.38 of 2015. The learned Appellate Judge, upon reconsideration of the evidence, concurred with the findings of the trial Court and concluded that the



execution of Ex.A2-Settlement Deed has been proved by the plaintiff and as such, the plaintiff is entitled to the relief of declaration and recovery of possession. On the above conclusion, the appeal was dismissed. Hence, the second appeal.

7. I have heard Mr.B.Prahalad Ravi, learned counsel for the appellant.

8. Mr.B.Prahalad Ravi, learned counsel for the appellant would vehemently contend that the non-production of the original settlement deed vitiated the claim of the plaintiff. He would also contend that the plaintiff was never in possession of the property, thereby, he has no right to claim recovery of possession.

9. I am unable to countenance the contentions of the learned counsel for the appellant. The Courts below have considered the evidence on record regarding the non-production of original settlement deed. The plaintiff has produced the plaint in another suit, namely, O.S.No.31 of 2005 as documentary evidence to establish that the original settlement deed is in the custody of the husband of the sister, who had sold the property to the defendant. Therefore, the Courts below had accepted the explanation offered by the plaintiff for non production of original settlement deed. I am unable to fault the Courts below for having accepted the explanation so offered which is substantiated by production of material evidence.

10. It is seen that the plaintiff has examined P.W.2, who has spoken about the signatures of the executant and the attesor in the settlement deed. Therefore, the plaintiff had proved the execution of the settlement deed as required under Section 69 of the Evidence Act. The evidence of P.W.2 as found by the Courts below satisfied the legal requirement, namely, in the absence of any of the attesting witness, the propounder of the document, which requires attestation, must examine a person, who is acquainted with the signature of the attesor and the executor. P.W.2, who is none other than the son of the attesor, who is also the brother of the executant of the document, has spoken about the signature of his father and his paternal uncle in the said document. His evidence has been accepted by the Courts below. Therefore, I do not see any illegality or perversity in the findings of the Courts below based on the evidence of P.W.2. Once the evidence of P.W.2 is accepted and it is found that the plaintiff has proved the settlement deed as required under law and the sale deed executed by the sister of the plaintiff in the year 2008 is not valid and the defendant cannot claim title under the said document. Further, the defendant has not chosen to produce the Will dated 05.12.1990 said to have been executed by the father of the plaintiff, in favour of his vendor, namely, the sister of the plaintiff. I do not find any question of law much less substantial question of law in order to enable me to entertain the appeal. Hence, the Second Appeal fails and it is



accordingly dismissed without being admitted. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The Additional Sub Court,
Tenkasi.

2. The Principal District Munsif Court,
Tenkasi.

+1 CC to M/s.B.PRAHALAD RAVI, Advocate (SR-12238[F] dated
18/03/2021)

S.A. (MD) No.188 of 2021

18.03.2021

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