



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 21.12.2021

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THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

S.A. (MD) No.798 of 2021

and CMP (MD) No.10999 of 2021

WEB COPY

1. Indira
2. Muthukumar
3. Selvi

...Appellants/Appellants/Plaintiffs

vs.

Rakkammal

...Respondent/Respondent/Defendant

Second Appeal filed under Section 100 of CPC against the judgment and decree dated 24.01.2020 passed in A.S. No.96 of 2019 on the file of the learned Subordinate Judge, Thirumangalam confirming the judgment and decree dated 30.07.2019 passed in O.S. No.123 of 2010 before the District Munsif court, Thirumangalam.

For Appellants : Mr.S. Karthick

JUDGMENT

The present second appeal has been filed against the judgment and decree dated 24.01.2020 passed in A.S. No.96 of 2019 on the file of the learned Subordinate Judge, Thirumangalam confirming the judgment and decree dated 30.07.2019 passed in O.S. No.123 of 2010 before the District Munsif court, Thirumangalam.

2. This matter is taken up for final hearing at the admission stage itself.

3. For the sake of convenience, the parties are referred to as, as described before the trial Court.

4.The case of the plaintiff, as per the averments made in he plaint, in short, reads as follows :

The plaintiff filed a suit in O.S No.123 of 2010 before the learned District Munsif, Thirumangalam seeking for a prayer of permanent injunction. Pending the suit the first plaintiff died and the plaintiffs 2 to 4 have been added as legal representatives. The court after considering the points raised by the plaintiff that the property belongs to the plaintiffs father, the plaintiff had constructed a well and had a motor pump through which he was doing cultivation, paid kist and other house tax receipt and he was in enjoyment of the same. Electricity connection was obtained in his father's name and the electricity bill was also paid by the plaintiff father as the plaintiff father has also got a patta in



pattt No. 740 and the plaintiff used to pay the kist even the after the death of the plaintiff father. The plaintiff submit that the plaintiff father had the plaintiff and the respondent as the legal heirs. On 1983 the defendant was given in marriage and given 50 soverigns of gold jewels were given as sreedhana and grand wedding was also conducted and the defendant without the knowledge of the plaintiff had created settlement deed in favour of herself and also obtained a patta clandestinely patta no 1563 which is a joint patta and started trespassing into the property of the plaintiff from 20.01.2010 onwards and trying to interfere with the peaceful possession and enjoyment of the said right of the plaintiff. The plaintiff is residing in the said house and doing cultivation and in possession of the same. The defendant has no right or any possession in enjoying the same at any point of time and she wanted to sell the same to the third party and trying to interfere with the peaceful possession, hence filed a suit seeking permanent injunction.

5. The written statement of the defendants, in short, are as follows:-

The property originally belonged to the plaintiff's father Muthusamykonar and while he was alive, he had executed a gift settlement in favour of his daughter Rakammal on 05.03.2007, who is the defendant, out of love and affection in S.No.206/8, an extent of 1 acre 85 ½ cents in northern side, out of total 3 acres 75 cents. The gift deed was a registered document, which was accepted by the defendant and she has also mutated the revenue records and obtained a patta. The plaintiff was gifted 1 acre and 85 ½ cents by his father namely Muthusamy Konar, by virtue of gift settlement deed. The joint patta has been issued to the defendant in respect of the property which absolutely does not belong to the plaintiff and prayed that the suit of the plaintiff has to be dismissed.

6. Before the trial Court, on the side of the the plaintiff, one Muthukumar was examined as PW. 1 and six documents were marked as Exs. A1 to A6. On the side of the defendant Rakammal was examined as DW.1, Sub Registrar of Checkanoorani village was examined as DW.2, M.Jeyam, Assistant of Checkanoorani village was examined as DW.3 and one Rajaram was examined as DW.4 and two exhibits were marked as Ex.B.1 and Ex.B.2 and one court document was marked as Ex.C.1.

7. After considering the oral and documentary evidence, the trial Court had come to the conclusion that the plaintiff had failed to prove his case and it has been made clear that the defendant had been in possession and enjoyment of the property from 05.03.2007, by way of gift settlement deed and accordingly, the plaintiff case was rejected and dismissed the claim made by the plaintiff.



8. Aggrieved by the same, the plaintiffs have preferred an appeal in A.S. No.96 of 2019, on the file of the learned Sub Judge, Thirumangalam.

9. After considering the averments made in the appeal the first appellate court has come to the conclusion that the plaintiff cannot be granted the relief of permanent injunction, as the plaintiff has no *prima facie* title for entire extent of suit property coupled with exclusive possession of the same had dismissed the appeal filed by the plaintiff and confirmed the judgement and decree of the trial court.

10. Aggrieved by the same, the plaintiffs 2 to 4 alone have preferred the present second appeal raising various grounds.

11. The learned learned counsel appearing for the appellants / plaintiffs 2 to 4 would submit that the Courts below without taking note of the fundamental principles of law that by holding that the father the defendant had executed a registered gift settlement deed dated 05.03.2007 in respect of 1 acre 85 ½ cents without even seeing the original documents allowed the suit erroneously. The courts below failed to see that the defendant has not produced any documents to show that she has got right and possession over an extent of 1 acre 85-1/2 cents in suit survey number. The courts below failed to follow the provision contemplated in Section 63 of Evidence Act., before receiving Ex.B.1. Further, the Courts below failed to look into the statement given by D.W.2 in that he himself admitted that the sign which he signed in the original gift settlement deed has to be compared with the original gift settlement deed. The findings of the Courts below is purely based upon surmise and circumstantial evidence and the same needs interference.

12. The learned counsel appearing for the respondents/ defendants would vehemently oppose the Second Appeal by contending that the well considered Judgments of the Courts below need not be interfered with, as there is no question of law involved in this Second Appeal and prayed for dismissal of the Second Appeal.

13. This Court paid its anxious consideration to the rival submissions made and also carefully perused the materials placed on record.

14. According to the plaintiffs, the suit property belonged to the father of the 1st plaintiff. During the marriage of the defendant in the year 1983, fifty sovereign of jewels and 'Sridana' articles were given to the defeendant and she is living separately. But, the defendant created false documents without knowledge of the 1st plaintiff and causing disturbance to the enjoyment of the 1st



plaintiff from 20.01.2010 in respect of the suit property.

15. But, according to the defendant, the suit property originally belonged to the 1st plaintiff's father and the defendant, by name, Muthusamy Konar. He had executed a gift settlement deed in favour of the defendant on 05.03.2007, in respect of the suit property, comprised in S.No.206/8 having an extent of 1 acre 85 ½ cents on the northern side, out of the total extent of 3 acres 75 cents. Likewise, the plaintiff was also gifted an extent of southern 1 acre 85 ½ cents by Muthuchamy Konar. Hence, the suit property is not absolute property of the 1st plaintiff. The joint patta also issued on the basis of possession and enjoyment of the defendant.

16. It is not in dispute that the suit property originally belonged to the father of the 1st plaintiff and the defendant. The 1st plaintiff and the defendant are brother and sister. The specific case of the plaintiff is that her father Muthuchamy Konar executed the gift settlement deed under Ex.B1 in her favour. On perusal of Ex.B1 it is seen that the property measuring northern 1 Acre 85 ½ cents comprised in S.No.206/8 out of total extent of 3 acres 75 cents was gifted in favour of the defendant by her father. It is pertinent to note that the 1st plaintiff did not file any document to show that the plaintiffs have been in exclusive possession and enjoyment of the suit property ousting the enjoyment of the defendant in respect of the suit property. That being the position, this Court is of the opinion that the plaintiff have no *prima facie* title in entire extent of the suit property coupled with exclusive possession over the same. Therefore, the well considered Judgment of the Courts below need not be interfered with in this appeal. There is no question of law much less substantial questions of law involved in this appeal. Hence, the appeal is liable to be dismissed at the admission stage itself.

17. In fine, the Second Appeal is dismissed, confirming the Judgment and Decree passed in A.S. No.96 of 2019 on the file of the learned Subordinate Judge, Thirumangalam, in confirming the Judgment and Decree passed in O.S.No.123 of 2010 by the District Munsif court, Thirumangalam. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Subordinate Judge, Thirumangalam
2. The District Munsif court, Thirumangalam

Copy to

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

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TR(18.02.2022) 5P 5C