



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Second Appeal No.941 of 2007
& MP No.1 of 2007

Thangakutti @ A.Krishnamurthi

... Appellant

Vs.

A.Arukkani Ammal

... Respondent

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 30.01.2006 made in A.S.No.102 of 2005 on the file of the learned I Additional Subordinate Judge, Erode confirming the judgement and decree dated 30.09.2005 made in O.S.No.422 of 2002 on the file of the learned I Additional District Munsif, Erode.

For Appellant

: Mr.A.Sundaravadhanan

For Respondent

: Ms.K.Ramani for Mr.V.Rajesh

**JUDGEMENT**

WEB COPY This second appeal has been filed against the judgement and decree dated 30.01.2006 made in A.S.No.102 of 2005 on the file of the learned I Additional Subordinate Judge, Erode confirming the judgement and decree dated 30.09.2005 made in O.S.No.422 of 2002 on the file of the learned I Additional District Munsif, Erode.

2. The appellant is the plaintiff and the respondent is the defendant in the suit and they are none other than the son and mother. For the sake of convenience, the parties are hereinafter referred to as it before the trial Court i.e, 'the plaintiff and 'the defendant'.

3.The suit is filed by the plaintiff for permanent injunction. According to the appellant/plaintiff, both the suit schedule mentioned properties were natham poromboke and a patta was issued in the name of his mother, the defendant, who in turn settled the suit item nos.1 and 2 properties vide settlement deed dated 01.07.1999. By virtue of the said



settlement, the plaintiff is in possession and enjoyment of the suit properties. However, later the defendant has cancelled the said settlement deed by virtue of deed of cancellation dated 02.09.2002 in respect of 2nd item of the suit property and the same has been marked as Ex.B1. Previous settlement deed, dated 01.07.1999 executed by the defendant in favour of the plaintiff, was marked as Ex.A2.

4. According to the plaintiff, as regards the 1st item of the suit property, there is no dispute at all and both the Courts below have also held that the plaintiff is entitled to the 1st item of the suit property. However, as regards 2nd item of the suit property is concerned, it appears that the defendant has cancelled the settlement in respect of 2nd item of the suit property. The specific contention raised by the plaintiff is that once the settlement deed executed by the donor and accepted by the donee, it is final and it cannot be unilaterally cancelled by the donor, but it can be done only with the mutual consent of both donor and donee. However, both the Courts below have dismissed the suit in respect of 2nd



item of the suit property taking note of the fact that the defendant has been in possession of the same. Aggrieved by the concurrent findings of the Courts below, the plaintiff has come forward with the present appeal.

5.The learned counsel for the appellant/plaintiff has filed a memo, stating that she sent a letter to the appellant for getting instructions, however, he is unable to contact her client and hence, she reported no instructions and assisted the Court on this legal point. Therefore, this Court is inclined to proceed with the matter and dispose of the same on merits.

6. The only point for consideration arises in this appeal is whether the Courts below are right in rejecting the suit in respect of item no.2 of the suit property?

7.The learned counsel for the defendant would submit that the



cancellation of the gift settlement was made her only due to the reason that her intention was only to settle item no.1 of the schedule mentioned property in favour of his son, but not item no.2. But being illiterate, the defendant put her thumb impression at the instance of the appellant before the Sub Registrar with bona fide impression that she was executing the settlement deed in respect of item no.1 of the property. Therefore, after coming to know that the settlement deed was executed in respect of both items, she cancelled the settlement with regard to item no.2 of the schedule mentioned property alone vide cancellation deed, dated 2.9.2002 which was marked as Ex.B1.

8.The learned counsel for the defendant would further submit that based upon both oral and documentary evidence, both the Courts below have rightly come to the conclusion that the defendant has been in possession of the item no.2 of the suit property and the suit was filed only for bare injunction against the defendant, since the plaintiff failed to prove his possession over item no.2 of the suit property, the Courts



below have rightly dismissed the suit in respect of item no.2 of the suit property.

9. On a careful perusal of the judgments rendered by the Courts below, this Court finds that both the Courts below have rightly appreciated the evidence adduced by both parties and came to the conclusion that even though the plaintiff claims by virtue of the settlement deed Ex.A1 executed by his mother, he is entitled to both properties, but taking into consideration the evidence adduced by the parties, which established the fact that the defendant has been in possession of the 2nd item of the suit property, the Court below decreed the suit only in respect of item no.1. In fact, Ex.C1 report of the Advocate Commissioner also reveals the fact that the defendant has been in possession of the item no.2 of the suit property. Admittedly, the suit filed by the plaintiff only for bare injunction. Perpetual injunctions are equitable reliefs, a person who seeks the equitable relief of injunction, has to come to Court with clean hands and has to stand on



his own strength and should not depend upon the weakness in the case or the defense put forth by opposite party. The first and foremost requirement of the person, who seek the relief should be in possession of the property and enjoying the right, which has been disturbed by the other side. Although it is settled law that the relief for bare injunction can be granted where there is no obstacle for granting such relief, without even seeking the relief of declaration, but in present case, the plaintiff has not proved his possession over the item no.2 of the suit property. By virtue of Exs.B1, C1 and C2 coupled with the evidence of PWs.1 and 2, the defendant has proved her possession over the suit property and these facts were rightly appreciated by both the Courts below and rendered well reasoned judgments, rejecting the claim of the plaintiff for grant of bare injunction in respect of item no.2 of suit property. Therefore, this Court does not find any infirmity in the concurrent findings in order to interfere with the same. Therefore, this Court does not find any question of law, much less substantial question of law to entertain this appeal.



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10. In the light of the above discussion, the Second Appeal fails and it is dismissed. Consequently connected miscellaneous petition is also closed. Both parties shall bear their own costs.

28.09.2022

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To

- 1.The I Additional Subordinate Judge,
Erode
- 2.The I Additional District Munsif,
Erode



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KRISHNAN RAMASAMY.J.,

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