



SA.No.105/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.105/2022

Vadivel

.. Appellant/1st Defendant

Vs.

1.Hema Latha

2.Minor Kajan Kumar

3.Minor Keerthana

.. Respondents 1 to 3/Plaintiff 1 to 3

4.Renuka

5.Tamilselvi

.. Respondents 4 & 5/Defendants 2 & 3

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code to call for the records and set aside the judgment and decree dated 01.04.2021 passed in A.S.No.28/2019 by the learned I Additional Subordinate Judge, Erode which confirming the judgment and decree of the Trial Court dated 15.11.2018 passed in O.S.No.96/2017 on the file of the District Munsif Cum Judicial Magistrate Kodumudi, Erode.

For Appellant : Mr.T.Sathyaseelan



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JUDGMENT

- (1) The 1st defendant in the Suit in O.S.No.96/2017 on the file of the learned District Munsif Court, Kodumudi is the appellant in the Second Appeal.
- (2) Respondents/plaintiffs 1 to 3 in this appeal filed the Suit in O.S.No.96/2017 for declaration of Cancellation Deed dated 08.07.2009, executed and registered by deceased Karuppayee Ammal is void and invalid and for declaration that the subsequent Settlement Deed dated 15.07.2009 executed by Karuppayee Ammal in favour of the appellant/1st defendant is void and invalid. The Suit is also for consequential prayer for injunction restraining the appellant/1st defendant from interfering with the peaceful possession and enjoyment of the respondents/plaintiffs.
- (3) It is not disputed that the Suit properties originally belonged to one Karuppayee Ammal, the mother of appellant by virtue of family partition dated 04.01.1975. 1st plaintiff is the wife of one Suresh who is the grandson of Karuppayee Ammal. Plaintiffs 2 and 3 are the daughters of Suresh. The father in law of the 1st plaintiff and 1st defendant are brothers and sons of Karuppayee Ammal. Defendants



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2 and 3 are the grand daughter of Karuppayee Ammal. Stating that the 1st defendant tried to interfere with the plaintiffs' possession, the Suit was filed. It is admitted that the said Karuppayee Ammal executed a registered Settlement Deed dated 20.10.2004 in respect of Suit properties in favour of 1st plaintiff's husband and defendants 2 and 3. It is specifically pleaded by the plaintiffs in the plaint that the Settlement Deed was accepted and acted upon. Possession was also handed over to the donees as per the recitals of the document. After the death of Thiru.Suresh, the Suit properties are enjoyed in common by plaintiffs and defendants 2 and 3. It is contended by the plaintiffs that defendants 2 and 3 had relinquished their right in favour of plaintiffs as per the final decree in the Suit for partition in O.S.No.226/2015.

- (4) The relationship between the parties is not in dispute. However, the 1st defendant filed the Written Statement specifically disputing the possession and enjoyment of the Suit property by the plaintiffs. It is contended by the 1st defendant that the Settlement Deed originally executed by the Karuppayee Ammal was subsequently cancelled by another document deed dated 08.07.2009.



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- (5) Since Karuppayee Ammal executed a subsequent Settlement Deed in favour of the 1st defendant, it is contended that the 1st defendant had obtained possession under the subsequent Settlement Deed and he is the absolute owner.
- (6) The Trial Court after framing necessary issue as to the validity of the Deed of Cancellation, has specifically found that the original Settlement Deed executed under Ex.A1 dated 20.04.2004 was accepted and acted upon, and hence declared the cancellation of Settlement Deed as invalid and void.
- (7) The subsequent Settlement Deed under Ex.A2 was therefore held to be invalid and void by the Trial Court relying upon a judgment of this Court. Since, the appellant/1st defendant did not prove his possession or enjoyment over the Suit property, by producing any documents, based on the documents produced by plaintiffs under Ex.A1 and A4, the Trial Court found that the plaintiffs are in possession of the Suit property. Therefore, the Trial Court after finding all issues against the appellant/1st defendant decreed the Suit as prayed for. Aggrieved by the judgment and decree of the Trial Court, the 1st defendant preferred an Appeal in AS.No.28/2019



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before the I Additional Sub Court, Erode.

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- (8) The Lower Appellate Court also dismissed the appeal after holding that the Settlement Deed executed under Ex.A1 is valid and all the subsequent documents by which the 1st defendant claimed title are void and invalid. As regards the question of possession also, the Lower Appellate Court held that the plaintiffs are in possession and enjoyment of the Suit property. Having executed the Settlement, the Courts below specifically held that the settlor namely Karuppayee Ammal has no right to deal with the property or to cancel the Settlement Deed as it was done under Ex.A2. Both the Courts below have concurrently held against the appellant while rejecting all the issues raised by the appellant. Aggrieved by the concurrent judgments and decrees of the Courts below the above Second Appeal is filed.
- (9) Learned counsel appearing for the appellant raised the following substantial questions of law in the Memorandum of Appeal.

1. Whether non-delivery of possession and non-exercising of any rights over the ownership of the property, the donee has failed to make mutation in the



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records would not make the gift deed invalid?

2.Whether there is any prohibition in law that ownership in property cannot be gifted without its possession and right of enjoyment?

3.Whether the Suit is barred by limitation under Article 59 of the Limitation Act?

4.Whether the Judgment of the Courts below is vitiated in granting injunction while the plaintiffs have not proved their possession over the Suit properties on the date of filing of the Suit?

- (10) The Trial Court and the Lower Appellate Court have categorically found that the document Ex.A1 was acted upon and possession was delivered to the plaintiffs as recited in the deed of Settlement. As evident from Ex.A4, the beneficiaries under the Settlement Deed got the Suit properties allotted in final decree proceedings. Merely because the revenue records have not been transferred immediately after Settlement Deed, the Court cannot come to the conclusion that the Settlement Deed under Ex.A1 was not acted upon. No document is filed by 1st defendant. Therefore the 1st question of law has no substance.



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- (11) It is to be noted that the Courts below have specifically found that the plaintiffs are in possession and enjoyment of the Suit property. This Court is unable accept the argument of the appellant with regard to the 2nd question of law which does not reflect a legal point on the admitted facts.
- (12) Learned counsel appearing for the appellant has argued the 3rd question of law by referring to Article 59 of the Schedule to the Limitation Act. It is true that Article 59 prescribes a period of three years to cancel or set aside the instrument from the date of instrument or from the date when the plaintiffs come to know about the rescission.
- (13) In the present case, the Suit is not for cancelling the document but for declaration that the cancellation of earlier Settlement Deed and a subsequent Settlement Deed is void. The status of the instruments are sought to be declared as invalid on the ground that the settlor has no right. The cause of action arose when the plaintiffs had knowledge about the rescission of settlement or when possession is sought to be disturbed by relying upon the subsequent transaction. In this case, the plaintiffs have specifically come forward with the



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case that the cancellation of the Settlement Deed came to the knowledge just before filing the Suit and therefore, the question of law has to be answered in favour of the respondents.

(14) In view of the specific findings of the Courts below in the light of evidence and the recitals in the Settlement Deed this Court has no hesitation to hold that the findings of the Courts below are perfectly in order and the plaintiffs have established their right and title under the 1st Settlement Deed. The appellant has no semblance of right. This Court finds no merits in the Appeal.

(15) Hence, the Second Appeal is dismissed with cost confirming the judgment and decree dated 01.04.2021 made in AS.No.28/2019 by the learned I Additional Subordinate Judge, Erode in confirming the judgment and decree dated 15.11.2018 made in OS.No.96/2017 by the learned District Munsif cum Judicial Magistrate, Kodumudi, Erode.

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Internet : Yes

S.S.SUNDAR, J.,



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To

1. The I Additional Subordinate Judge, Erode.
2. The District Munsif cum Judicial Magistrate,
Kodumudi, Erode.
3. The Section Officer, VR Records,
High Court, Chennai.

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