



S.A.Nos.959 and 960 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.Nos.959 and 960 of 2022

and

C.M.P.Nos.20339 and 20341 of 2022

R.Selvam

... Appellant in both S.As.,

Vs

C.Ramasamy (died)

1.P.Thenmozhi

2.Karthikeyan

3.Pappathi

S.As.,

... Respondents in both

Common Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgment and Decree dated 29.01.2021 made in A.S.Nos.103 and 73 of 2019 on the file of the Ld.Second Additional District Court, Erode confirming the judgment and decree dated 20.02.2019 made in O.S.No.376 of 2004 on the file of the Ld.First



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Additional Sub-Court, Erode.

For Appellant : Mr.N.Manokaran

COMMON JUDGEMENT

The second appeals arise from out of the judgment and decree in suit in O.S.No.376 of 2004 on the file of I Additional Sub-Court, Erode, as against which appeals had been filed by the plaintiffs in A.S.No.73 of 2019 and 1st defendant in A.S.No.103 of 2019 on the file of the II Additional District Court, Erode. The 1st defendant is the appellant before this Court and for the ease of understanding parties are herein below referred to in the same rank as before the trial Court.

2. The brief facts which are necessary for disposing of the above second appeals are herein below narrated.

3. Originally the suit was filed by the deceased 1st plaintiff and thereafter the 2nd plaintiff was impleaded by order dated 19.04.2013.

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The plaintiffs had filed the suit O.S.No.376 of 2004 on the file of the I Additional Sub-Court, Erode, for declaring the absolute title of the 2nd plaintiff to the suit property and for the consequential injunction restraining the defendants their men, agents and assigns from trespassing into the suit properties and interfering with the 2nd plaintiff's peaceful possession and enjoyment of the B schedule property and for a mandatory injunction directing the defendants to return the original title deeds relating to the suit properties to the 2nd plaintiff within a time frame fixed by this Court. The suit property consists of two items of properties in the A schedule property and B schedule property.

4. It is the case of the plaintiffs that the properties are situated at Thuyyampoondurai Village at Erode Villages. The 1st plaintiff's wife is one Pappathi and their son is the 1st defendant and the 2nd plaintiff is their daughter. She is married to a practising advocate in Erode. The



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1st defendant and his wife Poongodi are residing along with the 1st plaintiff and his wife in a different portion which has been described as B schedule property.

5. It is the case of the plaintiffs that the 1st plaintiff's father Chellappa Gounder owned about 9 acres of dry land in Iveli Village, Sankagiri Taluk in Salem District and 68 cents of land irrigated by L.B.P.Water in Vadugapatti Village, Erode Taluk as his separate and self acquired properties and he had no ancestral properties. Till his death in 2000, Chellappa Gounder was in possession and enjoyment of his properties appropriating the meagre income there from for his family expenses consisting of himself, his wife two sons and two daughters. On account of the meagre income, he could not contribute any thing to his sons. He died in the year 2000 and had left behind him surviving his wife Karuppayammal, two sons, the 1st plaintiff and one Saravanan and two married daughters Ramayi and Sellammal as

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his legal heirs. At present the 1st plaintiff's brother Saravanan is in possession and enjoyment of the property of their father.

6. It is the case of the 1st plaintiff that from out of his savings the 1st plaintiff has purchased a vacant site measuring 2400 sq.ft., on 14.07.1972 which is the 2nd item of A schedule property. On 26.10.1979, the 1st plaintiff had purchased the 1st item of A schedule property for a valid consideration. The said A schedule property is the separate property of the 1st plaintiff. Since his purchase, he is in possession and enjoyment of the suit properties. A house was constructed in 1st item by the 1st plaintiff out of his own savings and earnings.

7. It is further case of the 1st plaintiff that the father-in-law of the 1st plaintiff, Arumuga Gounder owned considerable extents of immovable properties and he died intestate leaving behind his Son



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Somasundaram and three daughters and one of whom is Pappathi, the wife of the 1st plaintiff, she became entitled to 3/16 shares in the properties of her father. Despite demands for partition, her brother Somasundaram and his son Gowrishankar did not come forward to mediate the dispute and arrive at amicable partition. On the other hand they had created fraudulent documents to usurp the entire rights of the said Pappathi in her father's property. Therefore, the said Pappathi had filed a suit in O.S.No.813 of 1994 against her brother Somasundaram, his son Gowrishankar and others in I Additional Sub-Court, Erode for partition and separate possession of her share. In the meanwhile, the daughter-in-law of the 1st plaintiff, Poongodi wanted to start a business and requested the 1st plaintiff also to join with her in the business that she intended to start and the 1st plaintiff agreed. For starting the business a loan of Rs.72,000/- was obtained by showing the suit properties belonging to the 1st plaintiff as security. The loan has to be repaid in equal installments, Poongodi however refused to repay the

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loan and the 1st plaintiff therefore demanded that she discharge the loan or to vacate the business from the suit properties, but she was not prepared to do either. By reason of this, friction arose in the 1st plaintiff's family. While things stood thus, in January 2004, the 1st plaintiff came to know about the gift settlement deed registered in respect of the suit property as if the 1st plaintiff has executed the gift settlement deed on 12.11.2002 gifting the entire property on the 1st defendant. On 20.11.2002, the 1st defendant had executed a registered mortgage deed in favour of the 2nd defendant mortgaging the entire property on the 2nd defendant.

8. The plaintiffs would contend that the settlement deed dated 12.11.2002 is a forged document and did not convey any title on the settlee. It appears that the 1st defendant had got some one to impersonate the 1st plaintiff and obtained the settlement deed. The 1st plaintiff would contend that he has not executed any settlement deed



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in favour of the 1st defendant and the document is nothing but a forged one and therefore, even the mortgage that has been executed by the 1st defendant is without any authority or right. The mortgage therefore is not binding on the 1st plaintiff or the suit properties. Therefore the suit.

9. The 1st defendant had filed the written statement *inter-alia* denying the allegations contained in the plaint and submitted that the 1st plaintiff out of his own free will and volition had executed a gift settlement deed on 12.11.2002 and put the defendant in possession of the property. From the said date, the 1st defendant has been in possession and enjoyment of the same. The original document was also handed over to the 1st defendant by his father namely the 1st plaintiff and now at the instigation of the sister who is the 2nd plaintiff, the 1st plaintiff has taken out such a defence. The defendants would further submit that they are in possession and enjoyment of the suit property as its absolute owner and therefore,

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they sought to have the suit be dismissed.

10. The learned trial Judge had framed the following issues:

"1. Whether the gift settlement deed dated 12.11.2002 is a true and genuine one and whether the same was executed by the 1st plaintiff?"

2. Whether the 1st plaintiff is bound to seek cancellation of the same by a suit?"

3. Whether the 2nd plaintiff is not entitled to the declaration and permanent injunction sought for?"

4. Whether the 1st defendant is bound to return the original title deeds relating to the suit properties to the 2nd plaintiff?"

5. To what reliefs if any the parties are entitled?"

11. The 2nd plaintiff had examined herself as PW1 and marked Exs.A1 to A37 and on the side of the defendants, the 1st defendant



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himself had examined as DW1 and Sengottuvan was examined as DW2 and marked Ex.B1 and Court had marked Ex.X1-Finger print expert's opinion.

12. Ultimately, the suit was partly decreed. The order reads as follows:

(1) Gift settlement deed dated 12.11.2002 is not true and genuine and it has not been proved to be executed by the 1st plaintiff.

(2) The plaintiff is not bound to seek cancellation of the settlement deed.

(3) The 2nd plaintiff is not entitled for declaration and permanent injunction as prayed for.

(4) The 1st defendant is bound to return all the original title deeds relating to the suit property to the plaintiffs."



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13. The defendants herein had filed A.S.No.103 of 2019 and the plaintiffs had filed A.S.No.73 of 2019.

14. The appellate Court by its judgment and decree dated 29.01.2021, allowed A.S.No.73 of 2019 filed by the 2nd plaintiff and the decree of the trial Court was modified as follows:

"1) It is hereby declared that the appellant/2nd plaintiff is hereby entitled to the declaration of her title to the suit property and consequential permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment over the suit properties.

2) With respect to the other relief granted by the trial Court, the judgment and decree is hereby confirmed.



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3) The appeal in A.S.No.103/2019 is hereby dismissed and the judgment and decree of the trial Court is hereby confirmed.

4) Considering the relationship between the parties, I make no order as to costs."

15. The learned Judge had dismissed the appeal filed by the 1st defendant in A.S.No.103 of 2019. Aggrieved by the judgment and decree, the 1st defendant is before this Court.

16. Heard the learned counsels on either side and perused the materials on record.

17. The appellant/1st defendant claims exclusive right to the property on the basis of the gift settlement deed said to have been executed by the 1st plaintiff in favour of the 1st defendant. The said

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document has been marked as Ex.A29 before the learned I Additional Sub-Judge, Erode. This original document has not been filed by the defendant who set up the plea of settlement though notice to produce the same has been issued by the plaintiff. The defendant has also not examined the attesting witness, the paternal uncle's son, Gowrishankar. The plaintiffs had taken steps to send the left Thumb Impression of the 1st plaintiff for comparison with the Left Thumb Impression maintained in the Left Thumb Impression Register of the Sub-Register Office, Avalpoondurai, the report marked as Ex.X1 will show the impression in the Register is smudged and cannot be compared. Further, the attesting witness who had examined as DW2 in his cross examination would state as follows:

"முதல் விசாரணையில் நான் சொல்லிய சங்கதிகளை தவிர அந்த ஆவணத்தைப் பற்றி எனக்கு வேறு எதுவும் தெரியாது. சாட்சி கையெழுத்து நான் 15 வருடத்திற்கு முன்னால் செய்தேன். அதற்கு குறிப்பு எதுவும் எழுதி வைக்கவில்லை. ஆதலால் அதன் தேதி மாதம் தெரியாது."

"நான் சாட்சி கையெழுத்து செய்த தான செட்டில்மெண்ட்



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டைப் செய்யப்பட்டிருந்ததா அல்லது கையில் எழுதப்பட்டிருந்ததா என்றால் கையில் எழுதியிருந்ததாக ஞாபகம்".

Therefore, the reading of this would clearly show that the document Ex.A29 has not been proved. The signatures found in Ex.A29 document was examined by the Court with the admitted document Ex.A35 and this clearly showed that the signatures are not the same. Therefore, in the light of the fact that the 1st defendant who has based his entire case upon the settlement deed and has failed to prove the same and further since the comparison of the signatures of the disputed signature with the admitted signature is in variance, the judgment given by the Courts below regarding validity of the settlement deed has to necessarily be upheld. Therefore, the second appeal does not give rise to any substantial questions of law.

18. In the result, the Second Appeals are dismissed and Judgment and Decree dated 29.01.2021 made in A.S.Nos.103 and 73 of 2019 on the file of the II District Court, Erode confirming the

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judgment and decree dated 20.02.2019 made in O.S.No.376 of 2004 on the file of the I Additional Sub-Court, Erode are confirmed. No costs. Consequently, connected civil miscellaneous petitions are closed.

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Index : Yes/No
Speaking order/non-speaking order
ssn

To

1. The II Additional District Court,
Erode.
2. The I Additional Sub-Court,
Erode.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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