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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.230 of 2014
and MP No.1 of 2014

Rathinambal ...Appellant/Appellant/Plaintiff
Vs.

Singara Kounder ...Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed by the I Additional District Judge, Tindivanam in AS No.35 of 2009, dated 3.7.2013 confirming the judgment and decree passed by the Principal District Munsif, Tindivanam in O.S.No.69 of 2006, dated 29.11.2008.

For Appellant : Mr. Karthik Raja
M/s.G.Karthikeyan

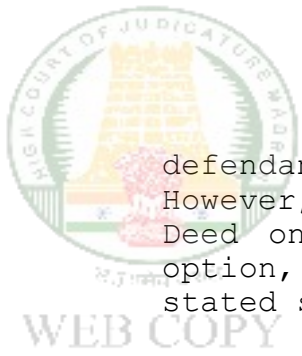
For Respondent : Mr.D.Ravichander

JUDGMENT

The plaintiff is the appellant in this Second Appeal.

2. The plaintiff filed the suit seeking for the relief of declaration of title and delivery of possession. The plaintiff also sought for the relief of permanent injunction restraining the defendant from alienating the suit properties.

3. The case of the plaintiff is that the suit properties originally belonged to one Irusappa Gounder. On his demise, his legal heirs namely Devaraj Gounder and Singara Gounder inherited the property and they were in possession and enjoyment of the same. The plaintiff is the daughter of Devaraj Gounder and the defendant in the suit is Singara Gounder. The further case of the plaintiff is that the suit properties are in possession and enjoyment of the defendant and he sold his half share in the properties and agreed to give the other half share to the plaintiff. A Settlement Deed was executed in favour of the plaintiff on 09.02.2004 by the



defendant and the share of the plaintiff was given to her. However, subsequently the defendant cancelled the Settlement Deed on 25.05.2005, marked as Ex.A3/B1. Left with no other option, the plaintiff filed the suit seeking for the reliefs stated supra.

4. The case of the defendant was that the suit properties are his self-acquired properties. A Settlement Deed was executed in favour of the plaintiff with a prior condition that he had to maintain the wife of the defendant. Since this condition was not fulfilled by the plaintiff, Settlement Deed was cancelled. Hence the defendant denied the very right and title of the plaintiff over the suit property. Accordingly, the defendant sought for the dismissal of the suit.

5. The suit was dismissed by the Trial Court through judgment and decree dated 29.11.2008. Aggrieved by the same, an Appeal was filed in AS No.35 of 2009, before the Sub Court, Dindivanam. The Lower Appellate Court remanded the suit back to the Trial Court for hearing the suit afresh and also permitted both the parties to lead further evidence. This was challenged by the defendant before this Court in CMA No.3510 of 2010 and this Court allowed the Appeal by an order dated 09.10.2012 and gave a direction to the Lower Appellate Court to record the evidence and decide the Appeal on merits. Accordingly, the plaintiff examined P.W.4 and P.W.5 and Ex.A5 was marked. Similarly D.W.1 was recalled and cross-examined by the plaintiff and Ex. A6 was marked. Ex.B4 patta was also marked.

6. The Lower Appellate Court on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, dismissed the Appeal through judgment and decree dated 03.07.2013. Thereby the judgment and decree of the Trial Court was confirmed. Aggrieved by the same, the plaintiff has filed this Second Appeal.

7. Heard Mr. Karthik Raja, learned counsel appearing for the appellant and Mr.D.Ravichander, learned counsel appearing for the respondent. This Court also carefully perused the materials available on record and the findings rendered by both the Courts below.

8. The learned counsel for the appellant relying upon Exs.A1 and A2 submitted that the defendant had already sold the properties that were allotted in his favour in the partition. There was no material to show that there was a partition between the parties and it is the specific case of the defendant that all the properties are his self-acquired properties. The defendant had executed the Settlement Deed in



favour of the plaintiff on 09.02.2004 and in this Settlement Deed, the defendant has specifically stated that the properties are his self-acquired properties. It was further mentioned in the Settlement Deed that the plaintiff should maintain the defendant and his wife and after their demise, the property will absolutely vest in favour of the plaintiff. This document also contained a clause to the effect that the defendant reserves the right to cancel the document in the absence of the plaintiff not fulfilling the condition prescribed under the Settlement Deed.

9. The plaintiff did not prove that the properties are in the nature of ancestral properties. In any case, the plaintiff was only tracing the right from the Settlement Deed executed in her favour by the defendant. It is admitted that the property is in possession and enjoyment of the defendant and that is why the plaintiff had also sought for the relief of recovery of possession. If the plaintiff is tracing the right on the ground that the properties are in the nature of ancestral properties, she cannot seek for the relief of declaration of title and at the best, she can only seek for the relief of partition and for allotment of her share.

10. Both the Courts below took into consideration the fact that the Settlement Deed was executed by the defendant by imposing certain condition and since the condition was not fulfilled, the Settlement Deed was revoked. If the plaintiff was aggrieved by the same, she should have challenged the document cancelling the Settlement Deed. Instead the plaintiff sought for the relief of declaration of title based on the Settlement Deed which was already revoked.

11. Both the Courts below found that the plaintiff was not clear about the stand taken by her with respect to the nature of the suit property, and hence it was found that the plaintiff did not establish her right and title over the suit property. In any event, Section 126 of the Transfer of Property Act, provides for circumstances under which it will be open to the donor to revoke the document. It is now a settled law that the condition imposed under the Settlement Deed/Gift Deed must be a condition subsequent which has to be fulfilled by the donee/settlee and such condition must be expressly provided in the document. In the present case, such a condition was imposed in the settlement Deed itself and it was not fulfilled by the plaintiff and therefore, the defendant proceeded to cancel the Settlement Deed through Ex.A3/B1.

12. In the considered view of this Court, the findings rendered by both the Courts below is supported by sufficient reasons and this Court does not find any perversity in those



findings. There is absolutely no ground to interfere with the judgment and decree passed by both the Courts below. In any event, no substantial questions of law are involved in this Second Appeal.

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13. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

jv

To

1.The I Additional District Judge,
Tindivanam.

2.The Principal District Munsif,
Tindivanam.

3.The Section Officer
VR Section,
High Court Madras.

+lcc to Mr.D.Ravichander, Advocate SR. No. 27046

+lcc to Mr.G.Karthikeyan, Advocate SR. No. 27441

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SVI (CO)
PR (05/05/2022)