



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.627 OF 2017

AND

CMP NO.15558 OF 2017

1.Rajathiammal

2.Nagammal

...Appellants/Appellants/Plaintiffs

VS.

1.Mariammal

2.Subramani

...Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the decree and judgment dated 13.04.2017 in A.S.No.13 of 2016 on the file of Subordinate Court at Ponneri, Thiruvallur District confirming the decree and judgment dated 14.10.2015 in O.S.No.88 of 2009 on the file of District Munsif Court at Ponneri, Thiruvallur District.

For Appellants : Mr.T.P.Sekar

For Respondents : Mr.M.Chandrasekaran

J U D G M E N T

The unsuccessful plaintiffs are the appellants before this Court.

2.The plaintiffs filed a Suit for declaration declaring that the Settlement Deed dated 09.09.2008 was not valid and for permanent injunction. According to them, they came to know of the Settlement Deed dated 09.09.2008 and registered a complaint with the Station House Officer, F2 Sipcot Police Station, which was registered in Crime No.836/2008 and the defendants were remanded to judicial custody. The cause of action arose when they got the property by virtue of a Partition Deed dated 07.05.1997 and on the police complaint given on 15.12.2008.



3. In the written statement, the defendants denied the possession of the plaintiffs and the rights of the plaintiffs to challenge the Settlement Deed after executing the same and suppressed the material facts of sale made to others after executing the Sale Deed and therefore, the plaintiffs are not entitled to the relief sought for by them.

4. The Trial Court framed appropriate issues and dismissed the Suit for suppression of the fact of execution of Sale Deed prior to filing of the Suit. On appeal, the First Appellate Court confirmed the findings of the Trial Court and dismissed the appeal. Aggrieved over the same, the plaintiffs preferred the above Second Appeal.

5. Heard the submissions made on either side and perused the materials available on record.

6. At the outset, a reading of the plaint does not disclose any cause of action on the impugned document dated 09.09.2008. But a mere statement has been made that the plaintiffs came to know of the fact that there was a fraudulent Settlement Deed in favour of the first defendant as if it was executed by the plaintiffs. There is no positive statement that the plaintiffs have not executed any Settlement Deed nor visited the Registrar's Office and that the registration of the Settlement Deed was made by impersonation. Absolutely, there is no pleading as to the signature found in the Settlement Deed. The cause of action paragraph does not mention about the Settlement Deed dated 09.09.2008, which is sought to be set aside. Further, there is absolutely no pleading as to the possession and interference of possession by the defendants. The Trial Court after elaborate trial and materials produced before it had found that the plaintiffs themselves admitted the factum that they have executed a Sale Deed in favour of grandsons of the first defendant and nephews of the second defendant on 16.10.2008. Thereafter, they filed the Suit on 08.04.2009. There is no pleading with regard to the sale of those properties on 16.10.2008 through Exs.B1 to B3. There is no pleading as to the entry found in Ex.B4 with regard to the statement made in favour of the first defendant. In such circumstances, the Trial Court has found that the plaintiffs have not approached the Court with clean hands and that they suppressed the sale made by them and the title was transferred to others.

7. In the result, the plaintiffs have failed to establish their legal right to challenge the Settlement Deed and also as to how the settlement is fraudulent. Without any as to the legal



right of plaintiffs' and without any specific pleading as to the fraud committed by the first defendant, the Suit itself is not maintainable for want of cause of action. Even though the plaintiffs have examined two independent witnesses, during cross examination, they plead ignorance with regard to the Settlement Deed and that there is a categorical finding that it was only a hearsay. The Courts below have rightly rejected the evidence of P.W.3 and P.W.4. I do not find any strong ground for interfering with the concurrent findings of the Courts below. Further, no question of law much less any substantial question of law arise for admitting the Second Appeal. Therefore, the Second Appeal is dismissed as it does not merit any consideration. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

TK

To

- 1.The Sub Judge,
Subordinate Court at Ponneri
Thiruvallur District.
- 2.The District Munsif at Ponneri
Thiruvallur District.

Copy To

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

+1cc to Mr.T.P.Sekar, Advocate SR.No.230
+1cc to Mr.M.Chandrasekaran, Advocate SR.No.727

SA NO.627 OF 2017

AK(CO)
GN(09/06/2022)