



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2022

CORAM:

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

Second Appeal (MD) No.148 of 2010

1.A.Raman .. 1st Appellant/2nd Appellant/
2nd Defendant
2.Kaliammal
3.S.Arumugam
4.S.Mahadevan
5.S.Anandan
6.Azhagi
7.Nachi
8.Pothum Ponnu .. Appellants 2 to 8/
LRs of the 1st Appellant/
LRs of the 1st Defendant

[Cause title accepted vide order dated 15.02.2010 made
in MP(MD) No.1 of 2010 in SASR(MD) No.47799 of 2009]

-vs-

1.N.Veeran
2.The Tahsildar,
Melur Taluk,
Melur Town,
Madurai District. .. Respondents/Respondents/
Plaintiff and 3rd Defendant

Prayer :- Second Appeal filed under Section 100 of Civil Procedure Code to set aside the decree and judgment dated 18.05.2009 rendered in A.S.No.22 of 2008 on the file of the Additional District Judge (Fast Track Court No.2), Madurai confirming the decree and the judgment dated 07.11.2005 rendered in O.S.No.32 of 2004 on the file of the District Munsif of Melur.

For Appellants : Mrs.P.Jessi Jeeva Priya
for Mr.G.Aravindhan
For Respondent-1 : Mr.R.Alaguram Jothi
for Ms.B.C.Catherine Evi
For Respondent-2 : Mr.R.Ragavendran,
Government Advocate



JUDGMENT

The 2nd defendant in O.S.No.32 of 2004 on the file of the District Munsif Court, Melur, is the appellant in this Second Appeal. The said suit was filed by the 1st respondent herein namely, N.Veeran seeking the relief of declaration, permanent injunction and mandatory injunction. The suit was resisted by the 1st appellant herein. Based on the divergent pleadings, issues were framed. The plaintiff, Veeran examined himself as P.W.1. Two other witnesses were examined on his side. Ex.A1 to Ex.A13 were marked. The 1st appellant herein examined himself as D.W.2. The 1st defendant, Segudan examined himself as D.W.1. Two other witnesses were examined on the side of the defendants. Ex.B1 to Ex.B19 were marked. After consideration of the evidence on record, the trial court by judgment and decree dated 07.11.2005, decreed the suit as prayed for. Aggrieved by the same, the contesting defendants 1 and 2 filed A.S.No.22 of 2008 before the Additional District Judge/F.T.C.2, Madurai. The first appellate court by the impugned judgment and decree dated 18.05.2009, confirmed the decision of the trial court and dismissed the appeal. Challenging the same, this Second Appeal came to be filed.

2. The Second Appeal was admitted on 16.03.2022, on the following substantial questions of law:-

"i) When the settlement deed dated 26.5.1980 was cancelled on 21.2.1981 and such cancellation was known to the plaintiff is not the suit filed on 5.2.2004 barred by limitation even to seek a declaration of his title; and

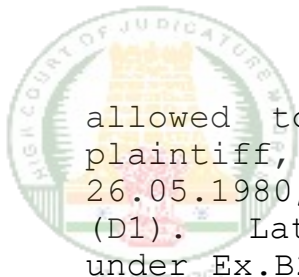
ii) Whether the settlement deed dated 26.05.1980 is valid in the eye of law?"

3. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgments and decrees and allow this appeal.

4. Per contra, the learned counsel appearing for the contesting respondent submitted that the impugned judgments and decrees do not call for any interference.

5. I carefully considered the rival contentions and went through the evidence on record.

6. The suit property measures an extent of 3 acres and 31 cents and is comprised in S.No.660/1A2C in Kesampatti Village, Melur Taluk, Madurai District. It was assigned in favour of the 1st defendant, Segudan. The original assignment order dated 20.01.1974 was omitted to be marked by the Courts below and the same was

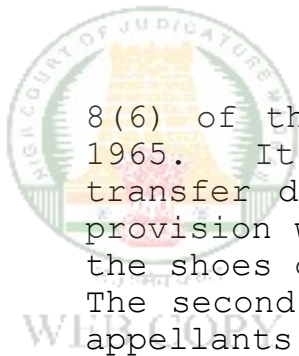


allowed to be marked as additional evidence as Ex.B20. The plaintiff, N.Veeran is the 1st defendant's nephew. Vide Ex.A1, dated 26.05.1980, the suit property was settled in his favour by Segudan (D1). Later, the deed of settlement was cancelled on 21.02.1981 under Ex.B2 by the settlor himself. The 1st defendant sold the suit property in favour of the 1st appellant herein namely, Raman under Ex.B6, dated 21.05.1990. Patta was also changed in favour of the 1st appellant/2nd defendant. In these circumstances, the 1st respondent, N.Veeran filed the aforesaid suit seeking the relief of declaration that the suit property belongs to him and for restraining the 1st defendant/1st appellant herein from interfering with his possession and enjoyment. The final relief sought for was that patta should be changed in his name by deleting the name of the 2nd defendant.

7. The learned counsel appearing for the 1st respondent/plaintiff submitted that Ex.B2-Cancellation Deed dated 21.02.1981 is null and void. He relied on the Full Bench decision reported in **2011 (2) CTC 1 (Latif Estate Line India Ltd. vs. Hadeeja Ammal)**. He would also state that though when the settlement deed was executed in favour of the plaintiff under Ex.A1, the 1st defendant did not have full title. Since the settlor later acquired title, the subsequent accretion should enure in favour of the plaintiff. He invoked Section 43 of Transfer of Property Act, 1882 in this regard. He emphasised the fact that even though the document may read as if it was a settlement that there was consideration for transfer is apparent from the recitals set out in Ex.A1. He also would state that originally patta was issued in favour of the plaintiff following the execution of Ex.A2 and that it was later cancelled and that is why, he sought mandatory injunction for directing the jurisdictional Tahsildar to issue patta in his favour, after deleting the name of the 2nd defendant.

8. Let us consider the contentions of the learned counsel appearing for the plaintiff/1st respondent in seriatim. The first question that arises for consideration is whether Ex.A1-Settlement Deed can be considered as valid. Ex.A1 was executed on 26.05.1980. The settlor/1st defendant was an assignee under Ex.B20 dated 20.01.1974. A mere reading of the terms of assignment would show that the land assigned should not be sold or otherwise alienated before the expiry of a period of 10 years from the date of assignment or the payment of the value of the land and buildings and trees thereon in full whichever is later. It is beyond dispute that Ex.A1-Settlement Deed was executed in the face of such prohibitory conditions in the assignment order.

9. The learned counsel appearing for the appellant drew my attention to the order dated 05.10.2012 made in W.P.No.14233 of 2009 etc., wherein it was held that no sale or transaction in contravention of a statutory provision can be recognised and approved by Courts. The assignment was issued in Form-F under Rule



8(6) of the Madras Land Reforms (Disposal of Surplus Land) Rules, 1965. It was further held in the said order that any sale or transfer during the period of assignment contrary to the statutory provision would not confer any right or interest so as to enter into the shoes of the assignee. Ex.A1-Settlement Deed is therefore void. The second substantial question of law is answered in favour of the appellants.

10. Secondly, the deed of settlement was cancelled on 21.02.1981 under Ex.B2. The plaintiff obviously had knowledge of the said cancellation, but he did not choose to challenge the same in the manner known to law. Of course, unilateral cancellation of a deed of settlement may even be void and may not warrant a formal challenge. But cancellation of a settlement deed that was executed in violation of the assignment condition stands on a different footing. The suit in question was filed 23 years after such cancellation. In the intervening period, the 2nd defendant purchased the property and the revenue record was mutated in his favour. The suit was hopelessly time barred. The first substantial question of law is also answered in favour of the appellants.

11. The next question that arises for consideration is whether the plaintiff can invoke Section 43 of the Transfer of Property Act. Section 43 of the Transfer of Property Act is as follows:-

"43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

12. I sustain the contention of the learned counsel appearing for the 1st respondent that there was some consideration for the transfer made under Ex.A1, but Section 43 of the Transfer of Property Act can be invoked only by a bona fide transferee. The condition precedent for invoking such provision is that the transferor must fraudulently or erroneously represent that he is authorised to transfer the immovable property in question. In this case, the plaintiff was aware that what was settled in his favour was an assigned land. That is why he claimed in evidence that he paid two of the instalments to be paid towards the value of the assigned land. Those documents were marked as Ex.A5 and Ex.A6. If the plaintiff wanted to invoke Section 43 of the Transfer of



Property Act, he must have specifically pleaded that the settlor/transferor made erroneous or fraudulent representation. No such plea is found in the plaint. In the absence of such a pleading, it is not open to me to invoke Section 43 of the Transfer of Property Act in favour of the plaintiff.

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13. It is true that for a brief while, patta stood in the name of the plaintiff, but when the authorities issued notice to the 1st defendant pointing out that the assignment condition has been breached, he promptly executed Ex.B2 cancelling the settlement made by him in favour of the plaintiff. Patta issued in the name of the plaintiff was cancelled and patta was issued in the name of the 1st defendant. After the 1st defendant sold the suit property in favour of the 2nd defendant, patta was changed in the name of the 2nd defendant. It is the 2nd defendant who has been paying the kist for several years prior to the filing of the suit.

14. The plaintiff had sought the relief of declaration of title over the suit property in his favour. Such a declaration cannot be granted because the settlement deed Ex.A1 based on which relief is sought cannot be recognised or approved by this Court. This is because, as already noted, Ex.A1 was executed in clear violation of the assignment condition. As on date, patta stands only in the name of the 2nd defendant/1st appellant herein. Therefore, the plaintiff cannot be said to have proved his possession. Viewed from any angle, the suit was not maintainable. The Courts below failed to take into account these elementary aspects. The substantial questions of law are answered in favour of the appellants. The impugned judgments and decrees are set aside. The Second Appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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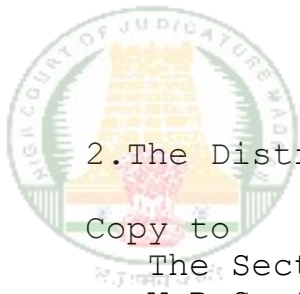
Note:- In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1.The Additional District Judge

(Fast Track Court No.2), Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The District Munsif, Melur.

Copy to

The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.

+1 CC to M/s.SPL GP (SR-13187[F] dated 21/03/2022)

S.A.(MD) No.148 of 2010

Dated: 18.03.2022

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