

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.94 of 2012

and

M.P.(MD) No.1 of 2012

Karuppaiah

... Appellant/Appellant/Plaintiff

Vs

Rajathi

... Respondent/Respondent/
Defendant

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 21.10.2011 made in A.S.No.30 of 2011 on the file of the Subordinate Court, Sivagangai, confirming the judgment and decree dated 23.12.2010 made in O.S.No.206 of 2009 on the file of the District Munsif Court, Sivagangai.

For Appellant : Ms.J.Ananthavalli

For Respondent : Mr.A.Sivaji

J U D G M E N T

The plaintiff, in O.S.No.206 of 2009 on the file of the District Munsif Court, Sivagangai is the appellant. The suit was laid for declaration of title and for certain ancillary relief of injunction. The plaintiff lost both the suit and also the first appeal in A.S.No.30 of 2011. For narrative convenience, parties are referred to by their rank before the trial Court.

2. There are two items of properties. The first item measures 1.33 acres in Sy.No.8/2 and the second item is the southern 52 cents in Sy.No.8/3/4. Both the properties are in Siddhikkudi Village, Sivagangai Taluk. According to the plaintiff, these properties were originally held by his paternal grandfather Vellaikannu Konar as ancestral property. After the demise of Vellaikannu Konar, it devolved on his son, Chidambara Konar. On Chindambara Konar's demise, it devolved on the plaintiff as a sole surviving co-parcener. As the plaintiff faced certain obstruction from his sister, the defendant herein, he laid the suit.

3. The defence offered is that the plaintiff's father, rather the father of the parties Chidambara Konar had two sisters. Vellaikannu Konar executed a settlement deed as regards the suit properties some time in 1965 in favour of his daughters Sornavalli and Muthammal, and that vide Ext.B.1-settlement deed dated 18.08.1966, both Sornavalli and Muthammal had settled the suit properties in favour of Chidambara Konar, that on 22.12.2005, under Ext.B.2, Chidambara Konar had settled the property in favour of the defendant. In 2006 Chidambara Konar died. She also disputes that the suit properties are ancestral in character.

4. The dispute went to trial and both sides adduced their oral and documentary evidences. The material evidence necessary for resolving the dispute has already been referred to above. The trial Court came to the conclusion that the properties are not the ancestral properties and upheld Ext.B.2-settlement deed executed by Chidambara Konar and the first appellate Court lend its concurrence to the finding of the trial Court and confirmed the decree passed by it. Hence, the second appeal. This second

appeal was not admitted and notice was ordered, pursuant to which the respondent has appeared.

5. Heard both sides.

6. Ms.J.Ananthavalli, the learned counsel appearing for the plaintiff/appellant herein submitted that she has produced an additional document dated 08.10.1945, a deed of simple mortgage executed by Vellaikannu Konar, the paternal grandfather of the parties, wherein he referred to Item-1 as his ancestral properties. Necessarily, Vellaikannu Konar did not have the right to execute any settlement deed in favour of his daughters, the properties being ancestral in character. Even if this kept aside, going by Ext.B.2 and reading it along with the testimony of D.W.1, it becomes evident that the defendant had mutated the revenue records only as regards Item-1 and not as regards Item-2, and this would indicate that the settlement as regards Item-2 had not taken effect.

7. Though the submissions of the learned counsel for the appellant are impressive at the first blush, on a deeper scrutiny, this Court finds it difficult

to sail with the submissions. Firstly, there are to be proper pleadings *vis-a-vis* Ext.B.1. So far as the authority of Vellaikannu Konar to execute a settlement deed in favour of his daughter is concerned, it is not challenged till date. Therefore, the settlement deed which Vellaikannu Konar had executed in favour of his daughter cannot be challenged now. This implies that Ext.B.1 is valid, and any property obtained under the settlement from female members cannot assume the character of ancestral property. Therefore, Chidambara Konar had every right to execute Ext.B.2.

8. Turning to the second leg of the argument of the learned counsel for the appellant, it must be stated that the plaintiff makes a desperate attempt to bring in doctrine of severability *vis-a-vis* the two properties covered under the same document. When once the gift is accepted, it is considered as accepted in *toto*. And, if at all the plaintiff was interested in bringing in doctrine of severability then there are to be proper pleading to that effect. Non mutation of revenue record is not conclusive on the point whether a gift/settlement deed had taken effect since revenue records are not documents vesting title.

9. In fine, this Court does not find anything in the judgment of the Court below as to warrant interference under Section 100 C.P.C. This Second Appeal is therefore, dismissed and the judgment and the decree of the Courts below are confirmed. So far M.P.(MD) No.1 of 2012 is concerned, since the additional document now sought to be introduced is not going to improve the situation, this Court does not consider it necessary to admit it. Accordingly, M.P.(MD) No.1 of 2012 is also dismissed. No costs.

16.09.2022

Internet:Yes
Index:Yes/No
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To

1.The Sub Judge, Sivagangai.

2.The District Munsif, Sivagangai.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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N.SESHASAYEE, J.

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