



SA.No.890 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07 .11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.890 of 2010

1. Marudhachala Gounder (died)

2. M. Sellammal

3. M. Lakshmi

4. M. Jayamani

... Appellants

(Sole appellant died Appellants 2 to 4
are brought on record as 'Legal Heirs'
of deceased Sole Appellant vide
order date 09.02.2023)

- Vs -

M. Shanmugam

... Respondents

Prayer: Second Appeal is filed under Section 100 of the Civil
Procedure Code against the Judgment and decree made in A.S.No. 20 of



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2008 on the file of the III Additional Sub Court at Coimbatore dated 19.11.2008 confirming the Judgment the Decree made in O.S.No.2240 of 2005 on the file of the I Additional District Munsif at Coimbatore dated 19.11.2007.

For Appellant : Mr. N. Vignesh

For Respondent : Mr. C. Veera Raghavan

JUDGMENT

This second appeal is filed to set aside the Judgment and decree made in A.S.No. 20 of 2008 on the file of the III Additional Sub Court at Coimbatore dated 19.11.2008 confirming the Judgment and Decree made in O.S.No.2240 of 2005 on the file of the I Additional District Munsif at Coimbatore dated 19.11.2007.

2. The brief facts which give rise to this instant second appeal is as follows:

One Marudachalla Gounder was the father of the plaintiff, and he has another one son and three daughters. It appears that the Marudachalla



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Gounder executed a settlement deed in favour of the plaintiff on 21.02.2005.

Subsequent to that, with the instigation of the other legal heirs namely the daughters and other son the said Marudachalla Gounder has unilaterally cancelled the said settlement deed in the month of May 2005 and attempted to interfere with the possession of the plaintiff. Hence, the plaintiff has instituted the suit in the month of December 2005.

3. The said suit was resisted by Marudachalla Gounder on the ground that the settlement deed was obtained by the plaintiff by way of misrepresentation. It was the submissions of the defendant that the plaintiff has obtained the settlement deed under the pretext of getting the general power of attorney. The defendant further states that since he become aged the plaintiff informed the defendant that he will manage the property, if the General power of attorney executed in his name. Only on that ground the defendant has signed in a document and the further contention of the defendant is that he has never executed any Settlement deed much less than the one mentioned in the plaint in favour of the defendant.



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4. Documents and Evidence

Before the Trial Court, the plaintiff has relied as many as six documents namely Ex.A1 to A6 and examined two witnesses as P.W.1 and P.W.2. On behalf of the defendant three documents have been marked as Exs.B1 to B3, and two witnesses have been examined as D.W.1 and D.W.2 and the trial Court has dismissed the suit while answering the following issues:

“ 1. Whether the plaintiff is entitled to permanent injunction against the defendant restraining him from interfering with the plaintiff peaceful possession and enjoyment of the suit property?

2. Whether the plaintiff is entitled to permanent injunction against the defendant restraining him from interfering with the plaintiff's alterations, or additional on new construction work in the suit property?

3. To what relief the plaintiff is entitled?”

5. The Trial Court found that the unilateral cancellation of the settlement deed is contrary to law. While arriving at conclusion the Trial Court would further relied upon the admission of D.W.2 to the effect that the plaintiff was in possession, and that the very settlement deed was cancelled



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not because that the defendant was forced to sign in the settlement deed on misrepresentation, but, on the ground that the plaintiff has been attempting to sell away the property. In view of the above findings the Trial Court decreed the suit.

6. Aggrieved with the same, the defendant has approached the first Appellate Court. The first Appellate Court also agreed with the findings of the Trial Court and has ultimately dismissed the first appeal. Thus, the defendant is before this Court by way of the instant second appeal.

7. Heard both side counsels.

8. The learned counsel for the defendant/appellant would contend that the Trial Court have not appreciated the case in its proper perspective, and would further submits that the Trial Court failed to see that the defendant has been in possession and enjoyment of the property. It is also the further contention of the learned counsel appearing on behalf of the plaintiff that the defendant within a period of 90 days has cancelled the power of attorney. According to the defendant/appellant the Trial Court without going into the



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oral and documentary evidences has decreed the suit. Hence, prayed to interfere with the findings of both the Court below and prayed to dismiss the suit.

9. Per contra the learned counsel for the respondent would contend that the unilateral cancellation of the settlement deed is contrary to law and would further submits that though the defendant would say that the settlement deed executed in favour of the plaintiff was under misrepresentation, the document being voidable one, the defendant did not file any suit to cancel or to set aside the said document. Therefore, the alleged unilateral cancellation of the settlement deed will not come into operation, and that the plaintiff have been in possession and enjoyment of the suit property and prayed to dismiss the second appeal.

10. I have given my anxious consideration to either side submissions.

11. The appellant has submitted the copy of deposition of D.W.1 along with typed set. On a perusal of the evidence given by D.W.1, the D.W.1 has categorically admitted that the plaintiff has been in possession and



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enjoyment of the property. He would further submit that the cancellation of the gift deed namely Ex.A1 necessitated the defendant only on the apprehension that the plaintiff would sell away the suit property. As a matter of fact, the cancellation deed do not contain any reason as stated in their written statement for cancellation of Ex.A1 settlement deed.

12. Therefore, from the admissions made by the D.W.1, it resonates that the case put forth by the defendant is contrary to his own admission. Further more, from the submissions made by the learned counsel for the appellant, this Court could not find any substantial question of law. Hence, this second appeal is dismissed. No order as to costs.

07.11.2023

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To

1. The III Additional Sub Court at Coimbatore
2. The I Additional District Munsif at Coimbatore



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C.KUMARAPPAN, J

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