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S.A.No.30 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2023

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.30 of 2023
and C.M.P.No.809 of 2023

P.Natarajan, since deceased

1. Subbathal
2. N.Murugasan
3. N.Thangaraj
4. Bharathi

.. Appellants

Vs.

1. Rangammal

2. N.Ramaswamy

.. Respondents

Prayer:- Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree dated 21.12.2021 in A.S.No.6 of 2019 on the file of the Subordinate Judge, Udhagamandalam, confirming the Judgment and Decree dated 30.11.2018 in O.S.No.94 of 2002 on the file of the District Munsif at Udhagamandalam, the Nilgiris and allow the Second Appeal as prayed for.

For Appellants : M/s AL.Ganthimathi, Senior Counsel
for SA.Kanmani

JUDGMENT

This second appeal has been filed as against the Judgment and Decree dated 21.12.2021 in A.S.No.6 of 2019 on the file of the Subordinate Judge, Udhagamandalam, confirming the Judgment and Decree dated 30.11.2018 in O.S.No.94 of 2002 on the file of the District Munsif at Udhagamandalam, the



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Nilgiris, thereby decreed the suit filed by the first respondent herein.

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2. The appellants are the defendants in the suit filed by the first respondent herein for declaration and possession. The case of the first respondent is that herself and the first appellant herein are sisters born to one Kaliappa Gounder. He had no son. He also had another daughter i.e, one Arukkaniammal. He owned agricultural land comprised in S.Nos.399/4, 399/5, 405/10, 405/13 and 481, situated at Ootacamund rural village, Nilgiris District. By virtue of a registered Gift settlement deed, dated 23.10.1999 executed by the said Kaliappa Gounder in respect of the Part I of 'A' Schedule property, in favour of the first respondent herein, she has become the absolute owner of the property. By virtue of another gift deed dated 25.10.1999 executed by the said Kaliappa Gounder in favour of the first respondent herein, she has become absolute owner of the property of Part II of 'A' Schedule property. Since the date of the gift deeds, the first respondent is in exclusive possession and enjoyment of the properties. While being so, the appellants have started threatening the first respondent not to cultivate the said lands, since they have a share in the said property. They trespassed into some extent of the property and demolished the fence put up by the first respondent. Hence, the suit.

3. Resisting the same, the appellants filed their written statement stating



that the gift deeds were not acted upon so far. The said Kaliappa Gounder met with an accident and sustained grievous injuries. Thereafter, he was hospitalized continuously and he was not in a sound state of mind and health and he was not even able to move freely till his death. Therefore, the settlement deeds were invalid for want of delivery of possession. Both the gift deeds were obtained by the first respondent by undue influence, fraud and misrepresentation. In fact, no sub division has taken place as per the gift deed and the first respondent is in possession and enjoyment of the property.

4. On the side of the first respondent, she had examined P.Ws.1 and 2 and marked Exs.A1 to 5. On the side of the appellants, they had examined D.Ws.1 and 2 and marked Exs.B1 to 9. The Advocate Commissioner was examined as C.W.1 and the Advocate Commissioner's report and sketch were marked as Exs.C1 to 3. On a perusal of oral and documentary evidences, the Trial Court decreed the suit and aggrieved by the same, the appellants preferred an appeal suit and the same was also dismissed confirming the Judgment and Decree passed by the Trial Court. Hence, this second appeal.

5. The appellants raised the following substantial questions of law,



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“a. Whether the Courts below are correct in finding that the settlement deeds have been proved ?

b. Whether the Courts below are correct in finding that the oral partition has not been proved in spite of the records which shows that the partition has been acted upon?

c. Whether the Courts below are correct in dismissing the suit on the basis of the settlement deed which has not been proved?”

6. The learned Senior Counsel for the appellants would submit that the suit properties originally belong to late Kaliappa Gounder. The first respondent and the first appellant are sisters, who are born to him. Therefore, both the sisters are entitled to have equal share in the suit properties. Totally, the said Kaliappa Gounder had given birth to three daughters. Therefore, all the daughters were given their respective share by oral partition and they are in exclusive possession and enjoyment of their respective shares which were allotted to them. The first daughter was allotted 1.50 acres with house and godown on Theetukkal, Udthagamandalam District. The second daughter Arukkaniammal was allotted 0.62 acres of agricultural land and another extent of 3.55 acres with house at Nambiampalayam. The first respondent herein was allotted 2.35 ½ acres of land with house and godown at Theetukkal, Udthagamandalam District. Accordingly, they are in separate possession and enjoyment of their respective shares. The settlement deeds were not at all acted



upon at any point of time, since no revenue records were mutated as per the gift deeds. In fact, those deeds were not executed in a sound state of mind by their father, since he met with an accident and he was not in a sound state of mind. It was obtained by undue influence and coercion.

7. A perusal of the records revealed that admittedly the said properties originally belong to late Kaliappa Gounder, who is none other than the father of the first appellant and first respondent herein. According to the first respondent herein, she was settled in respect of the properties mentioned in 'A' Schedule property by way of two registered gift deeds dated 23.10.1999 and 25.10.1999, which were marked as Exs.A1 and 2. Though, the appellants had taken a specific stand that the said Kaliappa Gounder could not stand, walk or execute any settlement deed since he met with an accident, the gift deeds were obtained by undue influence, fraud and misrepresentation. The appellants failed to substantiate the said contentions by any concrete proof. The medical records which were marked as Exs.B7 and 9 are also not helpful in order to prove that the said Kaliappa Gounder was in unsound mind at the time of execution of Exs.A1 and 2. That apart, the appellants did not take any steps to challenge the gift deeds, which were marked as Exs.A1 to 2. The appellants also failed to produce any piece of evidence to show that already the properties were orally



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partitioned between the sisters and they are in possession and enjoyment of their respective shares. In order to prove Exs.A1 and 2, the first respondent had examined P.W.2, who is one of the witnesses to the gift deeds. Therefore, the Courts below had rightly decreed the suit filed by the first respondent herein and this Court finds no infirmity or illegality in the orders passed by the Courts below and also finds that no substantial questions of law involved in this case and the second appeal is liable to be dismissed.

8. Accordingly, this Second Appeal is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.



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To

1. The Subordinate Judge, Udhagamandalam.
2. The District Munsif at Udhagamandalam, the Nilgiris.

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