



S.A.No.1009 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 1009 of 2019
and C.M.P.No.21704 of 2019

S.Parthasarathy Mudaliar,
Represented by Power Agent
P.Jothilingam

...Appellant

Vs.

1.S.Gowri
2.Susheela
3.V.Devi

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 31.01.2019 dismissing A.S.No.10 of 2013 by the learned Subordinate Judge at Madurantakkam, Kanchipuram District, confirming the decree and judgment dated 25.09.2012 decreeing O.S.No.237 of 2009 by the learned District Munsif Judge, Maduranthakkam, Kanchipuram District.

For Appellant : Mr.Abdul Mubeen
for M/s.D.Revathi Karthick

For Respondents : Mr.K.Govi Ganesan



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J U D G M E N T

The unsuccessful defendant is the appellant. The respondents filed the suit for declaration of title and for consequential injunction. The suit was decreed by the Trial Court. The appeal filed by the present appellant was also dismissed. Aggrieved by the concurrent findings, he is before this Court.

2. According to the respondents, the appellant herein is their father. The suit properties were originally owned by the appellant. He executed a settlement deed in favour of the respondents on 26.12.2006, settling the suit properties in favour of the respondents. Thereafter, patta for the suit item 1 to 9 were changed in favour of the respondents. The application for change of patta in respect of item 10 is pending with the Revenue Officials. The suit item 9 & 10 are enjoyed by the respondents as a way to reach the suit item 1 to 8. It was specifically averred by the respondents that subsequently the appellant due to some misunderstanding, attempted to interfere with the peaceful possession and enjoyment of the suit properties by the respondents and he gave out a threat as if he cancelled the settlement deed in favour of the respondents. Denying the right of the appellant to cancel the settlement deed



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duly executed in their favour, the respondents were constrained to file a suit for declaration of the title and injunction.

3. The appellant herein filed the written statement and resisted the suit on the ground that the alleged settlement deed executed by him was not acted upon. It was his case that the suit properties were nominally settled in favour of the respondents in order to save the same from his sons who filed the suit for partition against him. It was also contended by the appellant that the possession of the suit property was always with him and he had been paying kist to the suit properties. It was also contended by the appellant that he cancelled the settlement deed executed by him in favour of the respondents, which was obtained by misrepresentation.

4. Before the Trial Court, the 1st respondent was examined as P.W.1 and yet another witness was examined as P.W.2. Seven documents were marked on behalf of the respondents as Ex.A1 to Ex.A7. The appellant was examined as D.W.1 and three witnesses were examined as D.W.2 to D.W.4. On behalf of the appellant, seven documents were marked as Ex.B1 to Ex.B7.



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5. The Trial Court, on appreciation of the oral and documentary evidence available on record came to the conclusion that the settlement deed executed by the appellant was valid document and had been acted upon. Therefore, the Trial Court granted the decree for declaration of title and injunction as prayed for. Aggrieved by the same, the appellant preferred an appeal in A.S.No.10 of 2013 on the file of Subordinate Court, Madurantakkam. The 1st Appellate Court also concurred with the findings of the Trial Court and dismissed the suit. Aggrieved by the concurrent findings against him, the appellant has preferred this Second Appeal.

6. The learned counsel appearing for the appellant submitted that the appellant already executed a cancellation deed cancelling the settlement in favour of the respondents and the said cancellation deed has not been challenged by the respondents and in the absence of such prayer, the suit is not maintainable. The learned counsel further submitted that the Court below ought not to have come to the conclusion that the cancellation deed executed by the appellant was not valid in the absence of any specific prayer by the respondents. The learned counsel also submitted that the respondents failed to lead any evidence to show that the settlement deed executed by the appellant



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in their favour was acted upon and they have been in possession and enjoyment of the suit properties.

7. It is not in dispute that the appellant herein executed a settlement deed in favour of his daughters, namely the respondents. It was the case of the appellant that the settlement deed was executed nominally in order to save the suit properties from the sons of the appellant, who filed the partition suit. The appellant also raised a defence that the settlement deed was cancelled by him and therefore, the respondents are not entitled to the relief sought for.

8. It is settled law that the moment the settlement deed is executed and registered, the right of the settlor gets transferred to settlee *in praesenti*. Therefore, the settlor who is divested of his title over the property settled is not entitled to cancel the same, unilaterally unless he reserved right to cancel the settlement under the original settlement executed by him. Both the Courts below, on perusal of the recitals found in Ex.A1 pointed out there is a recital in the settlement that it was irrevocable one. Subsequent to the settlement in favour of the respondents, mutation had taken place, patta was issued in favour of the respondents under Ex.A2, the respondents also paid kist to the Government under Ex.A6.



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9. In the revenue document Adangal under Ex.A7 also, the names of the respondents are reflected. Therefore, on appreciation of recital in Ex.A1 coupled with mutation in the revenue documents in Ex.A2, Ex.A6 and Ex.A7, both the Courts below came to the conclusion that the settlement deed was a valid document and the same has been acted upon. Once it is held that the settlement deed executed by the appellant in favour of the respondents is a valid document, unilateral cancellation of settlement deed by the settlor is unknown to law. Therefore, the Courts below are correct in coming to the conclusion that the cancellation deed executed by the appellant is not a valid document. The said cancellation deed is not binding on the respondents when they were not the parties to the same and consequently, they can simply ignore it and there is no necessity to seek declaration regarding invalidity of cancellation deed.

10. Both the Courts below, on appreciation of oral and documentary evidence available on record, especially the mutation of revenue records in favour of the respondents, rightly came to a factual conclusion that the respondents proved their possession over the suit properties and therefore, they are also entitled to the consequential relief of injunction. The said finding



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of the fact by the Courts below is binding by this Court. In such circumstances, I do not find any substantial questions of law arising for consideration in this second appeal calling for interference while exercising jurisdiction under Section 100 of CPC Act.

11. In view of the discussions made earlier the second appeal stands dismissed;

a) by affirming the judgment and decree dated 31.01.2019 passed by the learned Subordinate Judge, Madurantakkam, Kanchipuram District in A.S.No.10 of 2013 confirming the judgment and decree dated 25.09.2012 passed by the learned District Munsif Judge, Maduranthakkam, Kanchipuram District in O.S.No.237 of 2009; and

b) In the above facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

19.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.

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To

1. The Subordinate Judge, Maduranthakkam,
Kanchipuram District.
2. The District Munsif Judge, Maduranthakkam,
Kanchipuram.

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