



S.A.No.274 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.274 of 2021

and

C.M.P.No.5470 of 2021

G.Srinivasan
Appellant

...

Vs.

A.V.S.Balasubramanian

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 22.01.2020 in A.S.No.22 of 2011 passed by the learned Additional Subordinate Judge, Mayiladuthurai, confirming the judgment and decree dated 24.01.2011 in O.S.No.205 of 2010, passed by the learned District Munsif, Sirkazhi.

For appellant : Ms.Shinu Thomas

For respondent : Mr.T.P.Manoharan, Senior Counsel
for Mr.K.P.Jotheeswaran



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JUDGMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court.

2. The facts leading to the filing of the above second appeal are briefly set out hereinbelow and the parties are referred to in the same rank as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff had filed a suit in O.S.No.205 of 2010 on the file of the Court of Principal District Munsif, Sirkazhi, for permanent injunction restraining the defendant, his men and agents, servants or persons claiming through him, from, in any manner, interfering with his peaceful possession and enjoyment of the suit property.

2.2. It is the case of the plaintiff that the suit schedule property was settled on him by his grandmother Sundarammal under a settlement deed dated 25.04.2008. The settlement deed was duly



attested and registered. From the date of the settlement, the plaintiff has been in peaceful possession and lawful enjoyment of the suit property without any let or hindrance. Further, the plaintiff has leased out the 1st item of the suit property to a third party.

2.3. While so, the defendant who is a close relative of the plaintiff and who had an eye over the suit property, had approached him asking him to sell the property to him at a very low price. The plaintiff refused to do so, as a result of which, the defendant got enraged. On 18.06.2008, when the plaintiff was in the suit property, the defendant along with a group of men came to the suit property and attempted to trespass into the suit property. This was successfully prevented by the plaintiff and his servants and the defendant had left stating that he will return. Therefore, the plaintiff has come forward with the suit for permanent injunction against the defendant.

2.4. The defendant had filed a written statement *inter alia*



contending that the suit has been filed suppressing all the material facts and documents and on false contentions.

2.5. The defendant would submit that the plaintiff has suppressed the execution of two settlement deeds in favour of the defendant by Sundarammal in the year 2001 and delivery of possession of the suit schedule property to him. It is the further case of the defendant that the plaintiff has suppressed the fact that it is the defendant who is in exclusive possession and enjoyment of the suit property from the said date. He would also submit that the plaintiff is none else than his nephew.

2.6. The said Sundarammal has purchased both items of the suit property under a sale deed dated 30.09.1965. The defendant, right from the beginning, has been living with his parents and assisting his father in running the jewellery business and after the demise of his father, he was the one taking care of his mother *viz.*, Sundarammal.



Therefore, taking into consideration the above, the said Sundarammal had executed two settlement deeds, settling the suit property upon the defendant. The original title deeds were also handed over to the defendant and he was put in possession of the property on the very same day.

2.7. The defendant would submit that by oversight, the new door number, lane and mother wall in respect of the 1st item of the suit property were not included in the settlement deed dated 21.03.2001. Therefore, his mother had executed a registered rectification deed dated 30.03.2001 in respect of 1st item of the suit property, setting out the correct details of the said new door number, lane, etc. Thereafter, the said Sundarammal had executed another settlement deed dated 30.04.2001 in respect of 2nd item of the suit property. Once again, the possession of the property was handed over on the very same day and he was in continuous possession and enjoyment of the property described in both the items without any hindrance.



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2.8. The defendant would submit that in both the settlement deeds, there were no conditions imposed on him and possession was also handed over to him as also the original title deeds. The defendant would submit that he had also got the revenue records mutated in his name and has also got the patta, tax assessment, electricity connection, etc., transferred in his name. The defendant would further submit that he was directed to pay additional stamp duty in respect of the settlement deeds and he had also paid the same and obtained back the original settlement deeds duly registered.

2.9. Thereafter, according to the defendant, all of a sudden, in the year 2008, when his mother was over 92 years of age and physically and mentally frail, the plaintiff and his father with an intention of grabbing the properties, had hurriedly cancelled the settlement deeds executed in favour of the defendant and thereafter, made her to execute a settlement deed dated 25.04.2008 in favour of



the plaintiff. The defendant would submit that Sundarammal had no right, title or interest on the suit property and further the settlement deeds being irrevocable ones, she had no right and authority to cancel the same. That apart, the defendant has been in possession and enjoyment of the suit property ever since the settlement deeds were executed in his favour. He would, therefore, seek for the dismissal of the suit for permanent injunction.

TRIAL COURT:

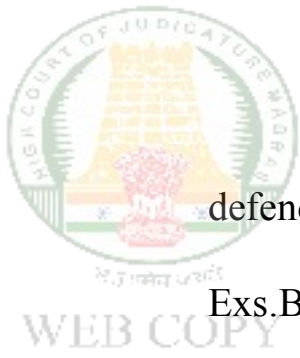
3. The Trial Court has framed the issues as to

“(1)Whether the settlement deed dated 25.04.2008 was valid?

(2)Whether the plaintiff is entitled to injunction as prayed for?

(3)To what other reliefs the plaintiff is entitled for?”

4. The plaintiff has examined himself as P.W.1 and one Ramesh as P.W.2 and marked Exs.A1 to A4. On the side of the



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defendant, the defendant has examined himself as D.W.1 and marked Exs.B1 to B16.

5. The learned Judge, had returned a finding that the settlement deed dated 25.04.2008 was invalid and that the plaintiff has not proved his possession to the suit property and therefore, had dismissed the suit.

LOWER APPELLATE COURT:

6. Challenging the same, the plaintiff has filed an appeal in A.S.No.22 of 2011 on the file of the Additional Subordinate Court, Mayiladuthurai. The learned Judge had also confirmed the judgment and decree of the Trial Court and dismissed the appeal.

7. It is challenging the same that the plaintiff has preferred this second appeal. The defendant had entered caveat in this matter.



8. Though this matter was posted for admission on 24.03.2021, the learned counsel for the appellant sought time and thereafter, the matter has not been listed. Finally, matter was listed on 13.12.2003 and then posted today for admission, finally.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

DISCUSSION:

10. The suit is one for permanent injunction, wherein, the plaintiff would submit that his grandmother had executed the settlement deed dated 25.04.2008 in his favour and had put him in possession of the said property. The suit has been filed within a period of one and half months of the alleged settlement i.e., on 19.06.2008.

11. The plaintiff has totally suppressed the factum of earlier settlement deeds and rectification deed executed in favour of the



defendant and subsequent cancellation of the said deeds. That apart, the plaintiff has not even described the defendant as his maternal granduncle and would refer to him only as his close relative. The plaintiff has not filed any document whatsoever to prove his possession of the suit property. He has produced Ex.A3 which is a receipt dated 07.01.2008 and three receipts marked as Ex.A4 (series) standing in the name of Sundarammal. Both these receipts are much prior to the date of execution of the alleged settlement deed in favour of the plaintiff.

12. On the contrary, the defendant has produced documents to prove his possession and enjoyment of the suit schedule property. Further, Sundarammal who had executed the two settlement deeds in favour of the defendant, had also executed the rectification deed which would clearly show that she had executed these settlement deeds. The defendant has been in possession of the property since 2001 and has also proved his possession.



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13. Both the Courts below have also observed that when the defendant had clearly and categorically denied the plaintiff's title to the suit property and had set up a separate title, the plaintiff has not sought for declaration of title with reference to the suit schedule property nor sought to declare the earlier settlement deeds and rectification deeds declared as null and void. Therefore, the suit is not maintainable. The party who seeks an order of injunction should come to the Court with clean hands. In the instant case, the plaintiff had suppressed the material facts. Both the Courts below have clearly found that the settlement deed in favour of the plaintiff is invalid and that apart, the plaintiff had failed to prove his possession to the suit property and therefore, the plaintiff is not entitled to an order of injunction.

14. The Courts below have rightly dismissed the suit. I see no reason to interfere with the concurrent judgment and decree of the



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Courts below, particularly, when the second appeal does not involve any substantial question of law.

Accordingly, this second appeal stands dismissed. Consequently, the connected C.M.P. stands closed. No costs.

20.12.2023

Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The Additional Subordinate Judge, Mayiladuthurai.
2. The District Munsif, Sirkazhi.
3. The Section Officer, V.R. Section, High Court, Madras.

P.T.ASHA, J.,

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