



S.A.No.323 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.323 of 2017

and

C.M.P.No.7718 of 2017

1.Vijaya

2.Rajiv Gandhi

3.Minor Radhika

4.Minor Ranjitham

5.Minor Ramya

... Appellants

*(Minors represented by their Guardian and Mother,
Vijaya 1st appellant)*

VS.

Rani

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, 1908, to set aside the Judgment and Decree dated 18.01.2017 made in A.S.No.49 of 2012 on the file of the Subordinate Judge, Dharmapuri reversing the Judgment and Decree dated 22.09.2011 made in O.S.No.61 of 2009 on the file of the District Munsif, Palacode.



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For Appellants : Mr.C.Munusamy

For Respondent : Mr.Arun Anbumani

J U D G E M E N T

The plaintiffs are the appellants. The appellants filed a suit seeking declaration of title and permanent injunction. The suit was decreed by the Trial Court. Aggrieved by the same, the respondent preferred an appeal and the same was allowed by the First Appellate Court and as a consequence, the suit was dismissed. Aggrieved by the reversing findings of the First Appellate Court, the appellants/plaintiffs have come up by way of this second appeal.

2. According to the appellants/plaintiffs, the suit property originally belonged to 1st appellant's mother Kamala under partition and by patta. The said Kamala settled the suit property in favour of the appellants by way of registered Settlement Deed dated 02.06.2008. The revenue documents also stands in the name of appellants. The respondent without having any manner of right over the suit property, attempted to interfere with the possession of the appellants and hence, they were constrained to file a suit for declaration of title and permanent injunction.



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3. The respondent herein filed a written statement denying the title of Settlor-Kamala. The respondent also denied the settlement in favour of the appellants and attacked the same as a concocted document. The respondent also claimed possession over the suit property. It was further averred that there was a illicit relationship between the 1st appellant and respondent's father Rajan. It was further averred that the respondent and her sister Pennammal filed a suit for partition against the said Rajan in O.S.No.87 of 1990 wherein the present suit property was also shown as subject matter of the suit. The said suit was decreed and preliminary decree for partition was also passed in favour of the respondent. On these pleadings, the respondent sought for dismissal of the suit.

4. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that the appellants proved their title as well as possession over the suit property and consequently, granted the decree for declaration of title and injunction as prayer for. Aggrieved by the same, the respondent herein filed an appeal in A.S.No.49 of 2012 on the file of Sub Court, Dharmapuri. The First Appellate Court on re-appreciation



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of evidence, came to the conclusion that the exclusive title of Settlor under Ex.A1 namely Kamala was not proved and consequently, reversed the findings of the Trial Court and allowed the appeal. Aggrieved by the same, the unsuccessful appellants/plaintiffs are before this Court.

5. This Court at the time of admitting the second appeal formulated the following substantial question of law:-

“(i) Whether the First Appellate Court is right in dismissing the suit based on presumptions and assumptions ignoring the vital documentary evidence adduced on behalf of the plaintiffs namely, Exs.A1, A4 and X1 to X17 would establish title and possession of the plaintiffs in the suit property?”

“(ii) Has not the lower appellate Court committed grave illegality in not framing the proper point for consideration as is required under Order 41, Rule 31 C.P.C.?”

6. The learned counsel appearing for the appellants assails the judgement passed by the First Appellate Court on the ground that title of the



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Settlor under Ex.A1 has been proved by revenue documents right from the year 1988 down to the date of settlement in the year 2008. Therefore, the First Appellate Court erred in coming to the conclusion that Settlor's exclusive title over the suit property was not proved. The learned counsel further submitted that oral evidence of PW.1 and PW.4 proved partition of the properties of Range Gounder and allotment of the suit property to the share of Kamala and the First Appellate Court failed to take into consideration the oral testimony of material witnesses.

7. The learned counsel appearing for the respondent submitted that the revenue documents will never confer title to anybody. Merely because, the revenue document stands in the name of Kamala, it cannot be presumed that she has got exclusive title to the suit property. The learned counsel further submitted that the witnesses of appellants/plaintiffs clearly admitted that the suit property originally belonged to one Range Gounder father of Kamala and in the absence of any evidence to show that after death of Range Gounder, his properties were partitioned and suit property was allotted exclusively to the share of Kamala, she is not entitled to settle the same in favour of the appellants.



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8. As per the plaint averments, the appellants claimed that the suit property originally belonged to 1st appellant's mother Kamala by partition and patta. When the 1st appellant was examined as PW.1, she clearly admitted that the suit property was originally belonged to Range Gounder. Though she deposed about allotment of suit property in a partition in the family, there is no independent evidence available on record to support her interested testimony. PW.4 is the son of Kamala aged about 40 years, he in his evidence deposed about partition and allotment of suit property to Kamala 40 years ago. Having regard to his age, his evidence regarding partition that had been allegedly taken place in the family 40 years ago is highly unbelievable. Having regard to his age, PW.4 is not a competent witness to talk about the partition that had taken place in the family 40 years ago. The appellants for the reasons best known to them, failed to examine any independent witnesses to prove the alleged partition in the family and allotment of the suit property exclusively to the share of Kamala.

9. In such circumstances, the Settlor under Ex.A1 namely Kamala's exclusive title over the suit property is not at all proved. Once this Court



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come to the conclusion that Settlor's exclusive title over the suit property is not proved, the settlement deed executed by her under Ex.A1 in the year 2008 would not confer absolute title to the appellants.

10. The learned counsel appearing for the appellants by relying on Exs.X1 to X17 submitted that revenue documents have been in the name of Kamala from the year 1988 and therefore, the partition pleaded by appellants should be presumed. It is settled law that merely because, the revenue document stands in the name of one of the sharer, the Court cannot come to a definite conclusion that the said property was allotted to his share exclusively unless there are acceptable evidence available on record to support the plea of partition. In the case on hand, as discussed earlier, there is no independent evidence available on record to prove the plea of partition and allotment of suit property in the name of Kamala. Therefore, revenue document in her name from the year 1988 will not help the appellants to get their title declared.

11. In view of the discussions made earlier, the questions of law framed at the time of admission are answered in favour of the respondent



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and against the appellants and judgement and decree passed by the First Appellate Court is liable to be confirmed and as a consequence, the Second Appeal is dismissed.

12. Though this Court comes to the conclusion Settlor under Ex.A1 Kamala's right to exclusive title over the suit property has not been proved, as a heir of Range Gounder, Kamala is entitled to half share in the suit property along with Rajan, the father of the respondent. In such case, the settlement deed executed under Ex.A1 by Kamala is valid to the extent of half share in the suit property. It is open to the parties to workout their remedies in a regular partition suit by impleading all the heirs of Range Gounder. With these observations, the Second Appeal is dismissed.

In Nutshell:-

(i) The Second Appeal is dismissed.

(ii) Consequently, the connected civil miscellaneous petition is closed.



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(iii) In the facts and circumstances of the case, there will be no order

as to costs.

20.11.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm

To

1.The Subordinate Judge,
Dharmapuri.

2.The District Munsif,
Palacode.



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S.SOUNTHAR, J.

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