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S.A.No.655 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.655 of 2017

1.S.T.M.Mohammed Gani
2.S.T.M.Jainulupdeen

... Appellants

vs.

1.B.Muthu Naidu (Died)
2.Sarojini
3.Sathiya
4.Sivakumar
5.Jeeva
6.Tamilselvan
7.Meyyazhagan

... Respondents

*(R1 Died, RR3 to 7 are brought on record as LR's of
the deceased R1 vide Court Order dated 17.11.2023
made in CMP.No.11373/2023 in SA.No.655/2017)*

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgement and decree in A.S.No.13 of 2013 on the file of the II Additional Subordinate Judge, Villupuram dated 04.11.2015 partly reversing the judgment and decree in O.S.No.165 of 2003 on the file of I Additional District Munsif Cum Judicial Magistrate No. 1, Ulundurpet dated 28.01.2010.

For Appellants : Mr.K.Muthukumarasamy

For R2 to R7 : Ms.R.Meenal



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JUDGEMENT

The plaintiffs in a suit for declaration of title and injunction are the appellants. The suit was dismissed by the Trial Court and the appeal filed by the appellants/plaintiffs was partly allowed by the First Appellate Court and suit was decreed in respect of property covered under Ex.A1 alone. In respect of remaining portion of suit property, the suit was dismissed by the First Appellate Court. Aggrieved by the dismissal of the suit in respect of the property not covered under Ex.A1, the plaintiffs have come by way of this second appeal.

2. According to the appellants/plaintiffs, the suit property originally belongs to one Jeyarama Naidu. The 1st appellant purchased a portion of the suit property from said Jeyarama Naidu under Ex.A1 dated 22.02.2002. The remaining portion of the suit property was purchased by 2nd appellant on 26.03.2002 from the very same Jeyarama Naidu. It was the case of the appellants that they had been in possession and enjoyment of the suit property from the date of purchase. It was also claimed by the appellants that the right claimed by respondents/defendants in respect of 1 cent of the



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suit property on the western side under the gift deed executed by Jeyarama Naidu was untenable as he himself cancelled the settlement subsequently. It was further alleged by the appellants that respondents illegally attempted to interfere with their alleged possession and therefore, they were constrained to file a suit for declaration of title and injunction.

3. The respondents 1 and 2 herein filed a written statement and resisted the suit on the ground that Jeyarama Naidu owned 2 cents of land in Survey No.108/1 situated at Jubilee Street, U.Keeranur Village, Ulundurpettai Taluk and he executed a Settlement Deed dated 30.04.1977 settling 1 cent on the western half in favour of the respondents. Thus, from the date of settlement onwards, the respondents had been in possession and enjoyment of the suit property. It was also claimed by the respondents that in the year 1989, a thatched house that stood in the western half of the suit property got destroyed and as on today, the western half had been enjoyed by the respondents as a vacant site. It was also claimed by the respondents that in the sale deed executed by the said Jeyarama Naidu in favour of the 1st appellant in respect of the portion of the suit property retained by him, the said Jeyarama Naidu clearly described the property settled in favour of the



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defendants as the western boundary of the property conveyed to the 1st appellant. Therefore, the respondents sought for dismissal of the suit.

4. On these pleadings, the parties went to trial and the Trial Court based on the oral and documentary evidence available on record, came to the conclusion that the Jeyarama Naidu had no right to cancel the settlement made by him in favour of respondents. The Trial Court also found that the appellants failed to prove their claim and consequently, the suit is dismissed in its entirety. Aggrieved by the same, the appellants preferred an appeal in A.S.No.13 of 2013 on the file of the II Additional Subordinate Judge, Villupuram. The First Appellate Court also found that Jeyarama Naidu after settling the western half of the suit property to the respondents, had no right to cancel the same under Ex.A3 and therefore, the sale deed executed by the said Jeyarama Naidu under Ex.A2 in favour of 2nd plaintiff in respect of western half of the suit property was not valid. As far as property conveyed by Jeyarama Naidu under Ex.A1 to 1st plaintiff, the First Appellate Court found the same was not in serious dispute, therefore, the appellants entitled to seek for declaration and injunction in respect of the property covered under Ex.A1 alone. The dismissal of the suit in respect of remaining extent



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of the suit property was confirmed. Aggrieved by the said judgement and decree, the appellants have come by way of this second appeal.

5. The learned counsel appearing for the appellants submitted that the Settlement Deed said to have been executed by Jeyarama Naidu under Ex.B1 dated 30.04.1977 was not at all acted upon and the respondents failed to take possession in pursuance of the Settlement Deed. Therefore, the said Jeyarama Naidu was justified in cancelling the gift deed, which never came into effect. In this connection, the learned counsel for the appellants pressed into service the decision of this Court in *Kali Naicker vs. Jeganathan* reported in **2013 (1) CTC 318**.

6. The Courts below on perusal of Ex.B1-Settlement Deed executed by Jeyarama Naidu in favour of respondents and oral evidence let in by the parties, came to the conclusion that 1 cent of the property being western half of the suit site was settled by Jeyarama Naidu in favour of the respondents on 30.04.1977. It was the specific case of the appellants that said Settlement Deed was not acted upon and therefore, the gift deed never came into effect and consequently, the Settlor was justified in cancelling the Gift Deed.



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However, in subsequent sale deed executed by Jeyarama Naidu in favour of the 1st appellant in respect of the remaining portion of property retained by him, he clearly admitted the possession of the respondents over the property settled to them under Ex.B1. In the boundary description found in Ex.A1-Sale Deed executed in favour of the 1st appellant, the western boundary of the property covered under the said document was mentioned as 'முத்து நாயடு மனைக்கு கிழக்கு' (East of Muthu Naidu's site). Therefore, it is clear Jeyarama Naidu himself admitted effective possession of the respondents in a subsequent registered document executed by him under Ex.A1.

7. In such circumstances, the contention raised by the appellants that gift deed executed by Jeyarama Naidu was not acted upon and the respondents had never taken possession of the said property by accepting the gift is not acceptable to this Court. Once this Court comes to the conclusion there is evidence available on record to show that the property settled under Ex.B1 was taken possession by the Settlee and his possession was admitted by Settlor himself in a subsequent document, the case law relied on by the learned counsel for the appellants would not advance his case.



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8. Both the Courts below by rightly appreciating the boundary description in Ex.A1, came to the conclusion that the gift deed executed by Jeyarama Naidu was acted upon and therefore, he was not entitled to cancel the gift deed unilaterally and thereafter, convey the subject matter of gift deed to the 2nd plaintiff under Ex.A2. Therefore, the conclusion reached by the First Appellate Court that plaintiffs are not entitled to declaration of title and injunction in respect of the portion of the suit property not covered by Ex.A1 is confirmed and the second appeal stands dismissed.

In Nutshell:-

(i) The Second Appeal is dismissed.

(ii) In the facts and circumstances of the case, there shall be no order as to costs.

01.12.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
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S.SOUNTHAR, J.

dm

To

- 1.The II Additional Subordinate Judge,
Villupuram.
- 2.The I Additional District Munsif
Cum Judicial Magistrate No. 1,
Ulundurpet.

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