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S.A.No.674 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.674 of 2017
CMP.No.17496 of 2017

1.Ganesan
2.Periyammal
3.Senthilkumar

...Appellants

Vs.

1.Ramasamy
2.K.Parameswari

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment decree dated 07.04.2017 made in A.S.No.22 of 2012 on the file of the learned Subordinate Court, Namakkal, Confirming the judgment and decree dated 15.03.2012 made in O.S.No.111 of 2006 on the file of the learned District Munsif Court, Namakkal by allowing this Second Appeal.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.S.Saravanakumar
for M/s.I.Abrar Md Abdullah
for R1 and R2



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As the respondents attempted to interfere with the possession of first plaintiff, a suit was filed for declaration and injunction. Originally an ex parte decree was passed in the suit. Subsequent to ex-parte decree, the suit property was sold to the second plaintiff. Thus claiming right under the registered settlement deed executed by Chinna Gounder, the plaintiffs filed a suit for declaration and injunction.

5. The appellants/defendants herein filed their written statement and denied the execution of the settlement deed by Chinna Gounder in favour of first plaintiff. The defendants also claimed that said Chinna Gounder executed a Will in favour of 3rd defendant on 02.03.2004 and hence the 3rd defendant is entitled to suit property after the death of Chinna Gounder.

6. Before the trial Court, the first and second plaintiff were examined as Pws.1 and 2. The attesor to sale deed in favour of second plaintiff was examined as PW.3. The attesor to the settlement deed relied on by the plaintiffs was examined as PW.4. The Sub Registrar in whose office settlement deed/Ex.A3 was registered was examined as PW.6. The finger print expert to compare the finger print of Chinna Gounder in settlement deed



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Ex.A3 with admitted finger print of Chinna Gounder available in Ex.A13 was examined as PW.8. Two other witnesses were examined as PW.5 and PW.7

On behalf of the plaintiffs fourteen documents were marked as Exs.A1 to A14.

The defendants 1 and 3 were examined as DW1 and DW2. The attesor to Exs.B1 relied on by the appellants was examined as DW3. Two other witnesses were examined as DW4 and DW5. On behalf of the defendants only one document namely the Will relied on by them was marked as Ex.B1. The report of the finger print expert was marked through her as Ex.C1.

7. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that respondents proved execution of settlement deed in favour of first plaintiff and consequently granted decree of declaration and permanent injunction. Aggrieved by the same, the defendants filed an appeal in A.S.No.22 of 2012, on the file of Subordinate Court, Namakkal. The First Appellate Court concurred with the findings of the trial Court and aggrieved by the same, the unsuccessful defendants have come by way of this Second Appeal.



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8. The learned counsel appearing for the appellants/defendants tried to assail the judgment of the Courts below, on the ground that the validity of settlement deed relied on by the plaintiffs ought not to have been affirmed by the Courts below only based on the expert opinion. The learned counsel further submitted that the plaintiffs failed to prove the execution of settlement by Chinna Gounder, as per the provisions of Section 63 of Indian Succession Act r/w Section 68 of Indian Evidence Act and consequently the Courts below ought not to have granted a decree for declaration and injunction in favour of the respondents.

9. The plaintiffs/respondents herein filed a suit for declaration and injunction based on the registered settlement deed executed by its original owner of the suit property viz., Chinna Gounder dated 12.02.2004. The defendants raised a defence in the suit by denying the execution of settlement deed in favour of first plaintiff. They also pleaded execution of the Will by the said Chinna Gounder in favour of 3rd defendant dated 02.03.2004. The settlement deed relied on by the plaintiffs is prior to the Will relied on by the defendants. Even otherwise under the settlement deed, the title get transferred to the settlee instantly on due execution of the registered settlement deed. As



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far as testamentary document is concerned there is no instant transfer of title and the is postponed till the death of Chinna Gounder. Therefore, if the execution of the settlement deed is proved by the respondents even assuming the Will allegedly executed by Chinna Gouonder is true, it will not have any legal effect.

10. In order to prove the execution of settlement deed, the attesor of the said document was examined as PW.4 by the respondents. The Courts below on careful perusal of PW.4's evidence came to the conclusion that Chinna Gounder executed the settlement deed voluntarily in favour of first plaintiff. Apart from the attesor evidence in support of settlement deed, the respondents also examined the Sub Registrar in whose office Ex.A3 settlement was registered. He also deposed that as per the records maintained in his office, Ex.A3 settlement deed was duly registered in his office. The thumb impression of Chinna Gounder available in the registration endorsement of Ex.A3 has been sent for expert opinion for comparison with the admitted thumb impression available in Ex.A13. The expert who compared the thumb impression was examined as PW.8 and her report was marked as Ex.C1. She clearly deposed that the thumb impression found in



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Ex.A3 settlement and the thumb impression found in Ex.A13 are one and the same. Therefore, the Courts below based on evidence of attestor to the settlement deed, opinion of thumb impression expert and the evidence of Sub Registrar came to the conclusion that execution of Ex.A3 has been duly proved. Once the execution of settlement deed is upheld the transfer of property takes in *presenti*. Then the settlor has no right to execute another document in respect of the very same property. Therefore, the subsequent Will allegedly executed by Chinna Gounder under Ex.B1 in favour of 3rd defendant pales into insignificance.

11. The learned counsel for the appellant also tried to assail the judgments of the Courts below by submitting that there is no evidence available on record to show that the settlement deed Ex.A3 was acted upon. The respondents by producing patta transfer order dated 08.05.2007 marked as Ex.A7 and adangal relating to the suit property for the fasli years 1414 to 1418, marked as Ex.A9, proved that subsequent to execution of the settlement deed in favour of the first plaintiff mutation had taken place in his favour. Exs.A11 and A12 are land tax receipts issued in the name of first plaintiff dated 22.05.2008 and 16.03.2009. Therefore, the respondents/plaintiffs also



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proved that the settlement deed was acted upon and mutation had taken place pursuant to the settlement deed in favour of first plaintiff.

12. In such circumstances, the concurrent findings of the facts rendered by the Courts below are based on sound appreciation of materials available on record, which requires no interference by this Court.

13. In nutshell,

The Second Appeal is dismissed by confirming the judgment and decree passed in A.S.No.22 of 2012, on the file of the learned Subordinate Court, Namakkal, dated 07.04.2017 confirming the judgment and decree in O.S.No.111 of 2006 on the file of the learned District Munsif Court, Namakkal, dated 15.03.2012.

b) In the facts and circumstances of the case, there shall be no order as to costs; and

c) consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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1. The Subordinate Court, Namakkal.
2. The District Munsif Court, Namakkal.



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