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S.A.No.794 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.794 of 2017

Valliammal (died)
w/o.Late Palanisamy Gownder,
Mr.P.Rajamani

...Appellant

Vs.

1.Ananthalakshmi
2.Vasuki
3.The President,
Kankeyam Village Panchayat,
Kangeyam Town and Taluk.
4.The Secretary
Kankeyam Village Panchayat,
Kangeyam Town and Taluk.
5.Executive Engineer,
Tamil Nadu Electricity Board,
Chennai-malai Road,
Kangeyam Town and Taluk.
6.Assistant Executive Engineer,
Tamil Nadu Electricity Board (south),
Chennai-malai Road,
Kangeyam Town and Taluk.
7.Junior Engineer,
Tamil Nadu Electricity Board (south),
Chennai-malai Road,
Kangeyam Town and Taluk.
8.Sub Registrar,
Kangeyam Town and Taluk.
9.Kamala Saraswathy

...Respondents



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Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 24.09.2013 made in A.S.No.53 of 2011 on the file of the Subordinate Court, Dharapuram, Tirupur District in confirming the judgment and decree dated 23.08.2011 made in O.S.No.186 of 2009 on the file of the District Munsif Court, Kangeyam.

For Appellant : Mr.N.Damodaran

For Respondents : Mr.P.Navaneethakrishnan
for R1 and R2
No such address R3 to R4
Notice served R5 to R8
Deceased R9

J U D G M E N T

The son of deceased first defendant in the suit is the appellant. The respondents 1 and 2 filed a suit for injunction restraining the appellant/defendant from cancelling the settlement deed executed by her dated 14.12.1984 in favour of respondents 1 and 2 and also from encumbering and also registering any document in 8th respondent's office and also effecting mutation of revenue records etc. The suit was decreed by the trial Court and the appeal filed by the appellant was also dismissed by the First Appellate Court. Aggrieved by the same, the first defendant has come up by way of this second appeal.



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2. According to the respondents 1 and 2/ plaintiffs, the first respondent is the daughter of the deceased first defendant and the second respondent is the daughter of the first respondent. The suit property originally belongs to the deceased first defendant. She executed a settlement deed on 14.12.1984 in favour of respondents 1 and 2. Under the terms of settlement, the life estate was created in favour of first respondent with vested remainder in favour of second respondent. The deceased first defendant also retained the right to enjoy the property during her lifetime without encumbering the suit property. Thus the title of the suit property passed on to the respondents 1 and 2 on the date of settlement deed itself and the deceased first defendant was divested of her title over the same. Now violating the terms of the settlement, the deceased 1st defendant attempted to cancel the settlement and encumber the same and also attempted mutation of the revenue records. In such circumstances, the respondents 1 and 2 were constrained to file a suit for bare injunction seeking the above said relief.

3. The appellant's mother/1st defendant filed a written statement and resisted the suit on the ground that the document dated 14.12.1984 executed by her was not a settlement and the same should be treated as a Will



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and in such circumstances, the respondents 1 and 2 would not get any title under the said document until the death of said Valliammal. It was also claimed by the appellant's mother that the possession of the property was retained by her and document dated 14.12.1984 never came into effect. Therefore, denying the right of respondents 1 and 2 under the document dated 14.12.1984, the appellant's mother Valliammal sought for dismissal of the suit.

4. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that Ex.A1 document dated 14.12.1984 executed by Valliammal in favour of Respondents 1 and 2 was a settlement deed and hence the respondents 1 and 2 were entitled to relief of injunction as prayed for.

5. Aggrieved by the same, the said Valliammal preferred an Appeal in A.S.No.53 of 2011 on the file of the Subordinate Court, Dharapuram, The First Appellate Court also on re-appreciation of evidence confirmed the findings of the trial Court. After dismissal of the appeal by the First Appellate Court, the said Valliammal passed away and the present second appeal has been filed by her son.



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6. The learned counsel appearing for the appellant submitted that Ex.A1 settlement deed was cancelled by Valliammal under Ex.B3 dated 07.09.2009 and said fact was clearly mentioned in the written statement by Valliammal. In spite of the same, the respondents 1 and 2 failed to seek any prayer for cancellation of deed executed by Valliammal. The learned counsel further submitted that in the absence of prayer for cancellation of Ex.B3 cancellation deed and the prayer for declaration of title of respondents 1 and 2, a simple suit for bare injunction is not maintainable.

7. It is settled law that a gift deed cannot be cancelled unilaterally by the settlor unless the right of cancellation is reserved in the document. Perusal of Ex.A1 settlement deed executed by Valliammal would make it clear that she was divested of title on the date of execution of settlement deed and there was a clear recital in the document that settlement was irrevocable one and she had no right to revoke the document. Therefore, it is clear that under Ex.A1, Valliammal never reserved any right to cancel the document. In such circumstances unilateral cancellation of settlement deed made by said Valliammal under Ex.B3 will have no legal effect and consequently the same



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can be ignored by respondents 1 and 2. Hence, there is no necessity for them to seek cancellation of the instrument. When Ex.B3 cancellation deed executed by Valliammal cannot create any cloud over the title of respondents 1 and 2 which they got under Ex.A1 settlement deed, a suit for bare injunction is very well maintainable without prayer for declaration.

8. When Valliammal was examined as DW.1, she clearly admitted that under Ex.A1 settlement deed the title of the property was transferred to the respondents and she only retained possession. Subsequently, she also admitted that after sometime she handed over the possession to the first respondent and as of today the first respondent and her heirs were in possession and enjoyment of the suit property. In such circumstances, both the Courts below rightly came to the conclusion that the Ex.A1 document executed by Valliammal in favour of respondents 1 and 2 was a settlement deed and the title of the suit property passed on to the respondents 1 and 2 on the date of the settlement itself. Once it is concluded that the respondents 1 and 2 are the owners of the property neither Valliammal nor any person claiming under her can create any encumbrance or effect mutation in revenue records in respect of the property covered by the settlement deed. Accordingly, the conclusions



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reached by the Courts below in decreeing the suit is acceptable to this Court.

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9. I do not find any substantial question of law arising for consideration in this second appeal to interfere with the said factual findings rendered by the Court below.

10. In nutshell,

(a) The Second Appeal is dismissed;

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

07.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.
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To
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- 1.The Subordinate Court, Dharapuram, Tirupur District.
- 2.The District Munsif Court, Kangeyam.

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