



S.A.No.827 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 13.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.827 of 2023
and
C.M.P.No.26190 of 2023

V.Radhakrishnan

... Appellant

Vs.

1.Gunasekaran

2.Selvarasu

3.Dakshnamoorthy

4.Susila

5.Tamilarasi

6.L.Kaliaperumal

Respondents

...



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Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 19.07.2023 passed in A.S.No.3 of 2021 on the file of the III Additional District Judge at Puducherry confirming the judgement and decree dated 12.02.2019 in O.S.No.178 of 2014 on the file of the Principal Subordinate Court at Puducherry.

For Appellants : Mr.J.Kumaran

For Respondents : Elizabeth Ravi [R.1 to R.4]
: [and R.6 Caveator]

JUDGEMENT

The plaintiff in the suit O.S.No.178 of 2014 on the file of the Principal Sub Court, Puducherry is the appellant before this Court. Short facts, shorn of details, that are necessary for disposing of the above Second Appeal are herein below set out and the parties are referred to in the same ranking as before the Trial Court.



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2. The plaintiff had filed this suit for declaring the donation deed dated 11.10.1971 executed by Kamalatchi Ammal in favour of the 6th defendant before the Sub-Registrar Office, Puducherry as null and void and not binding on the plaintiff. (2), declare that the donation deed dated 29.01.1988 executed by the 6th defendant, Kaliaperumal in favour of the 1st defendant as Document No.597/1988 as null and void and not binding on the plaintiff and consequently to pass a preliminary decree for partition and separate possession of the plaintiff's 1/4th share and to deliver the same.

3. Defendants 1 to 4 and 6 have filed a counterclaim (a) for a mandatory injunction directing the plaintiff to vacate the land and hand over vacant possession of the first floor of the plaint schedule mentioned property (b) directing the plaintiff to pay a sum of Rs.2,000/- per month as damages for use and occupation from December 2014 till he vacates and hand over the vacant possession of



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the first floor of the plaint schedule property.

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4. A counterclaim has been filed by the 5th defendant adopting the plaintiff's case and seeking a partition of her 1/4th share in the suit schedule property.

5. It is the case of the plaintiff that he is the native and resident of Union Territory of Puducherry and the suit property was originally occupied by one Kamalatchi Ammal, daughter of Thangavel Achari @ Arumuga Achari and wife of Vaithilinga Achari by virtue of a donation deed dated 22.04.1970. The plaintiff would contend that though the document was styled as a donation deed, it appears that the husband of Kamalatchi Ammal, Vaithilinga Achari had paid some consideration to the donor, namely, Thangavel Achari.

6. He would submit that Kamalatchi Ammal and her husband Vaithilinga Achari had 4 sons, Gunasekaran, the 1st defendant,



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Selvarasu, the 2nd defendant, Dakshnamoorthy, the 3rd defendant and Radhakrishanan, the plaintiff and two daughters Susila, the 4th defendant and Tamilarasi, the 5th defendant.

7. The plaintiff would submit that he was born and brought up in the suit property and has been living there since his birth. The 1st defendant herein, is the elder brother of plaintiff and defendants No.2, 3 and 5 (Tamilarasi), and younger brother of the 4th defendant (Susila). The 1st defendant has married one Santhi @ Valarmathi, daughter of the 6th defendant (Kaliaperumal) and the 4th defendant (Susila). The 6th defendant is the uncle of defendants 1 to 3 and 5 and plaintiff. The 2nd defendant had married one Malarvizhi daughter of defendants 4 and 6. Therefore, both defendants 1 and 2 are son in laws of the 4th defendant and the 6th defendant.

8. The plaintiff would submit that his father Vaithilinga Achari had died intestate on 07.02.2008 leaving behind the plaintiff and



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defendants 1 to 5 as his legal heirs. On 21.01.2014, Kamalatchi Ammal, the mother of the plaintiff and defendants 1 to 5 had also died intestate. Till his mother's death the plaintiff did not find any problem nor any hindrance in his enjoyment and possession of the suit property. However, in the 2nd week of February 2014, the 1st defendant started interfering with his peaceful possession and enjoyment of the first floor in the suit property. The 1st defendant threatened to get the plaintiff evicted from the property. The 1st defendant had also informed the plaintiff that he had documents which would prove his right to the suit property. This constrained the plaintiff to approach the Sub Registrar Office, Puducherry where he had obtained two documents i.e. donation deed dated 11.10.1971 executed by Kamalatchi Ammal in favour of the 6th defendant and the other donation deed dated 29.01.1988 executed by the 6th defendant, Kaliaperumal in favour of the 1st defendant.

9. The plaintiff would submit that these documents would



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clearly show the suspicious circumstances surrounding it. There is no explanation for the donor to give a donation to her son-in-law when her own sons and daughters are alive. No mutation of records have taken place pursuant to the donation deed dated 11.10.1971 and therefore the deed has not come into force and lastly there is no delivery of property effected under the donation deed dated 11.10.1971 and since the 3 major conditions prescribed under Section 126 of the Transfer of Property Act had not been complied with, the said donation deed is invalid and void ab initio. Similar is the case in the second donation deed dated 29.01.1988. Therefore, it is the contention of the plaintiff that these documents are dead, unenforceable and invalid and would not be binding on him. The plaintiff had therefore come forward with the above suit.

10. The 1st defendant had filed a written statement which was adopted by the defendants 2 to 4 and 6, inter alia denying the allegations contained in the plaint as false, frivolous and vexatious. It



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is the contentions of the 1st defendant that the plaintiff has suppressed material facts and filed the suit. He would submit that the property belongs to him exclusively by virtue of the registered donation deed dated 21.09.1988. The said Kamalatchi Ammal who is the mother of the plaintiff and the defendants 1 to 5 and mother-in-law of the 6th defendant had executed a registered donation deed dated 11.10.1971 wherein she had conveyed the suit property to the 6th defendant. Pursuant to this deed, the 6th defendant was in possession and enjoyment of the same and he had constructed the present building on the said land in the year 1986. After the completion of the construction of the building, which consisted of a ground and the first floor, the said Kamalatchi Ammal had occupied the building as a tenant. Therefore, the 1st defendant would contend that the plaintiff and his mother had no right whatsoever over the suit property and they were in occupation of the same only as a tenant under the 6th defendant.



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11. The 1st defendant herein married the daughter of the 6th defendant on 04.05.1987 and out of love and affection, the 6th defendant had executed a registered donation deed dated 29.11.1988 in favour of the 1st defendant and thus the 1st defendant had become the absolute owner of the suit property. Pursuant to the donation deed dated 29.01.1988, the 1st defendant had made improvements in the building and was periodically maintaining the same.

12. It is the further case of the 1st defendant that the plaintiff had started living with one Sujata who was a widow with a son which was objected to by his parents and therefore he has left the house and was living with the said Sujata. Subsequently, he had married her on 05.06.2000 and since he was suffering financially after the marriage, the 1st defendant had convinced the family members and permitted the plaintiff and his wife to stay in the 1st floor of the suit property. This occupation is only in the capacity of a permissive occupier and not as a co-owner.

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13. The 1st defendant would further submit that there is no separate electricity and water connection for the 1st floor and it is a common connection. The plaintiff was paying 2/3rd of the bill amount and water bill as his usage was more. However, taking advantage of an ex parte ad interim injunction in the suit, the plaintiff had stopped paying the consumption charges. The 1st defendant would therefore submit that he is claiming damages of Rs.2,000/- for wrongful use and occupation of the 1st floor in the suit property by the plaintiff.

14. The 1st defendant would further submit that in a judgement and decree dated 04.02.1978 in O.S.No.525 of 1974 on the file of the learned Principal District Munsif, Puducherry, the 6th defendant was declared to be the absolute owner of the suit property and in pursuance of the said judgement and decree, the 6th defendant had taken possession of the suit property through Court. The 1st defendant would also submit that the said Kamalatchi Ammal had herself



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deposed in that proceedings that she was occupying the property as a tenant. Therefore, the suit filed by the plaintiff has to be dismissed and the counterclaim filed by the 1st defendant has to be allowed.

15. The 5th defendant had filed a written statement and counterclaim adopting the arguments of the plaintiff and seeking partition of her 1/4th share.

16. The 5th defendant would also make a submission that a special law, namely, the Hindu Coromandel Law is applicable to persons residing at Puducherry which contains an organ of law called **LEGITIM** which protects the rights of sons and daughters from damage and loss caused by their parents while disposing the property. Therefore, she sought to have the suit dismissed and her counter claim decreed.

17. The 1st defendant had filed a reply statement, which was



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adopted by defendants 2, 3, 4 and 6, to the counter claim made by the 5th defendant which is a repetition of the written statement and had prayed to dismiss the counter claim filed by the 5th defendant.

18. The Trial Court had framed 9 issues. Before the Trial Court, the plaintiff had examined himself as P.W.1 and marked Ex.A.1 to A.12. On the side of the defendants, the 1st defendant had examined himself as D.W.1 and marked Ex.B.1 to B.14.

19. Ultimately, the Trial Court on considering the evidence on record had dismissed the suit and counter claim of 5th defendant. Aggrieved by which the plaintiff had filed A.S.No.3 of 2021 on the file of the III Additional District Judge, Puducherry. The learned Appellate Judge concurred with the findings of the Trial Court and dismissed the appeal. Challenging the same the plaintiff is before this Court.



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20. There is no dispute that the suit property belonged to one Kamalatchi Ammal by virtue of a donation deed dated 22.04.1970. It is also not disputed that Kamalatchi Ammal's husband was one Vaithilinga and their children are the plaintiff and defendants 1 to 5. The 6th defendant is the son-in-law of the said Kamalatchi Ammal and the 1st defendant is the son-in-law of the 6th defendant. The said Kamalatchi Ammal had executed a donation deed in favour of the 6th defendant on 11.10.1979 and on the basis of this donation deed, the 6th defendant had also executed a donation deed dated 29.01.1988 in favour of the 1st defendant, who is his son-in-law.

21. The plaintiff has not been able to prove that this document has been created in suspicious circumstances or that the said Kamalatchi Ammal was not in a sound disposing state of mind when the document, namely, the donation deed dated 11.10.1971 was executed.



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22. The 1st defendant had proved that the plaintiff had been in the permissive occupation. Ex.B.4 is the certified copy of the judgement passed in O.S.No.525 of 1974 on the file of the Principal District Munsif, Puducherry (suit for a declaration and recovery of possession) filed by the 6th defendant for a declaration that he is the absolute owner of the property on the basis of the donation deed dated 11.10.1971. This suit was decreed and the 6th defendant has taken possession through Court. During her deposition in the suit O.S.No.525 of 1974, the said Kamalatchi Ammal had clearly and categorically deposed that she was in occupation of the suit property only as a tenant. This evidence was not challenged by the plaintiff. Therefore, in the light of the admission of Kamalatchi Ammal and Ex.B.3 and B.4, the donation deed executed by Kamalatchi Ammal in favour of the 6th defendant is a valid document and further, the 6th defendant's title to the property has been declared. The 1st defendant is now the owner of the suit property by virtue of the donation deed



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dated 29.01.1988, which was executed by the 6th defendant in his favour.

23. Therefore, the Courts below have rightly declined to grant the relief claimed by the plaintiff. The plaintiff has not made out any case warranting the interference of this Court and that apart no Substantial Question of Law arises in this Second Appeal. Accordingly, the above Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The III Additional District Judge at Puducherry
2. The Principal Subordinate Court at Puducherry.
3. The Section Officer,

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V.R.Section,
High Court, Madras.

P.T.ASHA, J.,

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