



S.A(MD)No.621 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD).No.621 of 2014

Asbar Alikhan
rep. by his power agent
mother Meharnisha

... Appellant /Plaintiff

Vs.

1.Mehamuda Beevi
2.Viswanathan
3.Ramakrishnan

... Respondents/Defendants

PRAYER :-

This Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 24.01.2012 passed in A.S.No.6 of 2011 on the file of the Additional Sub Court, Ramanthapuram confirming the Judgment and Decree, dated 20.01.2011 passed in O.S.No. 40 of 2010 on the file of the District Munsif Cum Judicial Magistrate, Rameswaram.

For Appellant : Mr. V. Tharshini
for Mr. R. Murugan

For respondents : Ms. M. Rajeswari
for S.M.S. Johny Basha



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JUDGMENT

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The plaintiff in the suit is the appellant. He filed a suit for declaration of title and injunction. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first Appellate Court. Aggrieved by the same, the appellant, plaintiff is before this Court.

2. According to the appellant / plaintiff, the suit property originally belonged to Seeni Rowther. The appellant claimed that Sareebu Rowther, one of the son of the Seeni Rowther settled 2/7th share in the suit property in favour of the plaintiff under the gift settlement deed, dated 10.04.1974 marked as Ex.A3. The appellant also claimed title over the entire suit property under a customary partition. According to the appellant, in a customary partition made in the family of Seeni Ravuthar, the entire suit property was allotted to the share of the plaintiff and his father Kamaludeen. Subsequently, his father Kamaludeen orally gifted his share in the name of the appellant and hence, the appellant was entitled to title over the entire suit property.



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3. The respondents / defendants filed a written statement, wherein, the gift settlement pleaded by the appellant by Sareebu Rowther was specifically denied. The respondents also denied the plea of customary partition and allotment of shares in favour of the appellant and his father. The respondents also denied the oral gift by the appellant's father in favour of the appellant. Further, the respondents, defendants had averred that the father of the first respondent filed a partition suit in O.S.No.241 of 1947 on the file of the District Munsif Court, Ramanathapuram seeking a preliminary decree for partition in respect of the suit properties and the same was decreed. The respondents also averred that the first respondent and others had filed a final decree application in I.A.No.331 of 1991 and as per the final decree passed in that suit, the suit property was allotted to the first defendant. Later on, the first defendant / first respondent executed a sale deed in favour of 3rd respondent and thus, the third respondent was in effective possession and enjoyment of the suit property. On these pleadings, the parties went to the trial and the trial Court considering the oral and documentary evidence available on record, came to the conclusion that the appellant had failed to prove the gift of 2/7th share by Sareebu Rowther in his favour and also the plea regarding customary partition and allotment of suit property to the



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share of the appellant and his father and consequently dismissed the suit.

Aggrieved by the same, the appellant preferred an appeal in A.S.No.6 of 2011, on the file of the Additional Sub Court, Ramanathapuram. The First Appellate Court also concurred with the findings of the trial Court and dismissed the suit. Aggrieved by the same, the appellant is before this Court.

4. The learned counsel appearing for the appellant vehemently contended that the original owner Seeni Rowther executed a gift settlement deed under Ex.A3, dated 10.04.1974 in favour of the appellant and thereby, the appellant is the original owner of the suit property to an extent of 2/7th share, is proved. The learned counsel by relying on the revenue documents filed by the appellant submitted that the settled possession of appellant over the suit property had been proved and hence, the Court below at least should have granted a decree for injunction restraining the respondents from interfering with the settled possession of the appellant over the suit property except by due process of law.

5. This Court is not impressed with the submission made by the learned counsel appearing for the appellant.



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6. Though the appellant claimed right over the suit property to an extent of 2/7th share in the gift deed executed by Sareebu Rowther marked as Ex.A3, the death extract of Sareebu Rowther produced by the respondents under Ex.B10 would make it clear that the said Sareebu Rowther died even prior to the alleged execution of Ex.A3. Therefore, the Courts below had given a factual finding that Ex.A3 was a concocted document and therefore, it would not confer any right to the appellant over the suit property. As far as the alternate plea made by the appellant regarding the customary partition and allotment of suit property in favour of the appellant in the alleged customary partition is concerned, there is no evidence available on record in support of said plea raised by the appellant and therefore, the title to the appellant over the suit property is not at all proved and hence, the appellant is not entitled to the prayer for declaration. The learned counsel for the appellant further contended that the appellant had established his settled possession over the suit property and therefore, the Courts below ought to have considered the limited decree for injunction restraining the respondents from interfering with his possession over the suit property, except by due process of law. In the case on hand, the appellant has come to the Court with a specific plea that Sareebu



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Rowther executed a settlement deed in favour of the appellant under Ex.A3. The Courts below had given a finding that Ex.A3 is a concocted document as the said settlor died even prior to the alleged execution of Ex.A3. The appellant approached the Court with concocted document and therefore, the person who has come to the Court with unclean hands is not entitled to seek equitable remedy of injunction. Therefore, this Court is not inclined to accept the second contention made by the learned counsel for the appellant in respect of the prayer for limited injunction.

7. In view of the discussions made above, this Court finds no substantial question of law in this Second Appeal and therefore, the findings rendered by the Courts below are confirmed and the Second Appeal is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

10.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Additional Sub Court, Ramanthapuram.
2. The District Munsif Cum Judicial Magistrate, Rameswaram.
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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