



S.A.(MD)No.809 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.809 of 2022

and

C.M.P.(MD)No.12297 of 2022

Rajammal

... Appellant

/Vs./

Muthu

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 24.03.2022 made in A.S.No.1 of 2021 on the file of the Additional District Judge, Sivagangai, Sivagangai District, confirming the judgment and decree dated 08.03.2019 made in O.S.No.148 of 2013 on the file of the Subordinate Judge, Sivagangai, Sivagangai District, by allowing this second appeal.

For Appellant : Mr.A.Prasanna Rajadurai

For Respondent : Mr.S.Srinivasa Raghavan



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JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The appellant is the defendant in the suit in O.S.No.148 of 2013 on the file of the Sub Court, Sivagangai. The respondent is the plaintiff in the said suit. The appellant / defendant is the wife of the respondent / plaintiff. Admittedly, both of them are living separately for a long number of years. The suit was filed for declaration and for recovery of possession. The declaratory relief sought for by the respondent / plaintiff is to declare that the respondent / plaintiff is the absolute owner of the suit schedule property. The respondent / plaintiff has also sought for recovery of possession, as according to him, the appellant / defendant is in illegal possession of the suit schedule property. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. As seen from the plaint averments, the defendant is the first wife of the plaintiff and they have a daughter, by name Sudarkodi. According to the plaintiff, his relationship with the defendant is estranged. According to the plaintiff, in view of the estrangement of the



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relationship between him and the defendant, they separated themselves and the father of the plaintiff had settled S.Nos.49/3, 49/8, 77/2b, 90/9 and 161/8 in Mallaakottai Village by means of a registered Inam Settlement deed in the year 1984 in the name of the defendant and the daughter, Sudarkodi, in lieu of permanent alimony for maintenance.

3. The father of the plaintiff, by name Karupaiah, the plaintiff and his brother, by name Chellappa have orally divided the properties and the suit schedule property was allotted to the share of the plaintiff. The property situated to the west of the suit schedule property was allotted to the brother of the plaintiff, by name Chellappa. The properties continued to be in the name of the father of the plaintiff, namely Karupaiah in the Municipal records. There is a house in the suit schedule property, which was assessed to property tax in the name of the father of the plaintiff, namely Karupaiah and thereafter, house tax was also mutated in the name of the plaintiff.

4. The plaintiff has been enjoying the suit schedule property and the property, which was allotted to the brother of the plaintiff, namely



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Chellappa, in the oral partition has been settled in favour of the plaintiff by means of registered Inam Settlement deed dated 12.01.2009. According to the plaintiff, when he was abroad on employment, the defendant sought his permission to reside in the house property, which was allotted to the plaintiff in the oral partition on condition that the defendant would vacate the suit property, as and when demanded by the plaintiff. According to the plaintiff, the defendant is only a permissive occupant.

5. According to the plaintiff, in his absence, the defendant had acted behind his back and has clandestinely changed the patta for the suit schedule property in her name from the name of the plaintiff's father. According to the plaintiff, the house tax assessment and electricity connection, etc., were also fraudulently transferred in the name of the defendant, without knowledge of the plaintiff. Only after returning back to India, he came to know about the fraudulent activities of the defendant. The plaintiff contends that on coming to know, he had demanded the defendant to vacate the suit schedule property. However, according to the plaintiff, the defendant refused to vacate the suit



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property. The plaintiff contends that the house was built by his father.

The suit property was not given to the defendant by his father in the year 1984, as claimed by the defendant. Since the defendant failed to vacate the suit property, the plaintiff was constrained to file a suit for declaration and for recovery of possession as stated supra.

6. However, as seen from the written statement filed by the defendant, she admits that the house in the suit property was built by her father-in-law, ie., father of the plaintiff. However, she would state that there is a dispute raised in the patta transfer proceedings between the plaintiff and the defendant. According to the defendant, the father of the plaintiff had settled the suit property to her by an unregistered deed of Inam settlement dated 21.11.1984. According to the defendant, that is the reason for not including the suit property in the registered deed of inam settlement deed dated 21.11.1984 in her favour executed by the plaintiff's father. According to the defendant, she is the owner of the suit property by virtue of an unregistered deed of Inam Settlement dated 21.11.1984 executed by the plaintiff's father and the plaintiff has no legal right to claim rights for the same.



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7. Based on the pleadings of the respective parties, the trial Court framed the following issues:

(a) Whether the declaratory relief and recovery of possession relief sought for by the plaintiff can be granted?

(b) Whether the suit property was settled in favour of the defendant through an unregistered Inam Settlement deed dated 21.11.1984 and whether the possession was granted to her pursuant to the same?

(c) to what other reliefs?

8. Before the trial Court, the plaintiff filed nine documents, which were marked as Exs.A1 to A9 and two witnesses were examined on his side, namely the plaintiff himself as P.W.1 and one Ramachandran, an independent witness as P.W.2. On the side of the defendant, no documents were filed, but however, two witnesses were examined, namely the defendant herself as D.W.1 and one Alagarsamy, a third party witness as D.W.2.



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9. Based on the oral and documentary evidence available on record, the trial Court, namely the Sub Court, Sivagangai, by its judgment and decree dated 08.03.2019 in O.S.No.148 of 2013 decreed the suit in favour of the plaintiff by giving the following reasons:-

(a) There is no proof submitted by the defendant to prove that the suit schedule property was settled in her favour by the father of the plaintiff under an unregistered Inam Settlement deed dated 21.11.1984;

(b) The alleged Inam Settlement document relating to the suit property, which was relied upon by the defendant has not been produced by the defendant before the trial Court;

(c) Inam Settlement deed alleged to be executed in favour of the defendant on 21.11.1984 by the plaintiff's father cannot be acted upon, since the same was said to be an unregistered and unstamped document;

(d) The plaintiff has proved his title to the suit property, which is also admitted in the written statement;

(e) Inam settlement deed dated 21.11.1984 does not comprise the suit property, which was marked as Ex.A1.

(f) The receipt of electricity consumption charges (19 Nos.) and house tax receipts (10 Nos.) were marked as Exs.A2 to A4 and all the



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said documents stand only in the name of the plaintiff.

(g) Natham patta, FMB sketch, which were marked as Exs.A8 and A9 also stand in the name of the plaintiff.

10. Aggrieved by the judgment and decree dated 08.03.2019 passed by the trial Court in O.S.No.148 of 2013, the defendant filed a first appeal before the Additional District Court, Sivagangai in A.S.No.1 of 2021. The lower appellate Court has also confirmed the findings of the trial Court by dismissing the first appeal, by its judgment and decree dated 24.03.2022 passed in A.S.No.1 of 2021.

11. The substantial questions of law framed by the appellant in the grounds of this Second Appeal have all rightly been considered by the Courts below, only based on the oral and documentary evidence available on record and only in accordance with law. There are no debatable issues of fact or law involved for further consideration by this Court under Section 100 of C.P.C. No documentary evidence has been produced by the defendant to prove that the settlement deed has been executed in her favour in the year 1984 by the plaintiff's father. The revenue records also



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stand only in the name of the plaintiff, as seen from the exhibits marked on the side of the plaintiff. The plaintiff has proved his case beyond doubt that he is the absolute owner of the suit schedule property and on the contrary, the defendant has miserably failed to establish her title over the suit schedule property. In the result, there is no merit in this second appeal. Accordingly, this Second Appeal is dismissed.

12. Considering the fact that the appellant / defendant is the wife of the respondent / plaintiff and is an aged lady, this Court directs the appellant / defendant to hand over the vacant possession of the suit property to the respondent / plaintiff within a period of six months from the date of receipt of a copy of this judgment and the Execution Petition, which is still pending shall be kept in abeyance by the executing Court for a period of six months from the date of receipt of a copy of this judgment. There shall be no order to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
NCC : Yes / No
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ABDUL QUDDHOSE, J.

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TO:

- 1.The Additional District Judge, Sivagangai, Sivagangai District.
- 2.The Subordinate Judge, Sivagangai, Sivagangai District,
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
S.A.(MD)No.809 of 2022

Dated:
26.04.2023