



S.A.(MD) No.83 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 27.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.(MD) No.83 of 2023

Balamurugan

..Appellant

Vs.

1.K.Subbaiyah

2.S.Ganesan

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.12 of 2018 on the file of the Additional Sub Court, Pudukkottai dated 06.10.2020 confirming the judgment and decree passed in O.S.No.103 of 2010 dated 06.11.2017 on the file of the District Munsif, Keeranur, Pudukkottai District.

For Appellant

**: Mr.R.Sethuraman Senior Counsel
for Mr.R.Paranjothi**

For Respondents

: Mr.P.Ganapathi Subramanian



S.A.(MD) No.83 of 2023

JUDGMENT

WEB COPY

This second appeal is filed challenging the concurrent judgments in A.S.No.12 of 2018 on the file of the Additional Sub Court, Pudukkottai, in O.S.No.103 of 2010 on the file of the District Munsif Court, Keeranur.

2.The appellant/plaintiff filed a suit in O.S.No.103 of 2010 seeking the relief of declaration that the sale deed dated 02.02.2010 in Doc.No.205/2010 executed by the first defendant in favour of the second defendant in respect of the suit property of the plaintiff is illegal and void and for the consequential relief of permanent injunction restraining the defendants from claiming right over the suit property and restraining them from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff.

3.The case of the plaintiff as seen from the plaint averments, in brief, is as follows:

3.1.The father of the plaintiff, Rasu, executed a gift settlement deed in favour of the plaintiff on 13.07.2007 in respect of the suit property along with other properties. After the execution of the gift settlement deed, plaintiff is in possession and enjoyment of the suit property till date. Plaintiff mortgaged the suit property in favour of State Bank of India, Avoor Branch on 09.11.2007. Patta in



S.A.(MD) No.83 of 2023

respect of the suit property along with other properties was issued in the name of the plaintiff. 'A' Register in respect of the suit properties and other properties shows that the plaintiff is in possession and enjoyment of the suit property. He has been paying tax to the suit property. The first defendant is stranger to the suit property. He has no right or title in the suit property. The first defendant has executed the sale deed in favour of the second defendant on 02.02.2010. He has no right to sell the property of the plaintiff. The defendants 1 and 2 are trying to disturb the peaceful possession and enjoyment of the suit property. Thus, the suit was filed for the aforesaid reliefs.

4.The defendants have filed a written statement disputing and denying the averments made in the plaint. The validity of the settlement deed dated 13.09.2007 by the plaintiff's father is challenged. The plaintiff's father has no title and possession for the whole of the suit property. The settlement deed will not bind the right and title of the defendants in the suit property. The settlement deed is not valid in law and it is brought into existence with an evil design to grab the suit property by the defendants.

4.1.One Arumugam Udaiyar died 50 years back leaving his two sons, Muthappa Udaiyar and Karuppudaiyar. The suit properties and other properties belonged to Hindu join family consisting of Arumugam Udaiyar and his two sons



S.A.(MD) No.83 of 2023

Muthappa Udaiyar and Karuppudaiyar. Karuppudaiyar died 50 years back leaving his three sons, Periyaiah, Subbiah and Sivasamy. Subbiah is the first defendant in the suit. The second defendant is the son of the first defendant. Muthappudaiyar died 15 years back leaving his four sons, Ponnusamy, Nallusamy, Rasu and Jeyaraman. The plaintiff is the son of Rasu. In an oral partition effected among Muhappudaiyar and the father of the first defendant, namely Karuppudaiyar, the suit property had been allotted to Karuppudaiyar, first defendant's father. In the subsequent oral partition among the three sons of Karuppudaiyar, the suit property had been divided equally. Northern 1/3 portion had been allotted to Sivasamy. Southern 1/3 portion was allotted to Periyaiah and the middle 1/3 portion was allotted to the first defendant's father, Subbiah. They are in respective possession and enjoyment of the portions allotted to them. However, patta in respect of the suit property had been registered in the name of Periyaiah, who is the elder brother of the first defendant.

4.2.The first defendant has sold the suit property to the second defendant by sale deed dated 02.02.2010. The second defendant is in continuous possession and enjoyment of the suit property. Periyaiah and Sivasamy have title and possession of the northern and southern portion of the suit property respectively. They are necessary and proper parties in the suit. The plaintiff and his father by playing fraud had managed to procure change in the revenue records



behind the back of the defendants on the basis of the false and fictitious settlement deed. The settlement deed will not bind the defendants. Thus, the defendants prayed for dismissal of the suit.

5. On the basis of the above pleadings, the trial Court framed the following issues:-

“1. Whether the contention of the defendants that the suit is bad for non-joinder of necessary parties is legally sustainable?

2. Whether the suit property belonged to plaintiff as contended in the plaint?

3. Whether the sale deed executed by 1st defendant in favour of 2nd defendant dated 02.02.2010 doc no. 205/2010 is valid under law?

4. Whether the plaintiff is in possession and enjoyment of the suit property?

5. Whether the plaintiff is entitled to decree for declaration as prayed for?

6. Whether the plaintiff is entitled to decree for permanent injunction as prayed for?

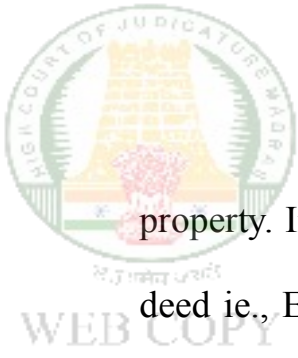
7. To what other relief?”

6. During the trial, P.W1 to P.W3 were examined and Ex.A1 to Ex.A15 were marked. D.W1 was examined and Ex.B1 to Ex.B3 were marked.



7. On the basis of the oral and documentary evidence produced, the learned trial Judge found that the plaintiff has not produced any document to show as to how his father owns the suit property. The evidence of P.W2 shows that he and the first defendant, Sivasamy had partitioned the suit properties. However, the patta continued to remain in his name for the reason that he was the elder brother in the family and that was established through Ex.B1. Therefore, it was found that the first defendant, Sivasamy and P.W2 are each entitled to 1/3rd share in the suit property. The case of the plaintiff was that the first defendant has sold his share to the plaintiff's father 25 years back and as per the request of Rasu, P.W2 had executed Ex.B15. It was further found that E.A2 is dated 09.11.2007, but Ex.A15 was executed one month later on 12.12.2007. When it is candidly admitted by P.W2 that D.W1 has right in the suit property and that there is no evidence produced to show that Rasu purchased the suit property from the first defendant, the learned trial Judge found that the suit filed by the plaintiff is not maintainable and dismissed the suit. The learned first appellate Judge also concurred with the findings of the learned trial Judge and dismissed the appeal filed in A.S.No.12 of 2018. In the said background, this second appeal is filed by the appellant.

8. It is submitted by the learned counsel for the appellant that the parties are close relatives. Subbaiah had sold his share to the plaintiff's father, Rasu through oral sale deed and as such, Rasu had become the owner of the suit



S.A.(MD) No.83 of 2023

property. In support of this, P.W2, brother of Subbaiah, had executed the consent deed ie., Ex.15. The revenue records had been mutated in the name of Rasu. He had mortgaged the suit property with the Bank and obtained loan. These factors clearly show that Rasu had effective title and possession in respect of the suit property and that he had settled his share in favour of his son. When the defendants had knowledge about the settlement deed, namely Ex.A1, which was executed in 2007, the execution of Ex.B1 sale deed in favour of the second defendant is illegal.

9.In support of his submissions, he brought to the notice of this Court to Section 3 of the Transfer of Property Act, 1882, for the position that where any transaction relating to immovable property is required by law and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated.



S.A.(MD) No.83 of 2023

WEB COPY

10.This Section makes it clear that the defendants 1 and 2 deemed to have notice of Ex.A1 settlement deed from 13.09.2007. When that be the position, the execution of the sale deed by the first defendant in favour of the second defendant dated 02.02.2010 is illegal and thus, the suit filed by the plaintiff seeking declaration that the sale deed is null and void is maintainable.

11.In response, the learned counsel for the respondents submitted that the plaintiff must have legal right in the form of title to the suit property to challenge the sale deed executed by the first defendant in favour of the second defendant. Without establishing the right in the suit property in Rasu, the execution of the settlement deed by Rasu in favour of the plaintiff through Ex.A1 is itself not maintainable. When that is not maintainable, the very filing of the suit is also not maintainable. Thus, he prayed for confirming the concurrent judgments of the Courts below and dismissal of this second appeal.

12.Considered the rival submissions and perused the records.

13.From the plaint reading, it is seen that the first defendant is claimed as stranger to the suit property. However, from the narration of defendants' case, as per the written statement, it is evident that the plaintiff and the defendants are



S.A.(MD) No.83 of 2023

close relatives. The relationship as detailed in the written statement is not disputed. There is also no dispute with regard to the fact that the suit property was originally belonged to Arumugam and his sons, namely Muthappa Udaiyar and Karuppudaiyar. They had partitioned the suit properties orally. In the said oral partition, it is admitted that the suit property was allotted to Karuppudaiyar. In the subsequent oral partition between Karuppudaiyar's sons, namely Periyaiah, Subbiah and Sivasamy, the northern portion was allotted to Sivasamy, southern portion was allotted to Periyaiah and middle portion was allotted to Subbaiah. Until this point, both the parties have no quarrel and there is absolutely no dispute whatsoever on this mode of disposition. This is confirmed by the oral evidence of P.W2 as well. P.W2, who is the brother of Subbiah, was examined by the plaintiff. He clearly admitted about this oral partition and allotment of shares. However, he says that the patta continued in his name. The fact remains that the suit properties were divided as detailed in the written statement among Periyaiah, Subbiah and Sivasamy.

14. Though there is no pleading in the plaint, it was projected that Subbiah had sold his portion of the property allotted to him through the oral partition to Rasu. This was the oral sale. However, in support of this oral sale, there is no evidence produced. Even in Ex.A1, the settlement deed executed by Rasu in favour of the plaintiff, there is no reference about the alleged oral sale



executed by Subbiah in his favour. He claims right in the property settled under Ex.A1, on the basis of patta in patta No.2204 and his alleged enjoyment.

15. Another document relied is Ex.A15. Even in this document, it is stated that the suit property was sold to Rasu, but the patta stands in D.W2's name. There is no clarity about who sold the property in Ex.A15. Whether it was Periyaiah or Subbiah. When Periyaiah, namely P.W2 admitted that he along with two others had partitioned the suit property, there must be clear indication as to whether he was selling the property or his brothers were selling the property. No such indication is found in the document. Curiously, there is no reference about the oral sale, but it is stated that a sale deed was executed. That is not the case of the plaintiff as well. It appears that the plaintiff had set up only the oral sale and that was not supported by Ex.A1 or by any other evidence. When the purported oral sale deed executed by Subbiah in favour of Rasu is not established by any satisfactory evidence, the settlement deed executed by Rasu in favour of plaintiff through Ex.A1 has no legs to stand. Only on the basis of Ex.A1, the plaintiff has filed the suit. When Ex.A1 becomes an invalid document, he has no *locus standi* to file the suit. Merely because, the settlement deed had come into existence in 2010 in respect of the property, for which no legal base for execution is made, the plaintiff cannot say that the first defendant cannot execute the sale deed in favour of the second defendant, which admittedly belongs to him through oral partition.



Through the evidence of P.W2 and the pleadings set out in the written statement, it is seen that Periyaiah and Sivasamy are also entitled to some right in the suit property. However, they are not impleaded as parties to the suit. Therefore, this Court finds that the Courts below especially the trial Court on going through the oral and documentary evidence and on proper analysis found that the plaintiff had no legal right to institute the suit and dismissed the suit. That was rightly confirmed by the first appellate Court. This Court is of the view that the judgments of both the Courts below do not call for any reconsideration.

16.In *Sir Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd., 1962* reported in *AIR 1962 SC 1314*, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

- 1.Whether it is of general public importance (or)
- 2.Whether it directly and substantially affects the rights of parties *and if so*,
- 3.Whether it is *either* an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) *(or)*
- 4.The question is not free from difficulty and calls for discussion of alternative views.

17.In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial



S.A.(MD) No.83 of 2023

question of law arises for consideration in this second appeal.

WEB COPY

18.In fine, this Court confirms the judgment and decree in A.S.No.12 of 2018 on the file of the Additional Sub Court, Pudukkottai dated 06.10.2020 confirming the judgment and decree in O.S.No.103 of 2010 dated 06.11.2017 on the file of the District Munsif, Keeranur, Pudukkottai District and dismissed this Second Appeal. No costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

27.11.2023

mm

To

- 1.The Additional Subordinate Judge,
Pudukkottai.
- 2.The District Munsif,
Keeranur.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



S.A.(MD) No.83 of 2023

G.CHANDRASEKHARAN, J.

mm

S.A.(MD) No.83 of 2023

27.11.2023