



S.A(MD)No.472 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.472 of 2016
and
C.M.P(MD)No.5076 of 2016

M.Jainulabudeen

...Appellant

-Vs-

S.Maideen
S/o.Sahul Hammed
No.84/7A, Krishnarajapuram 8th Street,
Tuticorin-I
Rep by his Power of Attorney Agent,
Nabila Banu
W/o.Maideen,
No.84/7B, 8th Street,
Krishnarajapuram,
Tuticorin-628 002.

... Respondents

(Sole respondent represented through his power of attorney agent, vide order dated 19.10.2016 made in C.M.P(MD) No.6709 of 2016 in S.A(MD) No.472 of 2016)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment in A.S.No.28 of 2014 on the file of II Additional District and Sessions Court, Tuticorin, dated 30.06.2015 in

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confirming the judgment and decree in O.S.No.82 of 2009 on the file of Sub Court, Tuticorin, dated 28.08.2014.

For Appellant : Mr.S.Ramesh

For Respondent : Mrs.Jessi Jeeva Priya
for Mr.G.Aravinthan

JUDGMENT

The unsuccessful plaintiff in the suit is the appellant. He filed a suit for declaration of title and recovery of possession. The suit was dismissed by the trial Court and the findings of the trial Court was confirmed in the first appeal.

2. According to the appellant, the suit property originally belonged to one Kansool Beevi. She purchased the suit property under Ex.A4 dated 27.08.1999. She sold the property to the appellant on 04.04.2008 under Ex.A1. It was further pleaded by the appellant that the suit property was settled by Kansool Beevi in favour of the respondent, her foster son under misrepresentation. She also laid a suit to cancel the settlement deed executed by her in favour of respondent in



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O.S.No.185 of 2006 on the file of District Munsif Court, Tuticorin, by raising a specific plea that the settlement was obtained by her employee under misrepresentation. The appellant further pleaded that during pendency of the said suit, the respondent executed a hand letter agreeing to remain loyal to Kansool Beevi and based on that letter, she withdrew the suit. It was also pleaded that Kansool Beevi also cancelled the settlement executed by her in favour of the respondent by a cancellation deed dated 13.09.2006 marked as Ex.A2. It was also pleaded that after the death of Kansool Beevi, the respondent trespassed into the suit property, denying the right of the appellant. On these pleadings, the appellant sought for declaration of title over the suit property and for consequential relief of possession.

3. The respondent herein filed a written statement denying the right of Kansool Beevi to sell the suit property to the appellant subsequent to the settlement in his favour. It was further stated that in the settlement deed executed by Kansool Beevi in his favour, she did not reserve the right to revoke the gift and hence, the alleged cancellation deed executed by Kansool Beevi under Ex.A2 was not valid. It was further averred that the said Kansool Beevi filed a suit in



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O.S.No.185 of 2006 for cancelling the settlement deed executed by her in favour of the respondent and the said suit was dismissed. The plea raised by the appellant as if the said suit was compromised, was specifically denied in the written statement. The respondent also pleaded that in O.S.No.185 of 2006, he filed a counter-claim seeking return of original settlement deed executed by Kansool Beevi in his favour and other parent documents and the said counter-claim was allowed in his favour. On these pleadings, the respondent sought for dismissal of the suit.

4. The trial Court, on appreciation of oral and documentary evidences, came to the conclusion that the appellant failed to prove his right over the suit property and dismissed the suit. Aggrieved by the same, he filed an appeal in A.S.No.28 of 2014 on the file of II Additional District and Sessions Court, Tuticorin and the said appeal was dismissed by confirming the findings of the trial Court. Challenging the same, the appellant is before this Court.

5. The learned counsel for the appellant by taking this Court to Ex.A5, a hand letter written by the respondent in favour of the said Kansool Beevi and



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Ex.A11, a letter allegedly written by Kansool Beevi to her counsel, submitted that the appellant was made to believe that the suit filed by Kansool Beevi against the respondent for setting aside the settlement in favour of the respondent was compromised out of Court and the same was withdrawn based on the hand letter written by the respondent. It is the contention of the learned counsel for the appellant that the appellant is a *bona-fide* purchaser of the property, without having knowledge of the pendency of the suit in O.S.No.185 of 2005 filed by Kansool Beevi against her son. The learned counsel further submitted that the Courts below failed to take into consideration of Ex.A2, registered cancellation deed executed by Kansool Beevi cancelling the settlement made by her in favour of respondent.

6. It is an admitted case of the appellant that Kansool Beevi was the original title holder of the suit property. She settled the suit property in favour of her foster son, namely, the respondent under Ex.A3 dated 29.04.2004. A perusal of Ex.A3 would make it clear that the right to revoke the gift, was not at all reserved by Kansool Beevi. Therefore, the gift made by her under Ex.A3 is absolute one and the same is irrevocable. Therefore, the unilateral cancellation of



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settlement made by Kansool Beevi under Ex.A2 will not affect the title passed on to respondent under original settlement, namely, Ex.A3. Further the appellant's vendor Kansool Beevi filed a suit for cancellation of settlement in favour of respondent by pleading misrepresentation in O.S.No.185 of 2006 on the file of District Munsif Court, Tuticorin. The said suit was dismissed by holding that the settlement deed executed by Kansool Beevi in favour of the respondent was valid. Therefore, when the said Kansool Beevi executed Ex.A1-sale deed in favour of appellant, she had no title over the suit property and consequently, the appellant did not acquire valid title to the suit property. The Courts below on appreciation of Ex.B6, a judgement rendered in the suit filed by the Kansool Beevi against the respondent and other relevant materials came to the conclusion that the appellant was not entitled to declaration of title and consequential recovery of possession. Hence, I do not find any questions of law muchless substantial questions of law in this second appeal and the same is dismissed.

7. In fine,

(i) the Second Appeal is dismissed by confirming the judgment and decree in A.S.No.28 of 2014 on the file of II Additional District and Sessions



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Court, Tuticorin, dated 30.06.2015, confirming the judgment and decree in O.S.No.82 of 2009 on the file of Sub Court, Tuticorin, dated 28.08.2014.

(ii) In the facts and circumstances, there will be no order as to costs.

(iii) connected miscellaneous petition is closed.

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

- 1.The II Additional District and Sessions Judge,
Tuticorin.
- 2.The Subordinate Judge,
Tuticorin.
- 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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