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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

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THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

S.A.No.1615 of 2008
in MP.No.1 of 2008

Suseela Ammal

...Appellant

Vs.

1.Saroja Ammal
2.Loganathan

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree made in A.S.No.98 of 2005 dated 27.09.2007 on the file of the Subordinate Judge, Gingee, confirming the judgment and decree made in O.S.No.464 of 1992, dated 17.10.2003 on the file of the Principal District Munsif, Gingee.

For Appellant : Mr.T.R.Rajaraman

For Respondents : Mr.S.Raghu



JUDGMENT

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The plaintiff is the appellant herein. The defendants are the respondents. The relationship between the parties are that the plaintiff and the first defendant are the sisters. The second defendant is the son of the first defendant. The 3rd defendant Pachai Ammal is the mother of plaintiff and the first defendant.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant second appeal are as follows:

The suit property originally belongs to one Gopal Gounder, during his lifetime, there was a family arrangement on 24.10.1985. By virtue of this family arrangement, half share of the property was allotted to the plaintiff. Therefore, the plaintiff came forward with the suit for declaration to declare her half right in the suit property.



4. The said suit was resisted by the defendants by contending that during the lifetime of Gopal Gounder namely the father of the plaintiff and the first defendant, he has executed a settlement deed in favour of second defendant who is the grand son of the Gopal Gounder and son of the first defendant. Therefore, by virtue of the settlement deed the suit property becomes the absolute property of the second defendant. Therefore, contended that the plaintiff cannot have any right over the suit property. Hence, he prayed to dismiss the suit.

5. Evidence and findings before the Trial Court:

Before the trial Court, the plaintiff has marked as many as twenty four documents as Exs.A1 to A24 and on behalf of the defendants, ten documents were marked as Exs.B1 to B10. The plaintiff has examined two witnesses as PW.1 and PW.2 and on behalf of the defendants five witnesses were examined as DW.1 to DW.5.

6. The trial Court after having considered the oral and documentary evidence and pleadings of the parties have ultimately found that the alleged settlement/family arrangement on 24.10.1985 even if



construed as a Will, the same will come into force only after the demise of the testator, therefore, the execution of the settlement deed in favour of the second defendant cannot be faulted and ultimately dismissed the suit.

7. Aggrieved by the same, the plaintiff approached the First Appellate Court, the First Appellate Court concurred with the findings of the trial Court and dismissed the appeal. Not satisfied with the order of the First Appellate Court, the plaintiff is now before this Court.

8. Submission on either side counsel:

The learned counsel for the appellant would vehemently submit that Gopal Gounder who was the executant of the settlement deed dated 02.05.1991 was party to the 1985 family arrangement. Therefore, he cannot execute the settlement deed after being party to the family arrangement and therefore by virtue of the family arrangement, the plaintiff is entitled for declaration as prayed for.



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9. Per contra, the learned counsel for the respondents would resist the arguments of the learned counsel for the appellant by contending that though the nomenclature of Ex.A2 termed as the family arrangement, a close reading of the same would show that it will come into operation only after the demise of Gopal Gounder. Therefore, at the best the Ex.A2 can only be termed as a Will. Therefore, in such factual scenerio, and the execution of the settlement deed in favour of second defendant cannot be faulted with. Hence, prayed to dismiss the second appeal.

10. This Court has given its anxious consideration to the submissions made by both sides.

11. The entire case revolves around the construction of Ex.A2 family arrangement. If the Ex.A2 family arrangement binds upon the plaintiff and the defendants then the execution of the settlement deed dated 02.05.1991 will have no effect. However, it is the contention of defendants that the nomenclature of the document as family arrangement [Ex.A2] cannot decide the character of the document and the recital would give the



real nature of the documents. Here on reading of Ex.A2 it is clear that it will come into effect only after the demise of Gopal Gounder.

12. Therefore, when there are specific recitals that the terms of the said Ex.A2 family arrangements will come into operation only after the demise of Gopal Gounder and third defendant who is none other than the wife of Gopal Gounder. Therefore, as rightly contended by the learned counsel for the defendants that the nomenclature of the document will not give any inference so as to bind the plaintiff and the defendants, as the recitals would make the document as a Will. In such a back ground during the lifetime of Gopal Gounder, he himself has executed a settlement deed dated 02.05.1991 in favour of D2, since Gopal Gounder has not divested the title upon the property, he being the owner can deal the property according to his wish, and has also dealt with the same as per his wish, and executed the settlement deed dated 02.05.1991 in favour of the second defendant.

13. Therefore, the findings of the fact recorded by both the Courts below are well merited and there are no grounds made out to



interfere with the findings of both the Courts below. Thus, in view of the above detailed discussion this Court hold that no substantial question of law arising for consideration in the second appeal.

14. In nutshell,

a) The Second Appeal is dismissed by confirming the judgment and decree passed by First Appellate Court.

b) In the facts and circumstances of the case, there shall be no order as to costs;

c) consequently, connected Miscellaneous Petition is closed.

03.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The Subordinate Judge, Gingee.
2. The Principal District Munsif, Gingee.



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C.KUMARAPPAN, J.
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