



S.A. No.1633 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.1633 of 2008

and

M.P.No. 1 of 2008

1. Sappai
2. Sekar

... Appellants

Vs.

1. Pavunambal
2. Jayachandra Reddiar
3. Vasu Chettiar
4. Kottapuli
5. Mangammal
6. Kanniappan
7. Govindan
8. Elumalai
9. Maliga
10. Kuppan
11. Sekar

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.12 of 2003 on the file of Sub-Court, Maduranthakam dated 07.07.2008



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confirming the judgment and decree passed in O.S.No.131 of 1997 on the file of District Munsif Court, Madhuranthakam, dated 15.09.2003.

For Appellants : Mr.J.R.K.Bhavanantham

For Respondents : Mr.M.S.Subramanian for R1

R2 to R11 – given up

JUDGMENT

The appellants herein are the defendants 1 and 5 in the suit in O.S. No. 131 of 1997 on the file of District Munsif, Madhuranthakam, which was filed by the 1st respondent/plaintiff herein for the relief of declaration and delivery of possession against defendants 1 to 6.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The suit was contested by 1st and 5th defendants alone and other defendants were remained exparte. On considering both side submissions, the trial judge held that the plaintiff is entitled for the relief as prayed for. Accordingly, the suit was decreed. Against which, defendants 1 and 5 preferred the first appeal before the learned Subordinate Judge,



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Madhuranthakam in A.S.No. 12 of 2003, wherein the first appellate court independently analysed the facts and evidence on record and finally held that the plaintiff is entitled for the relief as prayed for by confirming the findings of trial judge. Aggrieved over the concurrent findings of both courts below, the defendants 1 and 5 preferred this Second Appeal.

4. Brief facts of the case is as follows :-

The plaintiff Pavunambal claimed herself as an absolute owner of the suit property stating that she got the same by way of registered settlement deed dated 19.05.1972 executed in her favour by Muniammal, wife of Solai Chettiar, in which plaintiff's husband as well as husband of Muniammal also signed in the document. Thereafter, she was in possession of property as absolute owner and she enjoyed the same. Due to a family dispute between herself and her husband Krishtappa Chettiar, she left the matrimonial home before seven years of the suit. But, as a head of the family, her husband was permitted to pay kist receipt and taking advantage of the kist receipt, he executed a sale deed as if he is owner of the property and created illegal and void documents in favour of defendants. Since the vendor has no title over



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the property, in the year of 1993 the plaintiff demanded the defendants to deliver possession of property, but they refused. However, during the year of 1995, her husband died and thereafter, she had insisted for delivery of possession, but the defendants refused to hand over possession. Hence, she filed a suit for declaration and delivery of possession.

5. The contesting defendants 1 and 5 have claimed themselves as absolute owners of property by way of purchase. The 1st defendant contended that he purchased an extent of 33 cents in Survey No.90/4 through a registered sale deed dated 10.09.1967 in the name of his mother Chinnammal from his vendors Muniammal and her husband Kottaiyan for a valid consideration. After the purchase, his mother was in possession and enjoyment till her demise in the year of 1977 and thereafter, he possessed and enjoyed the said property. He would further submit that he purchased another extent of 40 cents in the same Survey No.90/4 from his vendor Kottaput Chettiyar (husband of Chinnammal) on 09.08.1977, thereby the lands in survey No.90/6 the entire extent of 70 cents is in his enjoyment and he had also obtained patta. Even otherwise, he was in continuous



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uninterrupted possession and enjoyment of property for more than a statutory period. Therefore, the alleged settlement deed claimed by the plaintiff executed on 19.05.1972 would not bind him nor the plaintiff took possession of the property. Even assuming that there was a settlement, it was not acted upon. Moreover, on the date of execution of settlement deed, the vendor already sold the portion of the property to this defendant. Subsequently, the remaining extent was also purchased in Survey No.90/4, thereby denied the plaintiff's claim.

6. The 5th defendant also contended that he purchased an extent of 3 acres 43 cents in Survey No.112/2 from his vendors Krishnammal and Rajammal through a sale deed dated 11.07.1990 for a valid consideration and thereafter, they are in possession of the property by developing the same and obtained service connection in his name. Thereafter, he installed 5 H.P. motor pumpset over the same and he was in possession of the property by cultivating lands. Thereafter, the settlement deed was not acted upon, thereby denied the plaintiff's title over the property.



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7. Before the trial court, both plaintiff and contesting defendants adduced their oral and documentary evidence. The only foremost issue framed by the trial court is that whether the plaintiff is entitled for declaration and delivery of possession? On perusal of entire findings of trial court, the trial judge simply held that as per the said settlement deed, the plaintiff is the absolute owner of the property and even no possession was given to her as her husband also signed in the document, thereby the gift deed seems to be valid one. Accordingly, the suit was decreed by granting the relief of declaration and delivery of possession in favour of plaintiff. The trial judge not even discussed about the purchase made by the 1st defendant much prior to the settlement from the original owner of property, even though the said documents were marked on the side of contesting defendants as Ex.B1 to B4. However, the trial judge made an observation that some of the sale deeds Ex.B2 and B3 were executed after the alleged settlement deed. So, it would not bind the plaintiff. But, no finding is given with regard to the purchase made by the 1st defendant through Ex.B1 sale deed dated 10.09.1957 prior to the alleged settlement deed. Against which, defendants 1



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and 5 preferred the first appeal before the learned Subordinate Judge, Madhuranthakam in A.S.No. 12 of 2003, wherein the first appellate court independently analysed the facts and evidence on record and finally held that the plaintiff is entitled for the relief as prayed for by confirming the findings of trial judge.

8. Challenging the said findings, the defendants 1 and 5 have preferred this Second Appeal and the same was admitted on the following substantial question of law :-

- “1) Have the courts below have not grievously erred in not finding that the Settlement deed Ex.A1 was not acted upon?
- 2) Have the courts below are erred in not finding that the undivided properties cannot be conveyed or settled?
- 3) Whether the courts below have not grievously erred in not appreciating the evidence on record?”

9. Admittedly, in the suit schedule, the plaintiff claimed 36 cents out of entire extent of 73 cents in Survey No.70/4 shown as second item in the



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suit property. But, as rightly pointed out by the learned counsel for defendants, the plaintiff has not established that the said Muniammal is entitled to execute the settlement deed in her favour nor produced any title deed in respect of suit property. Even after the alleged settlement deed, her husband also executed a sale deed in favour of 1st defendant in respect of the remaining extent of 40 cents in Survey No.90/4. Therefore, she herself admitted that her husband also signed in the settlement deed, thereby contended that she is also owner of the property. But, there is no proof on the side of plaintiff to show that she possessed and enjoyed the property from the date of settlement of the year of 1972. There is no iota of revenue record produced on her side to prove that the Gift deed was acted upon and she was in possession of the property. Without any such material evidence, the trial judge erroneously held that Gift deed was acted upon, since one of the signatory is plaintiff's husband in the alleged gift deed, it must be acted upon, more precisely there must be some revenue records viz., Chitta and adangal to show that she is cultivating crops in the said lands. But, the plaintiff was not questioned for non-production of documents nor any independent witness to show that she is in possession and enjoyment of the property.



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Therefore, the findings given by the trial judge that mere execution of Gift deed is sufficient, as such is totally erroneous one and the same is liable to be set aside.

10. Furthermore, the contesting defendants are not able to establish that they have purchased the suit property and enjoyed the same by cultivating lands as well as installed 5 HP motor pumpset over the same, which itself shows that they are in possession and enjoyment of the property as per the sale deed dated 11.07.1990. But, the trial judge, though there is no material document on the side of plaintiff, erroneously concluded that the plaintiff is entitled for the relief as such is erroneous one. Therefore, the concurrent findings of both the courts below is liable to be set aside.

11. Furthermore, the description of the property in the settlement deed would prove that common share was transferred by the alleged settlement deed in favour of plaintiff shows that the properties are not divided and no reason assigned on the side of plaintiff that how common share was transferred to her. Therefore, without any materials, both the courts below



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erroneously granted the relief as such is liable to be set aside. Accordingly,

the question of law 1 to 3 is answered and the Second Appeal is allowed.

The concurrent findings of both courts below is set aside, thereby the suit is

dismissed as no merit. No costs. Consequently, connected Miscellaneous

Petition is closed.

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Index : Yes / No

Internet : Yes / No

Speaking/Non-speaking order

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To

The Sub-Judge, Maduranthakam



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T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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