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S.A.No.1135 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.06.2024

PRONOUNCED ON : 11.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.1135 of 2012

Kaliammal

...

Appellant

Vs.

1.Rajasekaran

2.Ramalingam

3.Singannan

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree of the Subordinate Court, Namakkal, dated 26.08.2011, in A.S.No.48 of 2010 reversing the Judgment and Decree of the Additional District Munsif Court, Namakkal, dated 17.08.2010, in O.S.No.269 of 2003.

For Appellants	: M/s.C.M.Logeshwari for M/s.S.Senthinathan
For R1 & R3	: Mr.V.Perumal for M/s.T.Dhanyakumar
For R2	: Set ex-parte (vide order dated 26.06.2024)



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JUDGMENT

Challenge in this second appeal is made to the Judgment and Decree dated 26.08.2011, in A.S.No.48 of 2010 on the file of the Subordinate Court, Namakkal, reversing the Judgment and Decree dated 17.08.2010, in O.S.No.269 of 2003, on the file of the Additional District Munsif Court, Namakkal.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3.The case of the plaintiff, in brief, is that the suit property was acquired by the plaintiff under a registered settlement deed, dated 26.2.2003, which was settled by the plaintiff's father. On 27.04.2003, the settlement deed had been rectified with regard to the survey number. Originally, the suit property belongs to Sellayiammal, the grand mother of the plaintiff. On 12.01.1961, Sellayiammal settled the property in favour of plaintiff's father Chinna gounder. In turn, Chinna gounder settled the same in favour of the plaintiff. On 15.06.03, the defendants obstructed the plaintiff from enjoying



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the suit property in a peaceful manner. Hence, the plaintiff was constrained to file the suit against the defendants.

4.The defendants contested the suit, denied the allegations in the plaint and the first defendant filed a written statement, which was adopted by the second and third defendants, contending that the settlement deed was made by Chinna gounder out of his own free will and that the plaintiff taking possession of the suit property from the date of settlement deed has to be proved by the plaintiff. The plaintiff, in order to over ride the Will written by the Chinna gounder in favour of the defendants, had fraudulently obtained the said settlement deed from Chinna gounder. The plaintiff is not in the possession and enjoyment of the suit property. Therefore, the cause of action has not arisen on 15.6.2003 to the plaintiff as to the dispossession from the suit property and thus, pleaded to dismiss the suit.

5.On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:



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***1. Whether the settlement deed dated
26.2.2003 is a valid deed?***

***2. Whether the plaintiff is in possession of
entire suit property?***

***3. Whether the Plaintiff is entitled for the
relief of permanent injunction?***

***4. To what other relief the plaintiff is
entitled to?***

6. Before the Trial Court, in support of the plaintiff's case, PWs 1 to 5 were examined and 5 documents were marked as Ex.A.1 to Ex.A.5. On the side of the defendants, DW1 was examined and 1 document was marked as Ex.B.1. Ex.C1 & Ex.C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court decreed the suit as prayed for without costs.

8. Aggrieved over the same, the third defendant had filed A.S.No.48 of 2010, before the Subordinate Court, Namakkal. The First Appellate Court,



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after considering the entire materials and evidence on record, allowed the appeal. Aggrieved by the same, the plaintiff has filed the present second appeal.

9. The second appeal has been admitted on the following substantial questions of law:

1) The 1st appellate court misconstrued the oral evidence of the plaintiff and erroneously came to the conclusion that the schedule mentioned property described in the Will and in the settlement deed are one and the same?

2) The 1st appellate court misinterpreted the oral evidence of PW1 and erroneously came to the conclusion that PW1 had admitted the non-possession of the suit property?

3) The 1st appellate court has failed to note that even assuming that the property concerned in Will and the settlement are same, once a registered settlement deed is executed after the execution of a Will in respect of the same property (suit property), the Will shall not have any legal



***validity in the eye of law and the same shall
automatically stand cancelled?***

10.The learned counsel for the appellant submitted that the First Appellate Court had misconstrued the oral evidence of the plaintiff and erroneously came to the conclusion that the schedule mentioned property described in the Will and in the settlement deed are one and the same. In the evidence of PW1, it has been clearly stated that the property mentioned in the Will and the settlement deed are different. Further the First Appellate Court misconstrued the oral evidence of PW1 and erroneously came to the conclusion that she had admitted that she is not in possession. She denied the suggestion during the cross examination. She never admitted that she was not in possession. At the time of execution of settlement deed, she came into possession and enjoyment of the suit property. To evidence this, she filed the house tax receipt Ex.A5, which exposes the fact that after settlement, she took possession and enjoyment of the property and the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the appeal.



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11.The learned counsel appearing for the respondents supported the judgment of the First Appellate Court and further contended that during the Commissioner's visit, the plaintiff was not in possession of the suit property. It is evidenced by the Commissioner in his report that there is no acceptable evidence to show her possession over the plaint schedule property. Further, when the title is disputed, she ought to have sought for the relief of declaration and the prayer for bare injunction is unsustainable. He further submitted that the First Appellate Court had rightly allowed the appeal, there is no ground to interfere with the findings and no substantial question of law is involved in this case and thus pleaded to dismiss the Appeal.

12.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

13.On perusal of the records, it seen that the plaintiff had filed a suit against the defendants seeking permanent injunction with regard to the plaint schedule property. According to the plaintiff, she got the plaint schedule property by way of a settlement deed, dated 26.02.2003, from her father.



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Chinna gounder. From the date of settlement, she took possession and enjoyment of the property. The defendants had disturbed the possession and hence, the plaintiff had filed the suit for permanent injunction. The defendants contested the suit, denied the allegations in the plaint and the first defendant filed a written statement, which was adopted by the second and third defendants. They admitted the relationship between them and contended that the plaintiff was not in possession of the plaint schedule property. They are in possession of the plaint schedule property and the plaintiff is not entitled for permanent injunction.

14.Further, on perusal of the records and evidence, it is proved by the plaintiff that she got the property by way of a settlement deed dated 26.02.2003, which was settled by her father. It is proved by the oral evidence of PW2 to PW5 that, the settlement deed had been rectified with regard to survey number and the rectification deed was also executed by her father, which was marked as Ex.A2. Before settlement, the property was in enjoyment of her father, which is evidenced by the documents Ex.A3 and Ex.A4. After the settlement deed, plaintiff took possession and the tax receipts were changed in her name and the same is evidenced by Ex.A5 tax



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receipt. Ex.A5 tax receipt is in the name of the plaintiff. Further, on perusal of the evidence of PW1 and the other plaintiff's side evidence, it is clearly deposed that the property contained in alleged Will and the settlement deed Ex.A1 & Ex.A2 are different one.

15.To controvert this fact, on the defendants' side, they have not filed the alleged Will as stated in the written statement. In such circumstances, the finding of the First Appellate Court that the property contained in the Will and the in the settlement deed are one and the same is erroneous on fact. Further, on perusal of the evidence, the judgment of the Trial Court and the plaintiff's side evidence, it is noticed that through the oral evidence of PWs 1 to 5 and the documents Exs.A1 to A5, the plaintiff had established the genuineness of the settlement deed and her possession over the plaint schedule property. On perusal of the defendants' side evidence, though they had contended that they were in possession of the entire suit property, it is not proved. The evidence of attestors of Ex.A1, exposed the fact that the possession of the entire suit property was handed over to the plaintiff from the date of execution of the settlement deed. To prove the possession of the defendants over the plaint schedule property, no evidence is adduced in this case.



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16.Further, on perusal of the plaintiff's evidence PW1, it is noticed that nowhere she had admitted in her cross examination that she is not in possession of the suit property. The observations of the First Appellate Court that she had admitted during the cross examination that she is not in possession of the suit property is erroneous and without any evidence. Therefore, the First Appellate Court had, without any evidence, observed that the plaintiff admitted that she is not in possession of the plaint schedule property on the date of the suit and thereby, non suited the plaintiff and allowed the appeal. The First Appellate Court had misconstrued the oral evidence of the plaintiff and erroneously came to the conclusion that the plaint schedule property described in the Will and the settlement deed are one and the same and the plaintiff was not in possession of the plaint schedule property.

17.In view of the above, the findings of the First Appellate Court are erroneous and without any evidence, it is liable to be set aside and accordingly, set aside. The substantial questions of law formulated in the second appeal are accordingly answered.



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18. For the aforesaid reasons, the judgment and decree of the Trial Court dated 17.08.2010, passed in O.S.No.269 of 2003, on the file of the Additional District Munsif Court, Namakkal, is confirmed and the second appeal is allowed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

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11.07.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

1.The Subordinate Court, Namakkal.

2.The Additional District Munsif Court, Namakkal.



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V.SIVAGNANAM, J.

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Pre-Delivery Judgment made
in S.A.No.1135 of 2012

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