



WEB COPY



S.A.No.565 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

THE HON'BLE MR. JUSTICE V.SIVAGNANAM

S.A.No.565 of 2012

P.S.Manickam (Died)

1.Ramayammal

2.Chitra

3.Kannan

...

Appellants

Vs.

Subramaniam (Died)

1.Kaliappan

2.The Panchayt Union Council

Mechari,

Rep by its Commissioner,

Panchayat Union Office,

Mechari

Mettur Taluk,

Salem District.

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree passed in A.S.No.18 of 2009 dated 27.03.2010 on the file of Sub Court, Mettur confirming the Judgment and decree passed in O.S.No.444 of 2004 dated 01.07.2009 on the file of District Munsif Court, Mettur.

For Appellants

For Respondents

: Mr.S.Sundaravadhanan

: No appearance (for R1)

Mr.V.Subbiah (for R2)



S.A.No.565 of 2012

JUDGMENT

WEB COPY

Challenge in this second appeal is made to the Judgment and Decree passed in A.S.No.18 of 2009 dated 27.03.2010 on the file of Sub Court, Mettur confirming the Judgment and decree passed in O.S.No.444 of 2004 dated 01.07.2009 on the file of District Munsif Court, Mettur.

2.The plaintiffs in O.S.No.444 of 2004 on the file of the District Munsif Court, Mettur are the appellants herein.

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

4.The learned counsel for the appellants submitted that the 1st defendant/Subramaniam is the father of the 1st plaintiff/P.S.Manickam, and 2nd defendant/Kaliappan is the younger brother of the 1st plaintiff/P.S.Manickam. The 1st defendant's father Rakkiagounder @ Rakkianna Gounder purchased an extent of 3 acres and 85 cents in Survey No.104/4 on 04.02.1938, by way of a registered Sale Deed. After the death, his three sons namely the 1st defendant, Kaliappan and Senniappan. The three sons divided the property orally and



S.A.No.565 of 2012

enjoyed separately. In the oral partition, Survey No.104/4A was allotted to the 1st defendant. Since it is an ancestral property, the 1st plaintiff and the 2nd defendant and the 1st defendant are having equal shares in the property obtained by the 1st defendant by way of oral partition. Being a joint family property, without the consent of the other sharers i.e., the plaintiff and the 2nd defendant, the 1st defendant gave settlement of 13,248 sq.ft to the 3rd defendant/Panchayat, for formation of road along with 17 others. Since the settlement deed dated 22.05.2000, without the consent of 1st plaintiff and 2nd defendant, it is invalid and the 1st defendant had no right to gift the property, without the consent of the 1st plaintiff and 2nd defendant. On 06.12.2004, the 3rd defendant/Panchayat persons entered into the property. Therefore, the plaintiffs filed the suit for declaring that the gift settlement deed dated 22.05.2000 is null and void and consequential, permanent injunction restraining the 3rd defendant from trespassing into the property to form any road.

5.Further, learned counsel for the appellants submitted that, there is no evidence that other sharers gave the consent. The trial Court dismissed the suit, on the ground that the suit is barred by limitation. The execution of settlement deed came to the knowledge of the plaintiff only on 06.12.2004.



S.A.No.565 of 2012

Therefore, from the date of knowledge, the suit is filed within 3 years. So, the suit is well within the time. Further, the allegation in the written statement, it is stated that the road has been formed in the year 2005, however, the same is contrary to the evidence in Ex.B.1, Proceedings of Deputy Collector and Chairman of District Rural Development Agency, Salem. The condition that the road has been formed in the year 2007 is false. There is no evidence to show that the Government has taken the possession. The trial Court and the First Appellate Court overlooked the fact and dismissed the suit. There are substantial questions of law involved in this case and prays for admission and formulation of questions of law.

6.The learned counsel for the respondents supported the judgment of the trial Court and the First Appellate Court and prays for dismissal of this appeal.

7.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.



S.A.No.565 of 2012

8.It is not disputed that the total extent in Survey No.104/4 is 3 acres and 85 cents. Among the brothers, the 1st defendant and his two brothers orally partitioned and took each 1 acre and ares in their respective shares and Survey No.104/4A has been allotted to the share of the 1st defendant. Further, the 1st plaintiff and the 2nd defendant and the 1st defendant are equally entitled to 1 acre and ares. In which, the 1st defendant is entitled to have 30 cents and ares. Now, he gave settlement of 13,248 sq.ft to the 3rd defendant/ Panchayat for formation of road. So, it is well within his share. He is competent to give it for public properties. The want of consent will not make the settlement invalid. Therefore, the First Appellate Court and the trial Court had rightly dismissed.

9.There cannot be any doubt whatsoever for consideration of irrelevant fact and non consideration of relevant fact would give rise to substantial question of law. The case does not meet out the parameter laid down by the Hon'ble Supreme Court in the following decisions:-

1.**AIR 2008 SC 379** in the case of *Moses Vs. Kasturiba*

2.**AIR 2008 SC 956** in the case of *Abdul Raheem Vs.*

Karnataka Electricity Board

3.**AIR 2008 SC 1749** in the case of *Kashmir Singh Vs.*



S.A.No.565 of 2012

Harnam Singh and another.

WEB COPY

10. Therefore, the findings of the trial Court and the First Appellate Court are based upon the evidence on record and they are not perverse. There is no ground for reversing the findings recorded by the trial Court and the First Appellate Court. There is no merit for admitting in the Second Appeal. There is no substantial questions of law involved in this case.

11. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition, if any, is closed.

25.07.2024

gd

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No



WEB COPY



S.A.No.565 of 2012

To

1. The Sub Court, Mettur
2. The District Munsif Court, Mettur.



WEB COPY



S.A.No.565 of 2012

V.SIVAGNANAM, J.

gd

S.A.No.565 of 2012

25.07.2024