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Second Appeal No.877 of 2015

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 26.03.2024**

**CORAM :**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**Second Appeal No.877 of 2015**  
**and C.M.P.No.12993 of 2017**

Syed Masthan

.... Appellant

-Vs-

1.Thamim  
2.Kathun Bivi  
3.Fathima  
4.Sabira  
5.Abdul Rahman  
6.Masthan

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 28.04.2015 made in A.S.No.5 of 2013 on the file of the learned Subordinate Judge, Maduranthagam confirming the judgment and decree dated 18.09.2012 made in O.S.No.274 of 2010 on the file of the learned District Munsif at Maduranthagam.

For Appellants : Mr.Silambanan, Senior Counsel  
for M/s.Kaavya Silambanan

For Respondents : Ms.Preethi Baskar-for RR 1,3 & 6  
Mr.S.Uthaya Kumar - for R2



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## **J U D G M E N T**

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The present Second Appeal arises from the judgment and decree of the Court of the Subordinate Judge at Maduranthagam in A.S.No.5 of 2013 dated 28.04.2015 in confirming the judgment and decree of the Court of the learned District Munsif at Maduranthagam in O.S.No.274 of 2010 dated 18.09.2012.

For the sake of convenience, the parties are referred to as per their rank in the suit.

2. The plaintiff is the appellant. He presented O.S.No.274 of 2010 for the purpose of declaring his title to the suit schedule mentioned property and for a consequential relief of permanent injunction restraining the defendants, their men, agents, representatives in any way encumbering the suit property, and for declaring the sale agreement dated 02.09.2010 in Document No.3365 of 2010 in the SRO, Cheyyar executed by the defendants 1 to 5 in favour of the 6th defendant as null and void.

3. The claim of the plaintiff is that he is the absolute owner of the property. He states that the property originally belonged to his uncle Naina Mohammed Sahib. The plaintiff is the son of Kathija Beevi and Yousuf Sahib.



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Naina Mohammed Sahib is the brother of Kathija Beevi. Naina Mohammed Sahib is alleged to have brought up the plaintiff as his own son. When he was aged about 85 years, he executed a settlement deed on 29.09.1987 in favour of the plaintiff. On and from the date of the execution of the document, the plaintiff became the absolute owner of the property. On the basis of the settlement deed, he mutated the revenue records in his favour and obtained a patta in Patta No.877. He learnt that on 03.09.2010 certain individuals trespassed into the property and started measuring the same. On demanding from them as to on what basis they are doing so, the response that he received was that the defendants 1 to 5 had executed a registered agreement of sale in favour of the sixth defendant. The sixth defendant is none else than the husband of the third defendant. The third defendant is the sister of the plaintiff. Immediately, the plaintiff, apprehending that fictitious documents were sought to be created over the property, was constrained to file the suit. He would also plead that on 13.09.2010, the defendants 1 to 5 had issued notice to the plaintiff calling upon him to cancel the settlement deed that he had obtained from Naina Mohammed Sahib. Hence, the suit.

4. On receipt of the summons, the defendants entered appearance before the Court and filed a detailed written statement. According to them, Naina Mohammed Sahib was not the owner of the property and he had no right over



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the property to execute the settlement deed. It is their clear and categorical case that the property belonged to Mohammed Meera Sahib who was the owner of a larger extent of 2 acres and 4 cents of which the suit property is 34 cents. The said Mohammed Meera Sahib executed a settlement deed in favour of his son Ismail Sahib to an extent of 1.70 acres out of 2.04 acres and the remaining 34 cents he had sold to his daughter Kathija Beevi who is none else than the mother of the plaintiff. By virtue of sale dated 21.04.1964 in Document No.598 of 1964, Kathija Beevi became the owner of the property. Kathija Beevi was also called as Hatjaa Beevi.

5. The defendants further submitted that, after the death of Kathija Beevi the plaintiff and the defendants 1 to 5 became the owners of the property. They denied the individual right of the plaintiff over the same and asserted that as Mohammed Meera Sahib had executed a sale deed in favour of Kathija Beevi, the defendants 1 to 5 have share in the property as per Islamic law.

6. Insofar as the agreement of sale projected by the sixth defendant is concerned, it was stated that the document was created for the purpose of protecting the property from nefarious ideas of the plaintiff. The fifth defendant filed a separate written statement more or less adopting the same lines as that of the first defendant.



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7. On the basis of these pleadings, the learned trial Judge framed the following issues :

1. Whether the plaintiff has right and title over the plaint schedule of property ?
2. Is the plaintiff entitled for the relief of declaration and consequential relief of permanent injunction ?
3. Is the sale agreement dated 02.09.2010 executed by 1 to 5 defendants in favour of 6th defendant null and void document ?
4. Whether the plaintiff is entitled for the relief of declaration ?
5. Is the settler has right to execute the settlement deed dated 29.09.1987 in favour of the plaintiff ?
6. What are all the other reliefs and cost plaintiff is entitled for ?

8. On the side of the plaintiff, he examined himself as P.W.1 and another person as P.W.2. He marked Exs.A1 to A9. On the side of the defendants, two witnesses were examined and Exs.B1 to B4 were marked. On the basis of the oral and documentary evidence let in by both parties, the learned District Munsif came to the conclusion that the plaintiff had not proved his exclusive title to the property and therefore dismissed the suit.



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9. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.5 of 2013. Pending the appeal, he moved an application for receipt of additional evidence and the same was allowed and additional evidence was also received as Exs.A10 to A12. The learned judge finally concurred with the findings of the trial Court and dismissed the appeal.

10. Against the concurrent findings of the Courts below, the present Second Appeal has come up for hearing before this Court. This Court did not admit the appeal, but had ordered notice regarding admission on 12.04.2016. Thereafter, the matter had been referred to mediation and since mediation failed, it is posted before me for passing orders on admission and in the appeal.

11. I heard Mr.S.Silambanan, learned Senior Counsel for M/s.Kavya Silambanan and Ms.Preethi Baskar for the respondents.

12. Mr.Silambanan would argue that Mohammed Meera Sahib was never the owner of the property and at all points of time Naina Mohammed Sahib was the owner of the property. According to him, Naina Mohammed Sahib had enjoyed the property as absolute owner and as he had brought up the plaintiff as his own son. Out of love and affection, he had executed a settlement deed in



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favour of Syed Masthan the plaintiff herein to an extent of 34 cents. He would further state that, insofar as the remaining 1 acre 70 cents, Naina Mohammed Sahib had executed a settlement deed in favour of Syed Ismail Sahib. He would state that insofar as Syed Ismail Sahib is concerned, there is no dispute, but the entire dispute in this case is with respect to the 34 cents in S.No.195/4A with respect to the title of the plaintiff.

13. Ms.Preethi Baskar would submit that the property had been alienated by Mohammed Meera Sahib as early as in 1964 in favour of Kathija Beevi. This was not by way of a settlement deed, but by way of a sale deed at least 40 years before the presentation of the plaint. She would state that Kathija Beevi had enjoyed the property throughout as the absolute owner. Relying upon the evidence of P.W.1 and D.W.1 she would state that the plaintiff and defendants 1 to 5 were residing with Kathija Beevi till she passed away and nobody had disputed her title. In any event she would submit that as the antecedent title of Naina Mohammed Sahib has not been proved by the plaintiff, he is not entitled to succeed in the suit.

14. I have to decide in the present appeal whether the plaintiff has managed to prove his title to the property. Both the courts below have come to the conclusion that the plaintiff has not. The only document produced by the



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plaintiff for the purpose of proving his title is the settlement deed. In order for a person to claim title under the settlement deed, he necessarily has to prove that his donor had proper title to the property. A perusal of Exs.A1 to A12 would show that, apart from the revenue records which have been maintained by the Department for the purpose of collection of Kist, no records have been produced as to how Naina Mohammed Sahib had got title to the property.

15. Mr.Silambanan would point out that pending first appeal, they had produced a copy of the 'A' Register which had been obtained under the Right to Information Act for S.No.194/4 which would show that in Patta No.419, Naina Mohammed Sahib was shown as the occupant. Settlement Register by its nature is not a document of title. However, it is indicative of title, provided the same is backed up by patta on the number on which it is entered in the Settlement Register. I asked Mr.Silambanan as to whether he had filed Patta No.419 in order to show that the property stood in the name of Naina Mohammed Sahib. The answer was in the negative. Unless and until the parent deed of Naina Mohammed Sahib is produced, the plaintiff cannot get any title under Ex.A1.

16. On the contra, Ms.Preethi Baskar pointed out from Ex.B1 that Mohammed Meera Sahib has executed a sale deed as early on 21.04.1964 in favour of his daughter Kathija Beevi alias Hatjaa Beevi, and that Kathija Beevi



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and Hatjaa Beevi are one and the same has been admitted by P.W.1 as well as D.W.1. In fact they cannot take a different stand because it is the name of their mother. It would have been a plausible case for the plaintiff to argue that Mohammed Meera Sahib had executed a document in favour of Hatjaa Beevi without having antecedent title, if he has produced some title deeds in the name of Naina Mohammed Sahib. That being absent, I necessarily would have to fall on Ex.B1 in order to come to the conclusion that Mohammed Meera Sahib had executed a sale deed in favour of his daughter Kathija Beevi. If the sale deed has been executed in favour of Kathija Beevi automatically on the date on which the settlement deed was executed in favour of the plaintiff, the donor was not the owner and therefore he could not have any title under Ex.A1.

17. No person can confer title to another more than what he possesses and if he himself does not possess title, all that he conveys is just a piece of paper, which is not worth more than what it is. Both the courts have correctly applied this principle to the facts of the case. They have found that as the plaintiff has not proved the antecedent title of his donor, he is not entitled to succeed in a suit for declaration of title and for injunction and consequently have dismissed the suit and the appeal.



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18. On going through the records, I am not in a position to take a different opinion from those of the Courts below. Consequently, the Second Appeal is not admitted, it is dismissed. The judgment and decree of the learned Subordinate Judge at Madhurantakam in A.S.No.5 of 2013 dated 28.04.2015 in confirming the judgment and decree of the Court of the learned District Munsif at Madhurantakam in O.S.No.274 of 2010 dated 18.09.2012, is confirmed. As the parties are close relatives, this Court is not inclined to impose costs. Consequently, connected miscellaneous petition is closed.

**26.03.2024**

Index : Yes/No

Neutral Citation : Yes/No

Speaking Order / Non-speaking order

KST

To

1. The Subordinate Judge, Maduranthagam.
2. The District Munsif, Maduranthagam.



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**V.LAKSHMINARAYANAN, J.**

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