



S.A.No.918 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2024

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

S.A.No.918 of 2013

1.P.Lakshmanan
2.P.Periyasamy
3.P.Chinnathambi
4.P.Raji

...defendants/respondents/Appellants

Vs.

P.Marimuthu (Died)

2.Madhammal
3.Suganthi
4.Shanmughavel
5.Rajkumar
6.Siddyammal

[(RR2 to R6 are B/R as LR's of the deceased
R1 vide Court order dated 01.02.2024
made in C.M.P.Nos.6642, 6645
and 6652 of 2020 in S.A.No.918 of 2013 (VLNJ)]

...plaintiff/appellant/Respondent



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Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgement and decree dated 28.09.2012 made in A.S.No.15 of 2012 on the file of the II Additional Sub Court, Salem reversing the judgement and decree dated 14.09.2011 made in O.S.No.122 of 2010 on the file of the I Additional District Munsif Court, Salem.

For Appellants : Mr.T.Murugamanickam
Senior Counsel for
Ms.Zeenath Begum

For Respondent : Mr.S.Mukunth
Standing Counsel for
M/s.Sarvabhuman Associates
for R2, R4 and R5

R1-Died steps taken

R3 and R6 - NRN

JUDGEMENT

The present Second Appeal arises out of the judgement and decree of the II Additional Subordinate Judge, Salem in A.S.No.15 of 2012 in reversing the judgement and decree of the I Additional District Munsif, Salem in O.S.No.122 of 2010, dated 14.09.2011.



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2. O.S.No.122 of 2010 is a suit for permanent injunction restraining the defendants from interfering with the possession of the plaintiff. The relationship between the parties are not denied. The plaintiff and defendants are the sons of late Sidhayeeammal and one Periyathambi Gounder. The properties are the self acquisitions of Sidhayeeammal. On 23.10.2002, Sidhayeeammal and Periyathambi Gounder executed a settlement deed in Document No.3780 of 2002 on the file of the Sub Registrar at Suramangalam. On the basis of the said document, the plaintiff took possession of the property and also mutated the revenue records in his favour. To that effect, he had also produced the Patta document, dated 20.02.2003.

3.The plaintiff further pleaded that in respect to the remaining portions of the suit Survey No.6/3, his mother, Sidhayeeammal had executed separate settlement deeds in favour of the defendants 2 to 4. She had also executed a power of attorney in favour of her son one Raman, who had in turn sold the property. In the month of January 2010, when the plaintiff's possession was sought to be interfered with, he thwarted the same by giving a police complaint, but fearing that they would come again and disturb him, he filed the suit for permanent injunction in O.S.No.122 of 2010.



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4.The defendants, on being served, took a plea that the property was not self acquisition of Sidhayeeammal, but a joint family property, and therefore, the plaintiff and the defendants, being co-owners of the property, there is no question of any handing over of the possession. Apart from that, the defendants took a specific plea that Sidhayeeammal and Periyathambi Gounder wanted to give the suit schedule property in equal portions to all their children, and the plaintiff played a guile on them, and took them to the Sub Registrar Officer and got the document executed in his name instead of having it executed in favour of all of them. They also brought to the notice of the trial Court that seeking a declaration that the settlement deed is null and void, a suit was filed in O.S.No.238 of 2010 before the I Additional District Munsif Court, Salem.

The learned trial Judge framed the following issues:

- "1.Whether the plaintiff is entitled permanent injunction as prayed for ?*
- 2.To what other relied is entitled by the plaintiff ?"*



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5.The plaintiff entered the witness box as P.W.1 and marked Ex.P1 to Ex.P15. He also examined two other witnesses in order to substantiate his case. The third defendant entered the witness box and examined himself as D.W.1 and marked Ex.D1 and Ex.D2. After full trial, the learned trial Judge came to a conclusion that the suit deserves an order of dismissal and accordingly, dismissed it.

6.Aggrieved by the order of dismissal, a regular appeal was presented before the learned II Additional Subordinate Judge, Salem. The learned Subordinate Judge came to a conclusion that the mother of the defendants had admitted the execution of the settlement deed but had only stated that it had been obtained by misrepresentation - a vitiating circumstance. Consequently, finding that it is a vacant land, the Lower Appellate Court held possession follows title, and thereby allowed the appeal and decreed the suit as prayed for. Against the reversing judgement, the present Second Appeal has come before me.

7.This Court did not admit the Second Appeal but had ordered notice regarding admission on 11.09.2013. Notice was served and



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M/s.Sarvabhuman Associates entered appearance on behalf of the respondents 2, 4 and 5.

8.Heard Mr.T.Murugamanickam, learned Senior Counsel appearing for Ms.Zeenath Begum and Mr.S.Mukunth, who appears for M/s.Sarvabhuman Associates.

9. Mr.T.Murugamanickam, learned Senior Counsel would vehemently contend that having projected a settlement deed, it is the duty of the plaintiff to examine the attestors to prove the same. Unless and until, the attestors are examined, the settlement deed cannot be held to be valid.

10. Mr.S.Mukunth, learned counsel would argue that attestation would be necessary, if and only if it had been denied by the mother of the defendants or the defendants themselves. He would state that the suit initiated by the defendant's mother in O.S.No.238 of 2010 came to be dismissed on 04.11.2013, and the same had not been restored by her as long as she was alive.



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11. I have carefully considered the arguments on either side and perused the materials available on record.

12. A perusal of the written statement of the defendants in Paragraph 4 of the order of the trial Court, would show the defendants have admitted that the settlement deed was executed by Sidhayeeammal and Periyathambi Gounder. It is their specific case that since the plaintiff had played a fraud on Sidhayeeammal and Periyathambi Gounder, the document is null and void.

13. Section 68 of the Indian Evidence Act, 1872 calls upon a party to examine the attesting witness in order to prove the document. The explanation to Section 68 of the Evidence Act makes it clear that such examination would not be necessary unless and until its execution by a person by whom it purports has specifically denied the execution thereof. In the written statement filed by the appellants herein, the execution of the document has been admitted. The only ground on which the document is sought to be treated as null and void is because vitiating circumstance exists namely execution of the document by misrepresentation. When the execution of the document is admitted and vitiating circumstances are pleaded, the



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burden is on the person who pleads existence of vitiating circumstances to prove the same. Once that burden is discharged, it shifts to the person defending the document to prove that the circumstances pleaded did not exist. Unless and until, the initial burden is proved, the Court cannot call upon the plaintiff to prove the same.

14. The document was executed and accepted without any vitiating circumstances being proved. In addition, the Lower Appellate Court correctly concluded that the document is valid until it is set aside. The subsequent dismissal of O.S.No.238 of 2010 on 04.11.2013 also supports the respondent's case.

15. It is not in dispute that the land involved is a vacant land, and the possession having followed title and the title having stood transferred from Sidhayeeammal and Periyathambi Gounder in favour of the plaintiff, he would be entitled to continue in peaceful possession of the same. Consequently, I do not find any substantial questions of law involved in the appeal. Thereby, the Second Appeal is liable to be dismissed.



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16. The judgement and decree of the II Additional Subordinate Judge, Salem in A.S.No.15 of 2012 dated 28.09.2012 in reversing the judgement and decree of the I Additional District Munsif, Salem in O.S.No.122 of 2010 dated 14.09.2011 stands confirmed. The Second Appeal stands dismissed. Considering that the parties are closely related, I am not ordering cost in this appeal.

12.02.2024

Anu
Index : Yes/No
Neutral Citation Case : Yes/No

To:

1. The II Additional Sub Court, Salem
2. The I Additional District Munsif Court, Salem



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V.LAKSHMINARAYANAN,J.

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