



S.A.No.377 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :09.09.2024

CORAM:

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

S.A.No.377 of 2024
and
CMP.Nos.11392 & 11393 of 2024

R.Jayavelu

.. Appellant

Vs.

1.R.Ashok

2.R.Ramkumar

3.Kamakshi Gnanapriya @ R.Kamakshi

4.V.Saraswathy

.. Respondents

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree dated 05.04.2024 in A.S.No.131 of 2023 on the file of XVIII Additional City Civil Court, Chennai confirming the decree and judgement dated 21.04.2023 in O.S.No.8236 of 2006 on the file of III Assistant City Civil Court, Chennai.

For Appellant : Mr.R.Rajarajan

For Respondents : Mr.K.V.Babu



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J U D G M E N T

The appellant has filed this Second Appeal against the Judgment and Decree dated 05.04.2024 in A.S.No.131 of 2023 on the file of XVIII Additional City Civil Court, Chennai confirming the decree and judgement dated 21.04.2023 in O.S.No.8236 of 2006 on the file of III Assistant City Civil Court, Chennai.

2. Heard, Mr.R.Rajarajan, learned counsel for the appellant and Mr.K.V.Babu, learned counsel appearing for the respondents and perused the materials available on record.

3. The appellant herein is the 1st defendant in O.S.No.8236 of 2006 on the file of the III Assistant City Civil Court, Chennai, filed by the 1st respondent, Ashok, who is one of the brothers of the appellant. The suit was filed seeking relief by directing the 1st defendant to vacate the ground floor and hand over the same, along with claiming damages from the year 2004-2006 at Rs.10,000/- per month. Additionally, from October 2006 until the handing over of possession, future damages were claimed at Rs.10,000/- per



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month. On 03.06.2006, the suit was filed by the plaintiff for the aforesaid relief against five defendants. The 1st defendant is the brother, the 2nd defendant is the mother, and the 3rd defendant is another brother. The 4th and 5th defendants are the sisters of the plaintiff, Ashok.

4. For the sake of convenience, the parties herein are referred to as they are ranked in the suit.

5. The claim for recovery of possession made by the plaintiff was disputed by all the defendants, who filed written statements. After hearing both sides, the trial court framed issues and considered the evidence on record. The learned trial judge granted relief in favor of the plaintiff as prayed for. Challenging that decision, the appellant filed an appeal before the III Assistant City Civil Court, Chennai, in A.S.No.131 of 2023. The First Appellate Judge independently analyzed the evidence on record and ultimately dismissed the appeal, confirming the trial court's findings. Challenging the concurrent findings, the 1st defendant has preferred this appeal.

6. The learned counsel for the appellant submitted that the suit property



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at Alwarpet, extending to 1 ground and 882 cents, and another property in Adyar, extending to 4135 sq.ft., originally belonged to the plaintiff's father, Raju, through two sale deeds dated 21.07.1988 and 09.12.1967. The father passed away on 28.09.1995, leaving behind his wife (3rd defendant, Krishnaveni) and three sons (the plaintiff, 1st defendant, and 3rd defendant), along with two daughters (4th and 5th defendants), as his legal heirs. For the sake of dividing the properties, all the sons and daughters of the said Raju relinquished their shares in favor of their mother, Krishnaveni, through a release deed in 2003 and a settlement deed in 2004, which are undisputed facts.

7. Subsequently, Krishnaveni, the mother (D3), executed two settlement deeds, one in favor of the plaintiff in respect of the property at C-3, Plot No.15, Seethammal Colony, Alwarpet, Chennai (the suit property), with a superstructure in favor of her son (the plaintiff). In respect of the property at Adyar, Plot No.65, Door No.36, Kasthuribai Nagar, First Cross Street, Adyar, Chennai-20, she settled the property. Thereafter, the 2nd defendant, having become the absolute owner of the suit property (Alwarpet) and the property situated at Kasthuri Bai Nagar, Adyar, settled the suit property in favor of the



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plaintiff through a deed of settlement dated 16.10.2004. Similarly, she settled the other property situated at Kasthuribai Nagar, Adyar, in favor of her other two sons, D1 and D3, through two separate settlement deeds dated 11.10.2004.

8. From the date of settlement, the plaintiff became the absolute owner of the suit property. However, he allowed the 1st defendant to occupy the entire ground floor at the latter's request, as he sought to reside there until he could find alternative accommodation. Subsequently, their mother (D2), along with the 1st defendant, refused to vacate the premises and even threatened the plaintiff. As a result, the plaintiff filed the suit for recovery of possession. The plaintiff was also forced to live in a rented house, incurring rental costs. Therefore, he filed the suit seeking recovery of possession, damages, and vacant possession.

9. The 1st defendant admitted the relationship and the settlement deed but objected, stating that while settling the portion, it was never intended to allocate the entire property at Alwarpet (the suit property) in favor of the plaintiff alone. He claimed that the settlement deed was fraudulently executed



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in favor of the plaintiff, as if the mother intended to convey the entire property at Seethammal Colony to him. At the time, the 3rd defendant occupied the 1st floor, and the 1st defendant occupied the ground floor. The property allotted to the 1st defendant at Kasthuribai Nagar was allegedly less valuable compared to the property at Alwarpet. Additionally, the 1st defendant argued that the property in Adyar was not yet ready for occupation, and there was an unequal distribution among the brothers, with a larger portion of the property going to one party, and the other mutual terms, including the claim for damages, were also disputed by the plaintiff. Before the trial Court, the learned trial Judge framed issues and held that, except for the future claim of Rs.10,000/- which was not available to the plaintiff, the other reliefs such as vacating and handing over possession of the suit property, as well as the damages claimed for the stipulated period, were granted as prayed for. Thus, the suit was partly decreed. Challenging the findings, an appeal was filed, which was also dismissed, confirming the findings of the Courts below.

10. The learned counsel for the appellant (1st defendant) further



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submitted that the plaintiff had fraudulently obtained the entire house property with the superstructure from his mother through the settlement deed, and had forced her to give the property at Kasthuribai Nagar, Adyar (4135 sq.ft.), to the two brothers, D1 and D3, which was of lesser value compared to the property given to the plaintiff. The appellant contended that the unequal distribution made the gift deed liable to be cancelled. He also argued that the defendant was willing to hand over the Adyar property to the plaintiff in exchange, but the courts below failed to take note of the unequal distribution of the property.

11. By way of reply, the learned counsel for the 1st respondent submitted that out of love and affection, their mother, D2, executed a settlement deed, giving the property at Alwarpet (the suit property) exclusively to the plaintiff. Although the property is of a larger extent compared to the property given to the defendants 1 and 3 through another settlement deed, the suit property is situated in an interior location. In contrast, the property allotted to the defendants abuts the main road. Therefore, there is no inequality in the distribution of the property, as appreciated by the Court below, which requires no interference.



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WEB COPY 12. Further, he submitted that although the settlement was executed in 2004, all these years the plaintiff has been forced to pursue legal action to take possession of the property, as the 1st defendant refused to hand over possession despite receiving notice. From 2006 onwards, the plaintiff has been fighting in court to gain possession of the property. Moreover, he argued that since the plaintiff is residing in a rented house, he is entitled to claim damages.

13. Upon considering both submissions, it is evident that the ownership of the property originally belonged to their father, Raja. The release deed executed by all legal heirs of Raja in favor of his wife, Krishnaveni (D2), is an admitted fact. The courts below held that as per the settlement deed executed by D2, the plaintiff became the absolute owner and is therefore entitled to evict the 1st defendant, who is occupying the ground floor.

14. The learned counsel for the respondent/appellant submitted that the



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alleged gift deed was not acted upon. Even as per the evidence of P.W.1, he admitted that he was not in possession of the original deeds. However, the counsel for the 1st respondent submitted that the plaintiff is in possession of his own gift deed, while defendants 1 and 2 have not produced the gift deeds in their names. It was replied that the plaintiff took all the original settlement deeds, preventing the defendants from using them for economic purposes.

15. By way of reply, the learned counsel for the respondent/plaintiff submitted that he holds the original gift deed for the property at Alwarpet and is unaware of or in possession of the original settlement deeds executed in favor of D1 and D2.

16. Considering the entire situation, the gift deed executed by the mother in favor of the plaintiff, D1, and D2 is admitted. Moreover, it is an undisputed fact that sisters D3 and D4 gave up their shares.

17. During her lifetime, the 3rd defendant was alive but did not



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challenge the two settlement deeds executed in favor of the plaintiff and defendants 1 and 2. As the right person to dispute the validity and genuineness of the settlement deeds, her lack of objection is significant, although she was examined as a witness. After the mother's demise, the 1st defendant occupied the ground floor and refused to vacate, claiming that due to unequal distribution of property, he is entitled to a share in the Alwarpet property. As a result, he continued to reside on the ground floor.

18. However, as per the law, once the gift deed is executed, possession is deemed to be given to the settlee. Accordingly, possession was given to the plaintiff. Subsequently, the plaintiff allowed his father and mother to occupy the ground floor. Even after the mother's demise, the 1st defendant continued occupying the ground floor. The 1st-floor occupant, brother Ramkumar, has already vacated and handed over the keys. Therefore, this suit is for the recovery of possession, directing the 1st defendant to vacate the premises and hand over possession. As of now, it is undisputed that the 1st defendant occupies the ground floor.

19. As observed by the Courts below, the gift deed from 2004 has been acted upon, even though the original documents are not with defendants 1 and



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2, despite their request to the plaintiff for the original documents. The plaintiff denied possessing the settlement deed executed in favor of D1 and D3, stating that only the settlement deed in his favor is in his possession. As such, the original settlement deeds in favor of D1 and D3 are not available.

20. The Court grants the defendants liberty to obtain a missing certificate and use the certified copy of the settlement deed for legal purposes.

21. Hence, the plaintiff is the absolute owner of the suit property as per the settlement deed executed by the mother. The 1st defendant is directed to hand over vacant possession of the property to the plaintiff by 16.10.2024. Regarding the claim for damages, the learned counsel for the plaintiff/1st defendant argued that the plaintiff has been forced to stay in a rented house in Kodambakkam for a monthly rent of Rs. 35,000/- while the 1st defendant occupies the ground floor indeed he resides elsewhere outside Chennai. The 1st defendant occasionally visits the suit property with the intent to harass the plaintiff and prevent him from obtaining possession.

22. The appellant/1st defendant denied this, stating that his wife is



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suffering from cancer, and he has no other source of income. Furthermore, he has two daughters who need to be married, and he prayed for a waiver of rent arrears.

23. Considering the facts and comparing the extent of property allotted to the 1st defendant/appellant, a larger portion was given to the plaintiff. However, since the gift deed was acted upon and no objection was raised by the mother, the 1st defendant has no locus standi to dispute the gift deed.

24. In light of the fact that the appellant's / 1st defendant's wife is suffering from cancer, he has two unmarried daughters, and his economic situation is weak, this Court is inclined to reduce the damages awarded by the trial Court to a total of Rs.3,00,000/- (Rupees Three Lakhs only) to be paid as damages to the 1st respondent / plaintiff. The appellant /1st defendant is directed to hand over the keys and pay Rs. 3,00,000/- by demand draft to the 1st respondent / plaintiff on or before 16.10.2024.

25. In view of the above, this Second Appeal is disposed of.



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Consequently, the connected miscellaneous petitions are closed. Any deviation case will be re-opened for further action. No costs.

26. For reporting compliance, post the case on 17.10.2024.

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Index : Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The XVIII Additional City Civil Court, Chennai.
2. The III Assistant City Civil Court, Chennai.
3. The Section Officer, VR Section, High Court of Madras.

T.V.THAMILSELVI, J.



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