



S.A.Nos.336 & 337 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 08.02.2024	Judgment Pronounced on 01.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.Nos.336 & 337 of 2017
and C.M.P.Nos.7934 & 7935 of 2017

Pullarswamy

..Appellant in both
the Second Appeals

Vs.

1.Thulasiyammal

2.Eswaramurthy

..Respondents in both
the Second Appeals

COMMON PRAYER: These Second Appeals filed under Section 100 of the Civil Procedure Code against the common judgment and decree dated 10.01.2017 passed in A.S.No.19 of 2016 and A.S.No.63 of 2015 on the file of the learned Sub Judge, Sathyamangalam, reversing the judgment and decree dated 15.09.2015 made in O.S.No.201 of 2013 on the file of the learned District Munsif, Sathyamangalam.

(In both the Second Appeals)

For Appellant : Mr.S.Parthasarathy

For Respondents
For RR1 & 2 : Mr.A.Mohamed Ismail



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S.A.Nos.336 & 337 of 2017

COMMON JUDGMENT

These Second Appeals have been filed against the common judgment and decree dated 10.01.2017 passed in A.S.No.19 of 2016 and A.S.No.63 of 2015 on the file of the learned Sub Judge, Sathyamangalam, reversing the judgment and decree dated 15.09.2015 made in O.S.No.201 of 2013 on the file of the learned District Munsif, Sathyamangalam.

2.The unsuccessful defendant before the Trial Court as well as the First Appellate Court, in a suit for declaration and permanent injunction is the appellant herein.

3.The defendant had also filed a suit in O.S.No.208 of 1991, pertaining to the above said property, in view of the interference and disturbances caused by the defendant, the suit came to be instituted.

4.The parties are described as per their litigating status before the Trial Court.



S.A.Nos.336 & 337 of 2017

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5.The case of the plaintiff is that the property originally belonged to one Karuppanna Gounder, from whom, one Palaniswamy, the husband of the 1st plaintiff and father of the 2nd plaintiff, purchased the property and who in turn, had settled the property to Palaniswamy in and by a Settlement Deed dated 02.04.1968. Thereafter, the said Karuppanna Gounder along with the said Palaniswamy, representing himself and minor 2nd plaintiff, sold 1 acre and 50 cents in and by two sale Deeds dated 08.10.1973 and 29.11.1976. According to the plaintiffs, the balance of lands were in the enjoyment of the Karuppanna Gounder and Palaniswamy. The said Palaniswamy died on 05.05.1971 and thereafter, the plaintiff, along with the said Karuppanna Gounder had been jointly enjoying the suit properties, until the sale of another 50 cents on 23.07.1979. The said Karuppanna Gounder died in 1991 and thereafter, the plaintiffs have been in possession and enjoyment of the remaining lands, out of which, 59 cents were sold on 07.11.1994 and 20 cents were sold on 16.07.2001, retaining the balance of 84 cents.

6.The defendant filed a written statement stating that in respect of the suit property, Karuppanna Gounder had executed a Will dated 27.05.1988 in



S.A.Nos.336 & 337 of 2017

favour of the defendant and subsequently, after demise of said Karuppanna Gounder, the defendant has been in peaceful possession and enjoyment of the suit property absolutely. The defendant has further stated that the Settlement Deed dated 02.04.1968 was never acted upon and the 2nd plaintiff had also filed a suit in O.S.No.143 of 1995, which was dismissed on 13.11.2002 and suppressing the said fact, the present suit has been filed and the same is not maintainable. It is also contended that the suit is already barred by limitation.

7.The Trial Court partly decreed the suit, against which both the plaintiffs as well as the defendant preferred First Appeals. The First Appellate Court came to a conclusion that the appeal filed by the plaintiffs was entitled to be allowed and the appeal filed by the defendant was to be dismissed. Consequently, the First Appellate Court decreed the suit in O.S.No.201 of 2013 in entirety. Aggrieved by the above judgments and decrees of the First Appellate Court, the defendant has preferred the above Second Appeal.



8.The above Second Appeals have been admitted on 13.06.2017 on the following substantial questions of law:

1)Whether the Lower Appellate Court is correct in granting relief in favour of the respondents/plaintiffs, despite the fact, that the 2nd respondent/2nd plaintiff has suppressed the fact of filing of earlier suit in O.S.No.143 of 1995?

2)Whether the Courts below is right in coming to the conclusion that the respondent has the title over of the property especially when the Settlement Deed was not acted upon and in subsequent document, settler has alienated the property in favour of the third persons?

3.Whether the Courts below is right in coming to the conclusion that in the recital of the Settlement Deed Ex.A1 and clearly stated that the Deed will be given effect after his life time.

9.I have heard Mr.S.Parthasarathy, learned counsel for the appellant and Mr.A.Mohamed Ismail, learned counsel for the respondents and perused the materials available on record.

10.The learned counsel for the appellant would address his arguments and around the substantial questions of law that have been framed by this



S.A.Nos.336 & 337 of 2017

Court. He would state that the fact that the earlier suit filed by the plaintiff had been dismissed would clearly operate as *resjudicata* and the present suit itself was not maintainable and the First Appellate Court, without taking note of the same, proceeded to decree the suit in entirety.

11.The learned counsel for the appellant also invited my attention to Ex.B2 to Ex.B18, which had been exhibited on the side of the defendant to prove his possession. He would also invite my attention to the findings of the Courts below regarding the proof of Will and the fact that the Settlement Deed was not proved to be acted upon, would give full effect to the Will and therefore, the plaintiffs ought not to have been granted decree as prayed for.

12.Per contra, Mr.A.Mohamed Ismail, learned counsel for the respondents would state that the First Appellate Court has rightly re-appreciated the oral and documentary evidence and came to the conclusion that the plaintiff was entitled to relief and prayed for dismissal of the Second Appeals.

13.In so far as the First Appellate Court, it has found that Ex.A1 was only a Settlement Deed and not a Will. However, I find that, having gone



through Ex.A1, the terms covenant of Ex.A1, the settlor had retained the right of enjoyment of the property alone, without a right of encumbrance. It cannot be termed as a Will, but was only a Settlement Deed.

14.The First Appellate Court has rightly found that under Ex.A2 and Ex.A3, the property has been conveyed jointly by the said Karuppanna Gounder and Palaniswamy and therefore, Ex.A1/Settlement Deed had been duly acted upon. I do not see any illegality or perversity in the said finding arrived at by the First Appellate Court in interpreting with Ex.A1/Settlement Deed.

15.The First Appellate Court also found the issue of *resjudicata* against the appellant, holding that not only the earlier suit filed by the plaintiff in O.S.No.143 of 1995 had been dismissed, but also even the earlier suit in O.S.No.208 of 1991 filed by the defendants had also been dismissed on 21.08.1996.

16.The First Appellate Court, also placing reliance on the ratio laid down by this Court in ***Seetharaman Vs. Mani*** reported in **2014 (4) MLJ 85** held that if suits were dismissed, without adjudicating the rights of the



S.A.Nos.336 & 337 of 2017

parties, it would not operate as *resjudicata*. The First Appellate Court held and found that the revenue records came to be mutated in favour of the defendants, only based on Ex.B1/Will. The First Appellate Court found that on the date of execution of the Will dated 02.04.1968, the Testator namely, the said Karuppanna Gounder had no right in the suit property to execute a Will. Moreover, the First Appellate Court also found that the Will had also not been proved in terms of Section 68 of the Indian Evidence Act. The First Appellate Court also found that the plaintiffs were entitled to the relief of permanent injunction, which was negated by the Trial Court. I do not find any illegality or perversity in the findings arrived at by the First Appellate Court in granting decree in favour of the plaintiffs as prayed for.

17.In fine, the substantial questions of law are answered against the appellant and in fine, the Second Appeals are dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

01.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order

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S.A.Nos.336 & 337 of 2017

P.B.BALAJI., J.

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To

- 1.The Sub Judge, Sathyamangalam.
- 2.The District Munsif, Sathyamangalam.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.

Pre-delivery judgment made in

S.A.Nos.336 & 337 of 2017

01.03.2024