



S.A.No.482 of 2017
& C.M.P.No.11862 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 31.01.2024

Pronounced on: 16.02.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.482 of 2017
& C.M.P.No.11862 of 2017

M.Gunasekaran.

... Defendant/Respondent/Appellant

/versus/

M.Baskaran.

.... Plaintiff/Appellant/Respondent

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree of the Sub-Court, Tiruvarur in A.S.No.13 of 2011 dated 08.09.2011 and confirming the judgment and decree in O.S.No.203 of 2004 dated 21.07.2010 on the file of District Munsif Court, Tiruvarur.

For Appellant : Mr.M.Thamizhavel

For Respondent : No appearance



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JUDGMENT

The unsuccessful defendant in a suit for recovery of possession is the appellant herein.

2. The defendant has succeeded before the trial Court where the suit came to be dismissed. However, on appeal, the Subordinate Court, Tiruvarur, in A.S.No.13 of 2011 reversed the judgment and decree of the trial Court and decreed the suit, as against which the present Second Appeal has been preferred.

3. The Second Appeal was admitted by this Court on 17.12.2021 on the following substantial questions of law:-

“ 1. Whether the First Appellate Court is correct in passing the decrees and judgments in favour of the respondent in A.S.No.13 of 2011?

2. Whether the First Appellate Court is correct in reversing the decree and judgment in favour of the respondent without considering the plea of the appellant that the settlement deed dated 14.06.2004 executed by the deceased Kanagambal in favour of the respondent is created with coercive, undue influence and



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misrepresentation?

3. Whether First Appellate Court is correctly discussed legal points while passing the decree and judgment in A.S.No.13 of 2011?

4. Why the First Appellate Court failed to see the documentary evidence and oral evidence produced by the appellant to prove his possession over the suit property while passing the decree and judgment in favour of the respondent?

4. Despite service of notice, none appeared for the respondent.

Heard Mr.M.Thamizhavel, Learned Counsel for the appellant.

5. The material facts that are necessary for deciding this Second Appeal are as herein under:

The respondent/plaintiff filed a suit claiming that the suit property to an extend of 15 cents of Nanjai land belongs to him. The defendant is none else than the own brother of the plaintiff. Originally, the entire 15 cents belonged to their mother Kanagambal, who executed a settlement deed dated 14.06.2004 in favour of the plaintiff. As the defendant was in permissive possession, the plaintiff's mother issued a notice informing the defendant about



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the settlement deed and called upon the defendant to handover the possession to the plaintiff. Since, the defendant did not comply with the said demand of the mother, the plaintiff sent a Lawyer's notice on 09.08.2004, to which the defendant sent a reply with false allegations. Since the defendant did not come forward to vacate, the suit was instituted.

6. The defendant filed a written statement stating that the defendant was working in the Telephone Department and had contributed for purchase of the suit property and that the plaintiff was settled in Chennai and their elder brother was also settled in Coimbatore and they used to visit the village only during festival days. According to the defendant, the mother Kanagambal also started living along with the plaintiff in Chennai. Further, the defendant contended that the mother went along with the defendant's elder brother after borrowing Rs.25,000/- from the defendant and thereby, sold the suit property to the defendant. Also further, the defendant contended that the settlement deed executed by the mother Kanagambal in favour of the plaintiff was a forged one and the plaintiff never took possession of the suit property, which has always been with the defendant alone.



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7. The trial Court dismissed the suit, as against which the plaintiff preferred appeal in A.S.No.13 of 2011.

8. The First Appellate Court, on an independent assessment of oral and documentary evidence found that mother Kanagambal was the absolute owner of the suit property having purchased the same under Ex.A.1 sale deed.

9. The First Appellate Court also found that execution of settlement deed was duly proved by examination of the witnesses to the said document and found the evidences of P.W.2 to P.W.4 to satisfy the requirements of attestation under Section 3 of Transfer of Property Act.

10. The First Appellate Court also found that the defendant has not established his contention that the settlement deed was forged or brought about under suspicious circumstances in favour of one son alone.

11. The First Appellate Court also took into account the fact that two of the siblings of the plaintiff and the defendant had attested the said settlement deed and they did not take any benefit under the said settlement



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deed. Ultimately, the Appeal came to be allowed and the judgment and decree of the trial Court was set aside.

12. Heard Mr.M.Thamizhavel, Learned Counsel for the appellant.

13. The Learned Counsel for the appellant would state that the appellant/defendant has been in absolute physical possession and enjoyment of the suit property for several years. He would also state that the appeal came to be allowed only on sympathetic grounds and not on any legal premise and thus, the findings of the First Appellate Court were vitiated and liable to be interfered with. The Learned Counsel for the appellant would also state that the brother of the plaintiff and the defendant, namely P.W.2, was the main villan in the whole story and his version was totally prejudiced and the First Appellate Court ought not to have placed any reliance on the same since the brother who was examined as P.W.2 was not in cordial terms with the appellant/defendant. He would also state that the defendant was in possession of only 364 sq.ft and the plaintiff being away in Chennai, had no roots in the village and only with a vindictive attitude, the plaintiff has chosen to file the suit seeking recovery of possession from the appellant.



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14. Insofar as to the claim of the appellant that the mother had borrowed a sum of Rs.25,000/- and had executed an unregistered mortgage deed, I find that despite an attempt to mark the said document before the trial Court, the same was dismissed, as against which a revision was also preferred before this Court.

15. The Learned Counsel for the appellant would fairly concede that the said Civil Revision Petition was also dismissed and therefore, the appellant was not in a position to mark the alleged unregistered mortgage deed executed by the mother in favour of the appellant.

16. On a reading of the written statement of the defendant, I find that the execution of the settlement deed is not denied by the defendant. The defendant has merely stated that in order to settle scores with the defendant, the eldest brother, Dharmaraj took advantage of the fragile mental condition of the mother and by having persons close to him attest the document, brought about the said settlement deed. Thus, having not specifically denied the execution of the settlement deed, the burden was only on the defendant to prove that the said settlement deed was brought about by foul play, either by indulging in forgery



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or by coercion or undue influence. The defendant has not been able to produce any oral or documentary evidence to substantiate his defence as set out in the written statement.

17. Per contra, the attesting witnesses have clearly spoken about the due execution of the settlement deed by the mother in favour of the plaintiff. Merely because, the defendant has been in physical possession of the suit property and the settlement deed mentions that possession has been handed over by the mother to the plaintiff, it would not invalidate the settlement deed. Possession follows title. Therefore, the factum of possession been handed over to the plaintiff under the said settlement deed can also relate to the plaintiff being placed in symbolic possession. Thus, this Court is unable to accept the submission made by the Learned Counsel for the appellant that merely because the settlement deed states that the possession has been handed over to the plaintiff which is admittedly and factually incorrect, the same would vitiate the settlement deed itself.

18. The First Appellate Court has rightly found that due execution of the settlement deed has been proved through evidence of the attesting



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witnesses who are none else than the siblings of the plaintiff and the defendant, who were in fact not beneficiaries under the said settlement deed. Their evidence certainly would inspire the confidence of the Court and moreover, the First Appellate Court has rightly found that the appellant has not let in any oral or documentary evidence to prove the allegations of fraud, coercion or undue influence and misrepresentation by examination of any independent witnesses.

19. The other defence with regard to the mother giving away the property to the appellant/defendant after borrowing sum of Rs.25,000/-, the defendant has not able to substantiate the said version also and his attempts to much an unregistered mortgage deed were also unsuccessful and became final too.

20. In fine, I do not find any perversity or illegality in the findings arrived at by the First Appellate Court. The substantial questions of law are answered against the appellant and the judgment and decree of the First Appellate Court stands confirmed. The defendant shall vacate and handover vacant possession of the suit property to the respondent/plaintiff. Considering that the appellant has been in possession of the suit property for several years



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and also considering the relationship between the plaintiff and the defendant, namely own brothers, the appellant/defendant is granted time to vacate and handover the vacant possession of the suit property to the respondent/plaintiff, on or before 31.12.2024, subject to the appellant/defendant filing an affidavit of undertaking that he would peacefully handover the vacant possession of the suit property to the respondent/plaintiff, without driving the respondent/plaintiff to execution proceedings.

21. With the above direction, this ***Second Appeal is dismissed.*** No costs. The judgment and decree passed by the Learned Subordinate Judge, Tiruvarur in A.S.No.13 of 2011 dated 08.09.2011 stands confirmed. Consequently, connected Miscellaneous Petition is closed.

16.02.2024

Index :Yes/No.

Internet :Yes/No.

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P.B.BALAJI, J.

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Pre-delivery judgment made in
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