



S.A.No.758 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 18.01.2024

Pronounced on: 16.02.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.758 of 2017

1. C.Govindaraj.

2. G.Lakshmi.

... Defendants 3 & 4/Appellants

/versus/

1. Malarkodi.

2. Chinnasamy, (Died)

3. Muthayyan

... Plaintiff/Respondent

.... Defendants 1 & 2/Respondents

R2 Died LR's of the deceased R2 is already on record. Hence, no new parties need be impleaded recorded vide Court order dated 18.01.2024 made in S.A.No.758 of 2017 (PBBJ)

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the decree and judgment of the Additional District Court, Ariyalur dated 21.07.2017 passed in A.S.No.43 of 2016 confirming the decree and judgment of the District Munsif Court, Jayankondam dated 24.06.2009 passed in O.S.No.259 of 2004.

For Appellant : Mr.Yagnesh Patta
for Mr.P.Sesubalan Raja

For R1 : Ms.S.Anandhi,
for Mr.S.Kannan



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JUDGMENT

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The unsuccessful defendants 3 & 4 in a suit for declaration and consequential injunction are the appellants herein.

2. The parties, for sake of convenience are described as per their litigating status before this Court.

3. The material facts that are necessary for deciding the present Second Appeal are as herein under:

The plaintiff is the daughter of the 1st defendant. The defendants 2 & 3 are the brothers of the plaintiff. The 4th defendant is the wife of the 3rd defendant. The case of the plaintiff is that she became entitled to the suit property by virtue of the settlement deed executed by her mother on 20.03.1999. According to the plaintiff, her mother took back the original settlement deed from the plaintiff and proceeded to cancel the same on 10.03.2003. Thereafter, the mother had executed a sale deed in favour of the 1st plaintiff's sister-in-law, namely, wife of the 3rd defendant i.e., 4th defendant on 27.03.2003. Subsequently, according to the plaintiff, the defendant attempted to



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interfere with the plaintiff's peaceful possession and enjoyment and in order to protect her possession and to declare the sale deed executed by the 1st defendant in favour of the 4th defendant as not valid, the suit came to be filed.

4. The 3rd defendant, the brother of the plaintiff filed a written statement on behalf of the mother and his wife, 3rd defendant respectively.

5. According to the said written statement, the mother had no right to execute the settlement deed in favour of the plaintiff as the property was ancestral and joint family property in nature. Further, the plaintiff was never in possession and enjoyment of the suit property. The trial Court partly decreed the suit holding that the plaintiff is entitled only for the relief of declaration.

6. The defendants 3 & 4 have preferred an appeal in A.S.No.43 of 2016. The First Appellate Court, after assessing the oral and documentary evidence in an independent manner, came to the conclusion that the mother had every right to execute the settlement deed and further, she had no right to cancel the same and execute the sale deed in favour of the 4th defendant thereafter.



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7. Aggrieved by the concurrent findings, the appellants/defendants

3 & 4 have preferred the present Second Appeal and the above Second Appeal has not been admitted.

8. I have heard Mr.Yagnesh Patta, Learned Counsel for the appellants and Ms.S.Anandhi representing for Mr.S.Kannan, Learned Counsel for the 1st respondent.

9. I have also gone through the pleadings of the respective parties, the oral and documentary evidence adduced before the trial Court as well as the judgments of the trial Court and First Appellate Court.

10. The main contention advanced by the Learned Counsel for the appellants is that the mother had no right to execute the settlement deed and therefore, the settlement deed itself being a void document, nothing much can be made out with regard to the cancellation deed executed by the mother. According to the Learned Counsel for the appellants, there was no necessity at all for the mother to cancel the settlement deed since the settlement deed itself is a void document and the property being an ancestral and joint family



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property in nature, the mother could not execute the settlement deed.

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11. Periyadurai (P.W.2) was examined on the side of the plaintiff.

The Counsel for appellants contends that the Courts below have placed reliance on the evidence of P.W.2 along with the evidence of D.W.1 to arrive at a finding that there was a partition between the 1st defendant and his two sons. Further, the trial Court has also rightly found that if it was the case of the defendants that the mother had no right to execute the settlement deed in respect of undivided joint family property, then the very case set up by the defendants under a sale deed executed by the mother in respect of the very same property would also have to follow the very same line of argument and consequently will be a void document.

12. From an overall reading of the evidence of the parties, it is clear that the property which is the subject matter of the settlement deed which was executed in favour of the plaintiff and subsequently came to be cancelled is the separate property of the mother. The First Appellate Court has also rightly taken note of the fact that the schedule of Ex.A.1 settlement deed is also a clear point of the fact that there was a division of the property into four shares, by



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retaining $\frac{1}{4}$ share in the common well. If really, the properties were undivided or if the mother did not have any right to execute a settlement deed, then the sale deed executed by the mother in favour of the 4th defendant will also be void. Moreover, the Courts below have also found that pursuant to the settlement deed, the plaintiff was put in possession of the suit property as evidenced by Ex.A.2 to Ex.A.7. The plaintiff has proved possession of the suit property at her hands. The First Appellate Court has also rightly come to the conclusion that the settlement deed which was acted upon could not be revoked and any such revocation or cancellation would not bind the plaintiff.

13. Thus, I find that there is no error or patent illegality in the findings arrived at by the trial Court as well as the First Appellate Court and do not warrant interference under Section 100 of C.P.C. Hence, I do not find any substantial questions of law arising for consideration in this Second Appeal.

14. Accordingly, this *Second Appeal is dismissed*. No costs. The judgment and decree passed by the Additional District Court, Ariyalur, dated 21.07.2017, in A.S.No.43 of 2016 stands confirmed.

16.02.2024

Index :Yes/No.
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P.B.BALAJI, J.

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Pre-delivery judgment made in
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