



S.A.No.243 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 13.03.2024

Pronounced on: 22.03.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.243 of 2019

1. Annamalai,
2. Madeswari,
3. Minor Sivaprakasam,
4. Minor Vaikundhan,
5. Sumathi,

... Plaintiffs/Respondent/Appellants

/versus/

1. Pasupathi,
2. Sivasankar,
3. Ramajayam,
4. Nachiammal,
5. Unnamalai,
6. Vedi,
7. Kadaiyanda Veetu Vedi (died).
8. Sivagami,
9. Loganathan,
10. Kumar,
11. Thitti
12. Sridharan,

... Defendants/Appellants/Respondents

R7-Died

R8 to R12 brought on record as LR's of R7 vide order of Court dated 11.04.2023 and dated 01.06.2023 made in C.M.P.No.5860, 5684, 5863 of 2020 in S.A.No.243 of 2019 (NSSJ).

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 18.12.2012 made in A.S.No.18 of 2011 on the file of Subordinate Judge, Tirupattur, Vellore District reversing the judgment and decree dated 03.01.2011 made in O.S.No.193 of 2004 on the file of District



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Munsif Court, Tirupattur, Vellore District.

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For Appellants : Mr.S.Annamalai

For R1 to R6 &
R8 to R12 : Mr.T.Dhanasekaran

For R7 : Died (Steps taken)

J U D G M E N T

The plaintiffs having suffered a reversal finding before the First Appellate Court in a suit for declaration and permanent injunction are before this Court.

2. The parties are described as per their litigating status before the trial Court.

3. The brief facts that are necessary for deciding the Second Appeal is as hereunder:-

It is the case of the plaintiffs that the suit property belonged to Oomiayan @ Raman, son of Kali who had inherited the same from his



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ancestors. The said Kali had three other sons by Periya Mathala Kali, Nadu Mathali Kali and Chandran Kali. According to the plaintiffs, there was an oral partition amongst the brothers and under the same Oomiayan @ Raman was allotted the suit property. The said Oomiayan @ Raman was a Bachelor.

4. It is the case of the plaintiffs that the said Oomiayan @ Raman executed a settlement deed in favour of the plaintiffs. The said Arunachalam died on 23.09.2001 and consequently, the said Arunachalam's right was inherited by the plaintiffs and when there was an attempt by the defendants to encroach in the suit property, the plaintiffs filed the suit for declaration and permanent injunction. The case of the 1st defendant which was also adopted by the other defendants was that the suit property has not been properly described and there was a partition in the year 1988 and 8.50 Acres in S.No.7, out of 9.57 Acres was allotted to the 1st defendant and similarly, 1.5 Acres out of 4.64 acres in S.No.28/1 was allotted to the 1st defendant and he has been enjoyment of the same, paying kist and also planted jack fruit trees and other trees in the said land.



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5. It is the specific case of the defendants that the said Oomiayan

@ Raman had no right in the suit property and therefore, the settlement deed was not valid.

6. The trial Court finding that the defendants have admitted the fact that the properties in two survey numbers in a partition of the family members were allotted to Oomiayan @ Raman and also admission of the defendants that the plaintiffs were in possession and enjoyment of the suit property based on the settlement deed, decreed the suit. The First Appellate Court finding that the partition deed in the year 1988 was admitted, proceeded to hold that when there was no mention about how Oomiayan @ Raman got the property in Ex.A.1 Settlement deed and also holding that Oomiayan @ Raman was dumb and deaf person and was not competent to execute the settlement deed and further, holding that since the attesting witnesses to the settlement deed were not examined, proceeded to allow the appeal.

7. Aggrieved by the said reversal finding rendered by the First Appellate Court, the plaintiffs have come up by way of Second Appeal.



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8. After hearing the Learned Counsels, this Court has framed the following substantial questions of law:-

“(i). Whether the Lower Appellate Judge erred in holding that mere marking Ex.A.1 Settlement Deed does not prove the plaintiffs/appellants' right especially when the plaintiffs/appellants had duly proved the same by examining the one of the witnesses as P.W.3 as contemplated under the provisions of Section 68 of the Indian Evidence Act ?

(ii). Whether the Lower Appellate Judge erred in perversely holding that the said Omaiyan alias Raman was deaf person and not competent to examine the Settlement Deed and no precautions taken before registration of the document and there was no explanation from the plaintiffs, regarding the same were absolutely untenable and unwarranted as admittedly there was no such pleadings made by the defendants either in main written statement or in their proof affidavit or even in their grounds filed in support of main appeal in A.S.No.18 of 2011 and in the absence of any such pleading, how could the appellants/ plaintiffs were liable to examine the executants of the Ex.A.1 settlement deed as claimed by the learned Lower Appellate Judge?



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iii) Whether the Lower Appellate Judge erred in arriving to a conclusion that the appellants/plaintiffs had not proved that how the executant of Ex.A.1 Settlement Deed had vested the suit property who had clearly stated in Ex.A.1 that he got the suit properties ancestrally and further the respondents/ defendants who claim the title over the properties in question also ancestrally though his father Kali admittedly the brother of the executant of Ex.A.1 i.e., Omaiyan @ Raman also a coparcener?"

9. I have heard Mr.S.Annamalai, Learned Counsel for the appellants and Mr.T.Dhanasekaran, Learned Counsel for the respondents 1 to 6, 8 to 12 for final disposal of the Second Appeal.

10. Mr.S.Annamalai, Learned Counsel for the appellants would invite the attention to the finding of the First Appellate Court with regard to plea of oral partition not being substantiated and also the portions of the judgment of the First Appellate Court where the First Appellate Court has proceeded to reverse the findings of the trial Court based on alleged admissions i.e., the oral evidence adduced, namely, cross examination of D.W.1.



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11. The Learned Counsel for the appellants would state that there is absolutely no pleading or evidence as to Oomiayan @ Raman being a deaf and dumb person and the First Appellate Court has committed an error in accepting the oral submission of the Learned Counsel for the appellants in this regard, before the First Appellate Court, in order to render a finding that no precautions taken before registration of the settlement deed executed by deaf and dumb person. Further, he would also contend that the execution of the settlement deed being a registered instrument was not specifically denied by the defendants and therefore, there is no necessity to examine the attesting witnesses to prove due execution of the said settlement deed.

12. Per contra, Mr.T.Dhanasekarn, Learned counsel for the respondent 1 to 6 & 8 to 12 would submit that the said Oomiayan @ Raman was not competent to execute the settlement deed and he had no right, title or interest in the suit property in the first place and in any event, Section 68 of the Indian Evidence Act has not been complied with and further, he would also contend that though the said Oomiayan @ Raman was very much available, he was not examined. Therefore, according to the learned counsel for the respondents, the settlement deed is in valid and adverse inference has to be



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drawn against the plaintiffs for not examining Oomiayan @ Raman who used to attend the trial of the suit as claimed by the defendants.

13. I have carefully considered the rival submissions advanced by the Learned Counsel on either side.

14. In the written statement, I do not find any denial with regard to the relationship between the parties and also the fact that the Oomiayan @ Raman died as a Bachelor.

15. It is the case of the defendants that Oomiayan @ Raman had no right in the suit property and therefore, the claim of inheriting the suit property and settling the same in the name of the plaintiffs did not arise. The execution of the settlement deed is not specifically denied in the written statement.

16. Thus, I do not find the requirement of Section 68 of Indian Evidence Act, 1872 coming into play in such a scenario and further, it is seen from the evidence that when the 1st defendant was examined as D.W.1, he has categorically admitted that the plaintiffs are in possession and enjoyment of the



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suit property only based on the settlement deed and that they have never disturbed the peaceful possession and enjoyment of the plaintiffs with regard to the said property.

17. The trial Court baring its decision on the said admission of the 1st defendant, coupled with the fact that there is no specific denial of the execution of the settlement deed, proceeded to hold that the settlement deed was valid.

18. Point for consideration is whether the said Oomiayan @ Raman had a right to settle the suit property in favour of the defendants in the above referred settlement deeds.

19. Though, it is the case of the defendants that there was no allotment in favour of Oomiayan @ Raman and consequent Oomiayan @ Raman did not have any right to execute the settlement deed, it is seen from the evidence of D.W.1 that in respect of two survey numbers available, there was a partition amongst the family members and the share was allotted to Oomiayan @ Raman and thus, Oomiayan @ Raman was enjoying the suit property in his



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own right. That apart, D.W.1 has also admitted that the plaintiffs are in possession only based on the settlement deed executed by Oomiayan @ Raman.

Thus, the admission of the opponent is the best evidence before the Court of law and the trial Court has rightly taking into account the said admission made by the 1st defendant, adducing evidence on behalf of the defendants and proceeded to grant a decree in favour of the plaintiffs. However, the First Appellate Court had unfortunately misread the oral evidence of D.W.1 and by referring to portions of evidence of D.W.1, proceeded to find fault with the decision of the trial Court and held that the plaintiffs have not proved their case of oral partition and Oomiayan @ Raman becoming entitled to the suit property under such oral partition. In this regard, I am proceeding to examine the said portion of the evidence based on which the First Appellate Court has overturned the decision of the trial Court.

20. In the cross examination of D.W.1, he has admitted that Oomiayan @ Raman got 6.31 acres towards his share under the partition deed and that he has been in separate possession of the same and thereafter, D.W.1 with regard to allegation on 13.06.2004, that she and other defendants disturbed the peaceful possession and enjoyment of the plaintiffs, initially admitted to the



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suggestion that the defendants interfered with the peaceful and enjoyment of the plaintiffs. However, immediately the 1st defendant has back tracked by adding that it is not correct to say so. This has weighed in the mind of the First Appellate Court to reverse the finding of the trial Court. The said portion of the evidence where initially the 1st defendant admits to have interfered with the possession of the plaintiffs and consequently changing his answer only pertain to the allegation of interference of the plaintiff's possession and it cannot in any manner relate to the admission with regard to allotment of 6.31 acres to the share of Oomiayan @ Raman under the partition deed and his consequently being in separate possession of the same.

21. Further, the First Appellate Court also failed to see that P.W.3 is one of the attesting witness to Ex.A.1 settlement deed and therefore, the plaintiffs have clearly established due execution of the settlement deed, even though they were not required to prove due execution in view of the absence of any specific denial and also coupled with the admission of the D.W.1, still the exercise has been properly done by the plaintiffs by examining P.W.3 one of the attesting witness to Ex.A.1 settlement deed.



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22. Therefore, in the light of the specific admission of the D.W.1 evidence and in the absence of a specific challenge to the settlement deed, I do not find any material irregularity being committed by the trial Court. However, the First Appellate Court on a clear misreading of the oral evidence, has proceeded to set aside the well considered findings of the trial Court, warranting interference under Section 100 of C.P.C.

23. In fine, the substantial questions of law is answered in favour of the Appellants and this ***Second Appeal is Allowed.*** No costs.

22.03.2024

Index :Yes/No.
Internet :Yes/No.
Neutral Citation :Yes/No.
Speaking Order/Non-Speaking Order
bsm

Copy To:-

1. The Subordinate Judge, Tirupattur, Vellore District.
2. The District Munsif Court, Tirupattur, Vellore District.



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P.B.BALAJI, J.

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Pre-delivery judgment made in
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