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S.A.No.110 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.110 of 2019 &

C.M.P.No.2435 of 2019

1.Ramasamy
2.Velayudam
3.Pandian

... Appellants

Vs.

1.Sivappayi
2.Manonmani
3.Nagajothi
4.Velmurugan

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgement and decree dated 24-11-2014 in AS.No.162 of 2005 on the file of the Sub Court, Kallakuruchi, reversing the judgement and decree dated 09-03-2004 in OS.No.834 of 1989.

For Appellants	: Ms.Nilaphar
For Respondents	: Mr. R.Raj Prasanna for Mr.Raja Janakiraman

JUDGMENT



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The present second appeal arises out of the judgment and decree of the court of learned Subordinate Judge at Kallakurichi is A.S.No.162 of 2005 dated 24.11.2014 in reversing the judgment and decree of the court of learned Principal District Munsif at Kallakurichi in O.S.No.834 of 1989 dated 09.03.2004.

2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

3. The plaintiff presented the suit for declaration and for recovery of possession from the first defendant/Ponnayiammal. It is the case of the plaintiff that Ponnayiammal and her husband, Subramania Pillai had alienated the property by way of oral sale in favour of the plaintiff. Subsequently, at the instigation of the second defendant, who happens to be the nephew of Ponnayiammal, the said Ponnayiammal attempted to deny the title of the plaintiff and hence, he came forward with the suit for declaration



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of his title and recovery of possession.

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4. On service of summons, the defendants entered appearance. The first defendant filed a written statement, which was adopted by the defendants 2 and 3. They denied the oral sale alleged to have been made by Ponnayiammal and Subramania Pillai in favour of the plaintiff. They would also deny the allegation that after the oral sale, the first defendant was permitted to occupy the property. They would plead that the plaintiff has no right, title, or interest over the property and therefore, sought for dismissal of the suit.

5. On the basis of these pleadings, the learned Trial Judge framed the following issues:

“1. வாதி குறிப்பிடும் வாய்மொழி விற்பனை உண்மையானதா?

அது செல்லுமா? அதன்மூலம் வாதிக்கு வழக்கு சொத்தில் உரிமைமூலம் ஏற்படுமா?



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2. வாதி கோரும் உரிமை விளம்புகை பரிகாரம் பெற

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அருகமானவரா?

3. வாதிக்கு சுவாதீன மீட்புப் பரிகாரம் கிடைக்கத்தக்கதா?

4. வாதிக்கு கிடைக்கலாகும் இதர பரிகாரம் என்ன?"

6. The parties entered the witness box. On the side of the plaintiff, three witnesses were examined and two documents were marked. On the side of the defendants, the first defendant examined herself as DW1 and marked exhibits B1 to B3.

7. After the full trial, the learned Trial Judge came to a conclusion that there is no question of oral sale and therefore, dismissed the suit.

8. Aggrieved by the same, the plaintiff preferred an appeal, which was received as A.S.No.162 of 2005. During the pendency of the appeal, the sole plaintiff died, and his legal heirs were brought on record. The said



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A.S.No.162 of 2005 came to be allowed on 24.11.2014. Against the reversal of the judgment of the trial court, the present second appeal has come before this court.

9. The present second appeal was admitted on the following substantial questions of law on 31.01.2019:

“(i) Whether in law the lower appellate court was right in relying on an oral sale instead of the register documents, Exhibits B5 and B6?

(ii) Whether in law the lower appellate court as right in discounting Exhibits B5 and B6 after receiving them as additional evidence and without giving an opportunity to the appellants to prove them?”

10. I have heard Ms.Nilaphar on behalf of the Appellants and Mr.R.Raj Prasanna for the respondents.



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11. Ms.Nilaphar would contend that when the additional documents are received in the lower appellate court, the court below ought to have followed the procedure under Order XLI Rule 27 read with Order XLI Rule 28 and should have permitted the parties to let in evidence. She would plead that the lower appellate court having come to the conclusion that the oral sale is invalid, it ought not to have allowed the appeal, decreeing the suit.

12. Mr.R.Raj Prasanna would submit that the plaintiff is the brother's son of the deceased Subramania Pillai and since the first defendant had passed away, he succeeds to the estate by virtue of Section 15(2)(b) of the Hindu Succession Act. He would plead that since the appellants are maternal side relatives of his aunt, they do not have a better title than the plaintiff and hence, the appellate decree need not be interfered. He would request that the subsequent events should be taken note of by the court.



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13. I have carefully considered the arguments on both sides and perused the records placed for my consideration.

14. The facts necessary for the disposal of the appeal are that there were three brothers namely Palaniya Pillai, Subramania Pillai and Subbaraya Pillai. Subramania Pillai had married one Ponnayiammal. They had no issues. The deceased Subramania Pillai had purchased the property by way of a registered sale deed on 10.10.1950 and became the owner thereof. On his death, his sole legal heir namely, Ponnayiammal succeeded to the estate. The plaintiff pleaded that Subramania Pillai and Ponnayiammal had alienated the property in his favour by way of oral sale. An oral sale of the property above the value of Rs.100/- is impermissible in terms of Transfer of Property Act as well as the Registration Act. Therefore, I do not find any error in the view of the Courts below that the oral sale is invalid.



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15. Having put this aside, I now turn to the crux of the matter namely whether the plaintiff has better title to succeed to the estate than the defendants.

16. It is the plea of the defendants that on the death of Subramania Pillai, the first defendant/Ponnayiammal had executed settlement deeds settling the property in favour of Ramasmay, Velayutham and another portion in favour of Kamala.

17. According to the defendants/appellants, by virtue of Ex.B5 and Ex.B6 the settlement deeds dated 01.11.1989, they succeed to the estate of the first defendant. Though the defendants claimed title by virtue of settlement deeds namely Ex.B5 and Ex.B6, no attempt was made by them in order to prove the execution of the said documents by examining the attesting



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witnesses.

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18. In terms of Section 68 of the Indian Evidence Act, the document which requires attestation would have to be proved by examining at least one attesting witness. In terms of the Transfer of Property Act, the settlement deed is a document, which requires attestation. Therefore, a combined reading of the Acts makes it clear that if the attesting witnesses are not examined to substantiate the document, the Court cannot presume the document to be proved.

19. It is here that the substantial questions of law addressed by Ms.Nilaphar become relevant. According to her, while receiving Exs.B4 to B6, the lower Appellate Court did not follow the procedure established by law.

20. I am afraid that this is not a plea which is open to the



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defendants/appellants to argue. This is because it was the defendants/appellants, who had requested the lower Appellate Court to receive the documents. They did so by filing an application in I.A.No.200 of 2013.

21. When the prayer of the defendants/appellants had been acceded to by the lower appellate court, it is curious that the defendants/appellants argue that the procedure under Order XLI Rule 28 had not been followed. This plea would have been available to the legal heirs of the deceased sole plaintiff/respondents herein. When the documents produced by the defendants/appellants were received and the respondents herein, who were the appellants before the lower Appellate Court, were not permitted to cross examine the defendants on the documents so let in, they can raise such a grievance. However the defendants/appellants herein, who had the benefit of producing the documents in I.A.No.200 of 2013 did not take any efforts to examine the attesting witness to prove the same, cannot take that plea.



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22. Apart from this, the biggest lacuna in the case of the defendants/appellants is that though the defendants had been given an opportunity to file a written statement, the defendants 2 to 4 did not take any efforts to file separate written statements. In fact, the defendants 2 and 3 adopted the written statement of the first defendant, Ponnayiammal.

23. The first defendant in her written statement did not plead anything about the settlement deeds at all. In case the settlement deeds were true as alleged by the defendants/appellants, the least that Ponnayiammal would have done is refer to the said documents while presenting the statement. Having been given an opportunity to file written statement and not having availed the said opportunity, it is not open to the defendants/appellants, while arguing the second appeal, to plead that they should be given further opportunity by way of remanding the matter to the Trial Court in order to file the written statement and substantiate their plea of settlement deeds. They could have taken out an application before the lower



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Appellate Court itself in order to file an additional written statement. But they did not do so. They could have at least filed an application before the lower Appellate Court to let in oral evidence regarding the settlement deeds even that was not adhered to.

24. When the documents alone had been presented and not had been proved, I am not in a position to come to the rescue of the defendants/appellants.

25. This takes me to the next substantial question of law that was argued by Ms.Nilapher as to whether the oral sale can be relied upon as against a registered document viz., Ex.B5 and Ex.B6.

26. The aforesaid discussion makes it clear that the



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defendants/appellants not having proved Ex.B5 and Ex.B6 cannot put the

said documents against the right of the plaintiff.

27. I have to recollect the settled position of law that no amount of evidence can be looked into unless and until there is a plea to that effect. Pleading is essential because the opposing party must not be taken by surprise. The Code of Civil Procedure is not a cinematic trial to enable a party to produce any evidence as he or she requires at any stage as he or she pleases to do.

28. There is a system, which has to be followed and the system requires pleadings and the evidence to follow, on the basis of such pleadings. That not having been done, the defendants/appellants cannot plead by virtue of Ex.B5 and Ex.B6 that they have better title than the plaintiff.

29. Admittedly, the property belonged to Subramania Pillai as is



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clear from Ex.B4, which is the sale deed. Subramania Pillai had only one wife namely Ponnayiammal. Subramania Pillai had two brothers namely Subbaraya Pillai and Palaniya Pillai. It is accepted by both sides that Subramania Pillai and Ponnayiammal did not leave behind any children. The same was the position with respect to Subbaraya Pillai, which led to Palaniya Pillai or his children succeeding to the estate. This is by virtue of the operation of Section 15(2)(b) of the Hindu Succession Act. The property came to the female Hindu by virtue of the purchase made by her husband and on her death, in case she has no class-I legal heir, it will go to the hands of her husband's heirs.

30. By virtue of the fact that Ponnayiammal died pending the litigation and since Ex.B5 and Ex.B6 have not been proved, the plaintiff automatically succeeds to the estate by virtue of operation of Hindu Succession Act. If he succeeds to the estate, then he has better title to the property than the defendants. The lower Appellate Court has correctly



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analysed the provisions of law and has come to a clear and categorical conclusion that by virtue of Section 15(2)(b), the plaintiff succeeds to the estate and therefore, is entitled for declaration and recovery of possession.

31. I do not find any reason to take a different view from the view taken by the lower Appellate Court. The substantial questions of law framed by this Court are answered against the appellants/defendants.

32. In fine, the second appeal is dismissed. The judgment and decree of the lower Appellate Court in A.S.No.162 of 2005 dated 24.11.2014 in reversing the judgment and decree of the learned Principal District Munsif, Kallakurichi in O.S.No.834 of 1989 dated 09.03.2004 has been confirmed. As the parties are close relatives, I am not inclined to impose costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

To

1.The Sub Court, Kallakuruchi



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V.LAKSHMINARAYANAN, J.

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