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S.A(MD)No.666 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 14.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.666 of 2022

and

C.M.P(MD)Nos.9530 and 9532 of 2022

1.M.Saminathan

2.C.Kalimuthu

... Appellants/Appellants/Defendants

Vs.

M.Kasthuriammal

... Respondent/Respondent/Plaintiff

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 24.06.2022 made in A.S.No.14 of 2021 on the file of the Subordinate Court, Manamadurai by confirming the judgment and decree dated 29.01.2021 made in O.S.No.147 of 2019 on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruppuvanam and allow the Second Appeal.

For Appellants : Mr.R.Devaraj

For Respondent : Mr.V.Omprakash



S.A(MD)No.666 of 2022

JUDGMENT

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This Second Appeal is preferred against the judgment and decree dated 24.06.2022 passed in A.S.No.14 of 2021 on the file of the Subordinate Court, Manamadurai, confirming the judgment and decree dated 29.01.2021 made in O.S.No.147 of 2019 on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruppuvanam.

2. The appellants are the defendants in O.S.No.147 of 2019 on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruppuvanam. The respondent is the plaintiff in that suit.

3. For the sake convenience, the parties are referred as plaintiff and defendants as arrayed in O.S.No.147 of 2019 on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruppuvanam.

4. It is the case of the plaintiff that the plaintiff is the mother of the 1st defendant. She has five children. The suit property and other properties are self acquired properties of her husband. Her husband executed a Will dated



S.A(MD)No.666 of 2022

29.09.1992. However, after demise of her husband on 04.11.1993, she and her five sons entered into an unregistered partition deed, dated 18.08.2000 in respect of the properties. The suit property was allotted to one of her son Saravanan. Her son Saravanan was unmarried and died on 07.05.2016. So, the plaintiff is entitled to the suit property. The first defendant created a fraudulent unregistered gift settlement deed, dated 08.02.2016 as if it was executed by the deceased Saravanan. On that basis, the first defendant entered into a fraudulent sale agreement dated 01.06.2016 with 2nd defendant and later the 1st defendant executed a sale deed, dated 12.04.2017 in favour of the second defendant. Thereby, the defendants disturbed the possession of the plaintiff over the suit property. Hence, the plaintiff filed the suit for declaration that the sale deed dated 12.04.2017 as null and void and for directing the defendants to execute a cancellation deed relating to the said sale deed and for permanent injunction.

5. It is the case of the defendants that the suit property and other properties belonged to the father of the 1st defendant/Muthukrishnapillai and after his demise, the plaintiff and her five sons partitioned the same is admitted. The suit property was allotted to the deceased Saravanan, who is one of the brother, is also admitted. The 1st defendant stated that his brother Saravanan was



S.A(MD)No.666 of 2022

very affectionate with him and so, the deceased Saravanan executed unregistered gift settlement deed, dated 08.02.2016 in his favour. On the date of settlement, the possession of the suit property was handed over to the 1st defendant. After death of Saravanan, the 1st defendant was in possession and enjoyment of the suit property. The 1st defendant entered into a sale agreement dated 01.06.2016 in favour of 2nd defendant and then he executed a sale deed dated 12.04.2017 in favour of 2nd defendant based on settlement deed. The 2nd defendant got Patta in his name and has been paying kist. The plaintiff is known about these facts. The settlement is genuine one and it is not forged or created one. The suit is bad for not seeking for declaration of title. Hence, the suit is liable to be dismissed.

6. During trial, the plaintiff examined two witnesses as P.W.1 & P.W.2 and marked Ex.A.1 to Ex.A.14. On the defendants side, D.W.1 to D.W.4 were examined and Ex.B.1 to Ex.B.9 were marked.

7. After hearing both, the learned District Munsif-cum-Judicial Magistrate Court, Thiruppuvanam partly decreed the suit that the sale deed dated 12.04.2017 declared as null and void and granted permanent injunction by



S.A(MD)No.666 of 2022

passing judgment dated 29.01.2021. Aggrieved by the judgment and decree, the defendants preferred the Civil Appeal in A.S.No.14 of 2021 before the Sub Court, Manamadurai. The First Appellate Court after hearing both, passed judgment, dated 24.06.2022 and dismissed the appeal by confirming the judgment and decree of the Trial Court.

8. Challenging the concurring finding of the Courts below, the defendants have preferred this Second Appeal and the same has been admitted for file on 26.04.2023 on the following substantial questions of law:-

i) Whether the Courts below were right in not believing the settlement deed dated 08.02.2016 for want of registration?

ii) Whether the Courts below were right in decreeing the suit in favour of the plaintiff when the Trial Court had not framed an issue as to whether the settlement deed dated 08.02.2016 is valid or not?

iii) Whether a suit filed without seeking the relief of declaration and recovery of possession is maintainable?

9. Heard both sides and perused the records in this Second Appeal.



S.A(MD)No.666 of 2022

WEB COPY

10. The learned counsel for the appellants/defendants argued that the suit property was allotted to the share of Saravanan, who was the brother of the 1st defendant. He was in possession and enjoyment of the suit property from the date of unregistered partition deed, dated 18.08.2000. During his life time, the said Saravanan executed unregistered settlement deed dated 08.02.2016. The 1st defendant's brother Saravanan died on 07.05.2016. The 1st defendant became the absolute owner of the suit property and in turn, he executed a sale agreement and sale deed in favour of the 2nd defendant. The revenue records were changed in the name of the 2nd defendant. The Patta never stood in the name of the plaintiff. The plaintiff has clearly admitted in her evidence that she knew the Ex.A.5 - Settlement Deed executed by her son Saravanan. Admission is the best piece of evidence and hence, there will be no material necessary to prove the same. In the Ex.A5 - Settlement Deed one Malarkodi, Jeyalakshmi and Jeyalakshmi's husband signed. The said Malarkodi is none other than the daughter of the plaintiff's husband Muthukrishna Pillai through his 1st wife. Moreover, except the word 'fraud' used by the plaintiff, there is no material produced by the plaintiff to prove her case, which is required under Order 6 Rule 4 of CPC. Further, the said Saravanan was actually married one Meenakshi and



S.A(MD)No.666 of 2022

lived with her at Kalugarkadai. The plaintiff wantonly suppressed this fact.

Admittedly the 2nd defendant is in possession of the suit property and he cannot be forcibly dispossessed by another except due process of law. The plaintiff has no title over the suit property and she is not in possession of the same. When there is cloud over plaintiff's title, the plaintiff ought to have sought declaration of her title and for recovery of possession. But, the plaintiff has not taken steps to amend the plaint nor to withdraw the suit to file a fresh suit with reliefs of declaration and possession. The plaintiff admitted the execution of Ex.A.5 and knew the witnesses therein. The plaintiff has not sought any relief challenging the Ex.A5 - Settlement Deed. So the suit is not maintainable. The Courts below without appreciated these facts, but merely holding that the Ex.A.5 is unregistered one it cannot be valid in law and passed the suit partly decreed. Therefore, the questions of law are in favour of the appellants/defendants and the Second Appeal may be allowed.

11. In support of his argument, the learned counsel for the appellants/defendants has relied on the following citations:

1) **2022 (1) CTC 533 (Electrosteel Castings Ltd., /v/ UV Asset Reconstruction Co. Ltd.)**, wherein the Hon'ble Supreme Court held in



S.A(MD)No.666 of 2022

paragraph Nos.6.6 and 7.2 as follows:

WEB COPY

“6.6. It is submitted that in any case a bare review of the assertion in paras 31 & 46 it can be seen that no material particulars have been pleaded so as to constitute a pleading of ‘fraud’ as required under Order 6 Rule 4 of the Civil Procedure Code,1908....It is submitted that the pleadings in para 31 and 46 do not satisfy the test of ‘fraud’ under section 17 of the Indian Contract Act,1872.

7.2. However, it is required to be noted that except the words used ‘fraud/fraudulent’ there are no specific particulars pleaded with respect to the ‘fraud’. It appears that by a clever drafting and using the words ‘fraud/fraudulent’ without any specific particulars with respect to the ‘fraud’ the plaintiff-appellant herein intends to get out of the bar under section 3 4 of the SARFAESI act and wants the suit to be maintainable. As per the settled proposition of law mere mentioning and using the word ‘fraud/fraudulent’ is not sufficient to satisfy the test of ‘fraud’..”

2) 2003-4 Law Weekly 579 (Ramesh Chand Ardawatiya /v/ Anil Panjwani), wherein the Hon’ble Supreme Court held in paragraph No.36 as



S.A(MD)No.666 of 2022

follows:

“36. So, the person in possession may not have title to the property yet if he has been inducted into possession by the rightful owner and is in peaceful and settled possession of such property he is entitled in law to protect the possession until dispossessed by due process of law by a person having a title better than what he has. A person in possession of the property cannot be forcibly dispossessed by another rank trespasser and even if the latter does so, the former may be entitled to restoration of possession, because the law respects peaceful possession and frowns upon the person who takes the law in his own hands.”

3) AIR 2017 Supreme Court 1034 (E.O. Arulmigi Chokkanatha Swamy Koil Trust, Virudhunagar /v/ Chandran and Ors.), wherein the Hon’ble Supreme Court held in paragraph No.36 as follows:

“36. The plaintiff, who was not in possession, had in the suit claimed only declaratory relief along with mandatory injunction. Plaintiff being out of possession, the relief of recovery of possession was a further relief which ought to have been claimed by the plaintiff. The suit filed by the plaintiff for a mere



S.A(MD)No.666 of 2022

declaration without relief of recovery of possession was clearly not maintainable and the trial court has rightly dismissed the suit.”

4) (2008) AIR (SCW) 2692 (Ananthula Sudhakar /v/ P.Buchi Reddy...), wherein the Hon’ble Supreme Court held in paragraph No.12 as follows:

“12.We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff’s title raised a cloud on the title of plaintiff to the property. A cloud is said to raise over person’s title, when some apparent defect in his title to a property or when some prima facie right or a third party over it, is made out or shown. A action for declaration is the remedy to remove the cloud on the title to the property.....Where the plaintiff believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such as suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff’s title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration.



S.A(MD)No.666 of 2022

WEB COPY

12. Per contra, the learned counsel for the respondent/plaintiff vehemently contended that it is the specific case of the plaintiff that her son Saravanan did not execute any deed except an Othi Deed, dated 27.03.2014 in favour of one Soural Beevi under Ex.A.3. He was unmarried and he died on 07.05.2016 and hence, the plaintiff being mother absolutely derived title of the property. The alleged unregistered settlement deed executed by Saravanan is fraud one and created by the defendants. The settlement is not registered under the Registration Act and hence, it has no legal sanctity. The defendants have not produced the original of Ex.A.5 - Unregistered Settlement Deed. The plaintiff has obtained two certified copies of the alleged settlement deed Ex.A.5 from the District Registrar office and another Ex.A.14 from the Deputy Tahsildar office under RTI Act. On plain perusal of the same in Ex.A.5, six witnesses were shown in page No.4 of the deed whereas in Ex.A.14 four witnesses were shown in page No.4. That itself enough it is created one. Moreover, the witnesses Malarkodi, Jeyalakshmi and Kalimuthu are close relatives of the 1st defendant. They were only examined by the defendants as D.W.2 to D.W.4. The scribe and document writer named one Kannan was not examined by the defendants. One mobile number mentioned in the deed, which is said to have belonged to the scribe



S.A(MD)No.666 of 2022

Kannan. But, the 1st defendant as D.W.1 clearly admitted that the said mobile number is his cell number. Furthermore, on coming to know about the fraudulent deed she made a complaint to the concerned District Registrar, who enquired and ordered that the act of the Sub Registrar, who registered the Ex.A.8 - Sale Deed based on Ex.A.5 - Unregistered Settlement Deed is not as per law. The District Registrar also initiated action against the Sub Registrar. The defendants failed to substantiate that the settlement is genuine one and when the settlement is not registered one and has no legal sanctity, the consequent documents based on the settlement are also not legally valid. The Courts below correctly concluded the suit and there is no infirmity in the decisions of the Courts below and there is no need to interfere. Therefore, this Second Appeal may be dismissed.

13. On hearing both and on perusal of records, it is clear that the plaintiff is the mother of the 1st defendant. The suit property and some other properties belonged to one Muthukrishna Pillai, who is the husband of the plaintiff. The plaintiff has five sons. The said Muthukrishna Pillai executed a Will, dated 12.09.1992 in favour of the plaintiff. After his demise, the plaintiff and his sons entered into unregistered partition deed, dated 18.08.2000 and the E.schedule property, mentioned therein was allotted to one Saravanan, one among the sons.



S.A(MD)No.666 of 2022

After partition, the parties were in possession and enjoyment of their respective allotted share of properties. There is no dispute between the parties.

14. The defendants state that the said Saravanan had executed an unregistered settlement deed dated 08.02.2016 in favour of his brother, the 1st defendant herein, out of love and affection. Later, the said Saravanan died on 07.05.2016. After his demise, the 1st defendant executed a sale agreement and sale deed in favour of the 2nd defendant. The plaintiff objects that his son Saravanan never executed any settlement deed and he was unmarried and after his demise, she is the absolute owner of the suit property and that the alleged unregistered settlement deed is a fraud one.

15. The defendants case is based on unregistered settlement deed dated 08.02.2016. On perusal of the same, it conveys acres of land fetching higher value of more than Rs.100/-. As per Section 17 of the Registration Act, it has to be registered. But, it was not registered. Hence, as rightly contended by the plaintiff, the settlement has no legal sanctity is acceptable. Moreover, at the instance of the complaint given by the plaintiff, the District Registrar initiated



S.A(MD)No.666 of 2022

action against the Sub Registrar, who registered a subsequent sale deed on the basis of unregistered settlement deed. It is not disputed by the defendants.

16. On perusal of records, the plaintiff marked unregistered settlement deed as Ex.A.5 which is received from the District Registrar Officer and Ex.A.14 which is received from the Deputy Tahsildar. On perusal of Ex.A.5, six witnesses attested the deed, whereas Ex.A.14 four witnesses attested the deed. One cell number 99437 83086 is mentioned therein said to have been that of one Kannan writer of the document. But, the 1st defendant as D.W.1 admitted in his evidence that the mobile number is his cell number. On defendants side, there is no proper explanation as to why there are different of witnesses said to have attested the deed. Moreover, the D.W.2 to D.W.4, who are said to have attested the settlement deed, are relatives of the 1st defendant. The plaintiff said that D.W.2 - Malarkodi is daughter born to Muthukrishnapillai (plaintiff's husband) through his 1st wife. D.W.3 is daughter of D.W.2 and D.W.4 is husband of D.W.3. The defendants have not denied the aforesaid relationship. Except them, no other witness was examined to prove the genuineness of the deed. These facts create suspect over the settlement deed.



S.A(MD)No.666 of 2022

17. It is pertinent to note here that the defendants have stated that the brother of the 1st defendant namely Saravanan married one Meenakshi and lived with her at Kalugarkadai. On perusal of Ex.A.5 and Ex.A.14, why the said Saravanan ignored his wife while executing the settlement deed and there is no proper explanation for the same in the settlement deed, which is required as per settled principles. The defendants have also not stated a valid reason for the same. These facts substantiate that the settlement deed is a created one. When a litigant plays fraud or forge and he has come to Court with unclean hands, his case in entirety based on that fraud deed should be thrown out at any stage of the case and the litigant is not entitled to any relief based on fraud deed. In this case, the defendants have not substantiated by producing acceptable evidence that the settlement deed is not a fraud one and the same is legally valid one. The Courts below correctly concluded that the unregistered settlement is not valid and thereby the Courts below have correctly not believed the settlement deed dated 08.02.2016 for want of registration. When the unregistered settlement deed is not believable, the plaintiff stands got the title over the suit property admittedly belonged to her unmarried son, who is now no more. It is a settled principle that title follows possession. Hence, the citations relied on by the appellants/defendants are not applicable to the facts of this case.



S.A(MD)No.666 of 2022

18. Hence, the Courts below were right in decreeing the suit in favour of the plaintiff though the Trial Court had not framed issues as to whether the Settlement Deed dated 08.02.2016 is valid or not and that the suit filed without seeking the relief of declaration and recovery of possession is maintainable. Thus, this Court does not warrant any interference with the concurrent finding of the Courts below and the question of law raised in this Second Appeal are answered against the appellants.

19. In the result, the Second Appeal is dismissed. The judgment and decree dated 24.06.2022 passed in A.S.No.14 of 2021 on the file of the Subordinate Court, Manamadurai, confirming the judgment and decree dated 29.01.2021 made in O.S.No.147 of 2019 on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruppuvanam is hereby confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

14.03.2024

NCC : Yes / No
Internet : Yes / No
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S.A(MD)No.666 of 2022

To

- 1.The Subordinate Court,
Manamadurai.
- 2.The District Munsif-cum-Judicial Magistrate Court,
Thiruppuvanam.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.666 of 2022

P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
S.A(MD)No.666 of 2022
and
C.M.P(MD)Nos.9530 and 9532 of 2022

14.03.2024