



S.A.(MD).No.710 of 2023

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.02.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.710 of 2023

Mokkammal

... Appellant

/Vs./

S.Veeramani

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 07.12.2022, passed in A.S.No.20 of 2022 on the file of the Subordinate Judge, Periyakulam, confirming the judgment and decree, dated 14.02.2022, passed in O.S.No.119 of 2015 on the file of the District Munsif Court, Periyakulam.

For Appellant : Mr.N.Vallinayagam

For Respondent : No appearance

JUDGMENT

This Second Appeal is filed against the Judgment and Decree passed in A.S.No.20 of 2022, on the file of the Sub Court, Periyakulam, dated 07.12.2022 confirming the Judgment and Decree passed in O.S.No.119 of 2015 on the file of the District Munsif Court, Periyakulam, dated 14.02.2022.



S.A.(MD).No.710 of 2023

WEB COPY

2. The Plaintiff is the Appellant and the Defendant is the Respondent herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendant.

3. The suit in O.S.No.119 of 2015 is filed for permanent injunction restraining the defendant from interfering in the peaceful possession and enjoyment possession of the suit property and the suit was dismissed. Aggrieved over the same, the plaintiff had filed Appeal Suit in A.S.No.20 of 2022 and the same was dismissed. Aggrieved over the same, the present second appeal is preferred by the plaintiff.

4. The case of the plaintiff is that originally the suit properties belong to one Subramani, wherein he was having patta and paying tax to the 1st item and he was having Natham Nilavari Patta to the 2nd item. He was in possession of the said properties along with his wife Badrakaliammal, son Ratnavel, daughters Mukkammal and Rajeswari. The said Subramani died on 06.03.1992 and thereafter, his daughters Mukkammal and Rajeswari executed a Release Deed dated 04.03.2013 in favour of the Ratnavel. The plaintiff is the wife of the said



S.A.(MD).No.710 of 2023

Ratnavel and he executed Gift Deed dated 19.07.2013 in favour of the plaintiff and she was in possession and enjoyment of the property. While that being so, the defendant approached the plaintiff for selling the property and the plaintiff refused the same. Thereafter, the defendant encroached the property forcefully on 15.07.2015 and disturbed the possession of the property and hence, the suit was filed.

5. The case of the defendant is that the properties are not belonging to the plaintiff or her husband Ratnavel as claimed by the plaintiff. The documents namely, Release Deed dated 04.03.2013 and Settlement Deed dated 04.03.2013 relied on by the plaintiff are created and are bogus, hence, the same would not be binding the defendant. The allegations that the defendant approached the plaintiff for selling the property, the plaintiff refused the same and the defendant encroached the property forcefully on 15.07.2015 are all false and are created for the sake of the case. The defendant further stated that the properties in 1st item and 2nd item belong to the defendant's father namely Subramani @ Subramanian and the defendant is in enjoyment of the 2nd item of the property. The defendant's father was an Army Personnel and he had two wives namely Badrakaliammal and



S.A.(MD).No.710 of 2023

Chellammal. On 04.02.1987, the defendant's father by showing the defendant as minor had executed an agreement with the husband of plaintiff (Ratnavel), who is the son of the first wife, regarding certain properties along with the 2nd item of the property. Based on the agreement, dated 04.02.1987, the 2nd item of suit property was granted to the defendant by the plaintiff's husband, hence, the defendant's father and the plaintiff have no right on the same. The defendant along with his father was in enjoyment of the property from the date of the agreement, ie., 04.02.1987, thereafter, the defendant's father died on 06.03.1992. After his demise, the defendant is peacefully enjoying the 2nd item of the property without any interruption by planting six coconut trees and other trees, paying property taxes, water taxes, electricity bill, etc. It is the plaintiff who had created the documents, it is the plaintiff who had forcefully encroached the defendant's lands and the defendant with the help of neighbours had stopped the plaintiff's encroachment. Hence, the defendant prayed to dismiss the suit.

6. The Trial Court after considering the pleadings and evidence had dismissed the suit. Aggrieved over the same, the plaintiff had preferred an appeal suit and the same was dismissed confirming the Trial Court judgment and decree.



Aggrieved over the same, this second appeal is filed by the plaintiff.

7. The second appeal was admitted on the following substantial question of law on 02.01.2024 and the same is extracted hereunder:

“Whether the Court below failed to see the title before granting the relief of injunction?”

This Court is re-framing the said substantial question of law as under:

“Whether the Trial Court is right in declining injunction when the possession is proved by the plaintiff?”

8. The defendant stated that he is not claiming any right over the 1st item of the property but he is claiming right over the 2nd item of the property and the same is recorded by the Trial Court.

9. As far as the 2nd item of the property is concerned, the plaintiff submitted that the property is a vacant site. But in the deposition, the plaintiff had admitted that the suit notice was issued to the house where the defendant is residing and the said house is shown as 2nd item in suit schedule property. From this it is evident that the defendant is residing in the 2nd item of the suit property. The plaintiff's husband had deposed as DW2 and he had also deposed that the defendant is residing in the 2nd item of the suit property for the past eight years. Further, the Ex.A10 property tax receipt belongs to the 1st item of the property and



S.A.(MD).No.710 of 2023

not 2nd item of the property, but this has not been disclosed by the plaintiff. When the plaintiff had not proved that he is in possession of the 2nd item of the suit property, the Courts below are right in declining injunction and the substantial question of law is answered against the plaintiff.

10. As far as the 1st item of the property is concerned, the Trial Court had elaborately stated the reasons for declining injunction. The Trial Court had held that even though the plaintiff had not stated that the defendant is the son of Subramani born through the second wife, based on the service records maintained by the army marked as Ex.B15, the Trial Court had come to the conclusion that the defendant is the son of Subramani born through the second wife.

11. Further, the Trial Court had held that the alleged Release Deed, dated 04.03.2013 marked as Ex.A6 was not signed by one of the executor namely Rajeswari for which the defendant had submitted that the said Rajeswari died, but it is admitted in the deposition that the said Rajeswari is having six children and none of them were added as parties. Therefore, the Trial Court had come to the conclusion that the alleged documents are not stating the entire facts and hence,



S.A.(MD).No.710 of 2023

the documents are not believable.

12. Further, the defendant had taken serious objection on the alleged release deed and the settlement deed. Hence, the plaintiff ought to have tried to prove the document as per law. But the plaintiff had not proved the alleged document by producing the cogent evidence or witness who had affixed signature in the alleged document. Hence, the plaintiff had not proved that the 1st item belongs to the plaintiff and hence, the Courts below are right in declining injunction for the 1st item also.

13. For the reasons cited above, the substantial question of law is answered against the plaintiff. Therefore, this Court is of the considered opinion that the Courts below are right in dismissing the original suit and the appeal suit, consequently, the second appeal is liable to be dismissed.

14. Accordingly, this Second Appeal is dismissed confirming the Judgment and Decree passed in A.S.No.20 of 2022 on the file of the Sub Court, Periyakulam, dated 07.12.2022 and confirming the Judgment and Decree passed



S.A.(MD).No.710 of 2023

in O.S.No.119 of 2015 on the file of the District Munsif Court, Periyakulam, dated
14.02.2022. No Costs.

22.02.2024

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. Subordinate Judge, Periyakulam.
2. District Munsif Court, Periyakulam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD).No.710 of 2023

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.710 of 2023

Dated:
22.02.2024