



S.A.No.1436 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2025

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.1436 of 2011
and M.P.No.1 of 2011
and C.M.P.Nos.11876 & 11870 of 2023

Thanigaivel

... Appellant / Defendant

Vs.

1. Devaki
2. Raja

... Respondents / Plaintiffs

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree of the learned Subordinate Judge, Thindivanam dated 28.09.2011 made in A.S.No.8 of 2011 confirming that of the learned District Munsif, Vannur dated 01.02.2011 made in O.S.No.13 of 2005.

For Appellant : Mr.S.Subbiah
Senior Counsel
for Mrs.G.Sumithra

For Respondents : Mrs.Chitra Sampath
Senior Counsel
for Mr.T.S.Baskaran



S.A.No.1436 of 2011

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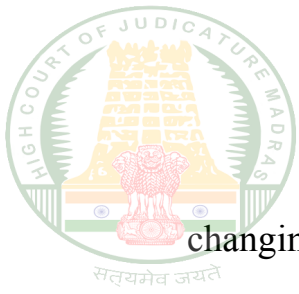
JUDGMENT

The defendant is the appellant against whom the plaintiffs have filed a suit for the relief of declaration. The first plaintiff has filed a suit for permanent injunction and later impleaded the second plaintiff due to consequent sale in his favour and the relief has been amended for adding the relief of declaration.

The trial Court has decreed the suit and the first Appeal preferred by the defendant also got dismissed by confirming the judgment and decree of the trial Court. Now the defendant has filed this Second Appeal by challenging the same.

2. The short facts pleaded in the plaint are as follows:

The suit items are comprised to an extent of 0.85 cents in S.No.277/2 and 0.09 cents in S.A.No.277/4 situated at Bommaiarpalayam, Vanur Taluk, Villupuram District. According to the plaintiffs, the suit properties belonged to one Sarangapani Naicker. He had sold the said properties in favour of one Arumuga Gounder on 19.05.1955 through a registered sale deed. Arumuga Gounder was in enjoyment of the same by



S.A.No.1436 of 2011

changing patta in his name in Patta No.117. Subsequently, Arumuga

WEB COURT Gounder had executed a sale deed in favour of Govinda Gounder through a registered sale deed dated 10.02.1975. The said Govinda Gounder has been in enjoyment of the same and later settled the suit property in favour of his daughter who is the first plaintiff herein through a registered settlement deed dated 15.12.1980.

2.1 Govinda Gounder died in the year 1983. In pursuant to the settlement deed, the first plaintiff was in enjoyment of the same and the defendant was also aware of the same. As the defendant had started to claim an undue right in the suit property and caused disturbance to the enjoyment of the first plaintiff, she had filed a suit for permanent injunction. However, during the pendency of the suit, the suit properties have been sold in favour of the second plaintiff on 20.09.2007 through a registered sale deed and thereafter, the second plaintiff had taken possession of the suit property and he is in enjoyment of the same. Hence, the suit has been subsequently amended by including the second plaintiff also as a party and also seeking the relief of declaration in favour of the second plaintiff.



S.A.No.1436 of 2011

WEB COPY

3. The averments made in the written statement filed by the defendant are as follows:

The settlement deed dated 15.12.1980 in favour of the first plaintiff is a fraudulent one and it has not been acted upon. Subsequently, the first plaintiff's father Govinda Gounder has executed different settlement deeds in favour of the first plaintiff and her sisters Lakshmi Devi and Mangalakshmi @ Pallipattammal on 04.05.1981 by executing separate settlement deeds. The first plaintiff has accepted the settlement deed dated 04.05.1981 and hence, she was estopped from claiming any right in pursuant to the earlier settlement deed dated 15.12.1980 and the first plaintiff has also sold the property in favour of one Vijayakumar on 29.12.1988 by citing her right derived from the settlement deed dated 04.05.1981. The first plaintiff has not been in enjoyment of the suit property individually in view of the settlement deed dated 15.12.1980 and the said settlement deed is non-est in law. The sisters of the first plaintiff viz., Lakshmi Devi and Mangalakshmi @ Pallipattammal have also sold the property obtained by them through a settlement deed dated 04.05.1981 in favour of Pounammal through a sale deed dated 16.06.1988 and the said Pounammal in turn had settled the properties in favour of the defendant through a settlement deed dated



08.07.1999 and handed over the possession. The suit has been filed by

concealing the fact that the suit properties are enjoyed by the defendant in pursuant to the settlement deed dated 08.07.1999. The suit has been filed without impleading the necessary parties. So far as the sale in favour of the second plaintiff is concerned, that has been executed by the first plaintiff without any right. Hence, the first plaintiff cannot pass any title in favour of the second plaintiff and hence the second plaintiff would not derive any right over the same.

4. On the basis of the above pleadings, the Trial Court has framed the following issues and additional issues:

- "1. வழக்கு சொத்து வாதிக்கு பாத்தியப்பட்ட சொத்து என்பது சரியா?
2. வழக்கு சொத்தில் உள்ள வாதியின் அனுபவத்தை பிரதிவாதி தடுக்க முற்பட்டார் என்பது சரியா?
3. வாதிக்கு அவர் கோரியவாறு பரிகாரம் கிடைக்கத்தக்கதா?
4. வாதிக்கு கிடைக்கத்தக்க இதர பரிகாரங்கள் என்ன?
5. அவசியமற்ற தரப்பினரை சேர்த்துள்ளதால் தாவா பாதிக்கப்பட்டுள்ளதா?"



S.A.No.1436 of 2011

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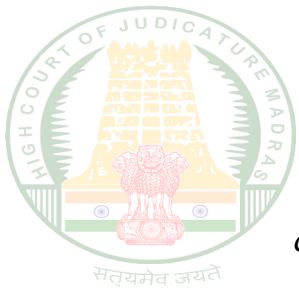
5. During the course of the trial, on the side of the plaintiffs, three witnesses were examined as P.W.1 to P.W.3 and Exs.A1 to A10 were marked. On the side of the defendant, three witnesses were examined as D.W.1 to D.W.3 and Exs. B1 to B14 were marked.

6. At the conclusion of the trial and on considering the evidence available on record, the trial Court has decreed the suit. Aggrieved over that, the defendant has preferred the First Appeal and the First Appeal has also got dismissed. Aggrieved over that, the defendant has preferred this Second Appeal. The Second Appeal has been admitted on the following substantial questions of law:

"1. Whether the Lower Appellate Court was right in holding that Exhibit A4 settlement deed was acted upon ignoring the fact that there was no transfer of title under the said document?

2. Whether the Lower Court was right in holding that the first plaintiff is not estopped from claiming title under Exhibit A4 after having accepted Exhibit B3?

3. Whether on the recitals in Exhibit A4, it could be

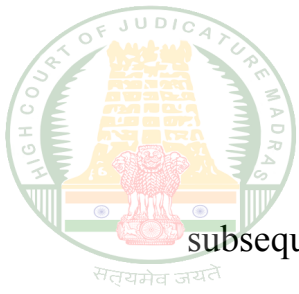


S.A.No.1436 of 2011

concluded that there was instantaneous transfer of
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7. Mr.S.Subbiah, learned Senior Counsel for the appellant / defendant, submitted that the settlement deed dated 15.12.1980 (Ex.A4) has not been acted upon and even according to the first plaintiff she has only accepted the subsequent settlement deed dated 04.05.1981; as the property description in both Ex.A4 settlement deed dated 15.12.1980 and the subsequent settlement deed dated 04.05.1981 are one and the same, the act of acceptance of the first plaintiff would render the earlier settlement deed dated 15.12.1980 as redundant; since the very same property has been settled in the subsequent settlement deed dated 04.05.1981 and the first plaintiff has dealt the same by mentioning it in the recitals of the subsequent sale deed executed by her in favour of Vijayakumar on 23.12.1988 it is not right on the part of the trial court and the first appellate court to decree the suit as prayed by the plaintiff.

8. Mrs.Chitra Sampath, the learned Senior Counsel for the respondent, submitted that the property transacted in the settlement deeds dated 15.12.1980 (Ex.A4) and 04.05.1981 (Ex.B1 to B3) are different properties and by mistake, the very same survey numbers have been mentioned in the



S.A.No.1436 of 2011

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subsequent settlement deeds dated 04.05.1981; after settling the property comprised in Ex.A4, the remaining property were only in Survey No.277/3 and 277/5; both together would workout to 2 acre 50 cents out of which all three sisters have been given with distinct share of $0.86 \frac{1}{2}$ cents which is $\frac{1}{3}$ share out of the total extent of 2 acre 50 cents; just because the survey numbers have not been properly mentioned and the survey numbers mentioned in Ex.A4 has also been repeated in subsequent settlement deeds, it cannot be presumed by the defendant that the earlier settlement deed dated 15.12.1980 in favour of the first plaintiff, got cancelled; the courts below have rightly appreciated the evidence on record and chosen to decree the suit by approving the sale in favour of the second plaintiff by the first plaintiff.

9. Even though the first plaintiff has filed the suit for mere injunction subsequent to her sale of the suit property in favour of the second plaintiff, the second plaintiff has been impleaded as a party and the relief has also been amended by claiming the relief of declaration as well. The specific case of the first plaintiff is that she has been given with the property comprised in Ex.A4 by her father and on the strength of the said settlement deed she has passed title in favour of the second plaintiff. The fact that the suit properties were originally belonged to the father of the first plaintiff has not been



S.A.No.1436 of 2011

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denied. The specific contention of the defendant / appellant is that the settlement deed dated 15.12.1980 (Ex.A4) has not been acted upon and the first plaintiff had accepted the subsequent settlement deed dated 04.05.1981 (Ex.B3) and hence the earlier settlement deed dated 15.12.1980 gets stultified.

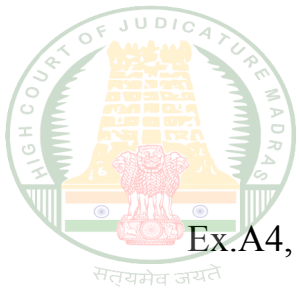
10. After executing the settlement deed dated 15.12.1980 in favour of the first plaintiff, the father of the first plaintiff had executed three separate settlement deeds dated 04.05.1981 (Exs.B1 to B3) in favour of the first plaintiff and her two sisters. None of these settlement deeds dated 04.05.1981 contains a recital that the earlier settlement deed dated 15.12.1980 got cancelled or revoked. Even the defendant has not stated that Ex.A4 got cancelled. But the defendant's specific contention is that by the conduct of the first plaintiff, the settlement deed dated 15.12.1980 has become non-est in law and hence it has to be ignored. According to the defendant, the property particulars in both Ex.A4 and Exs.B1 to B3 are one and the same and hence the sisters of the first plaintiff have sold their share of properties settled through Ex.B4 in favour of Pounambal by virtue of Ex.B4 - sale deed and the said Pounabmal in turn executed a settlement deed in favour of the defendant.



S.A.No.1436 of 2011

WEB COPY 11. After impleading the second plaintiff though the relief for declaration has been included, at no point of time the defendant had sought a relief by filing any counter suit to declare the settlement deed dated 15.12.1980 as non-est or null and void. However, the factum of executing the settlement deed Ex.A4 in favour of the first plaintiff was not denied by the defendant.

12. It is categorically admitted that the property settled in favour of the first plaintiff pertains to the Patta No.321 stands in the name of the first plaintiff and that she has been paying kist. The relevant documents in this regard have been marked as Exs.A5 and A6. The defendant has also got the knowledge that there is no recital in Ex.B4 settlement deed that the settlor can revoke the settlement deed at any point of time. Without any doubt the settlement deed dated 15.12.1980 is an irrevocable settlement and by virtue of mutation of the revenue records happened subsequently, the settlement deed dated 15.12.1980 (Ex.A4) has been acted upon and the first plaintiff has been in possession and enjoyment of the property so settled in her favour. Even though the subsequent settlement deeds dated 04.05.1981, has repeated the survey Nos.277/2 and 277/4 which is the subject matter of

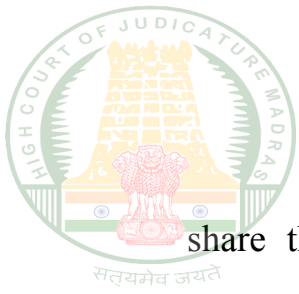


S.A.No.1436 of 2011

WEB COPY

Ex.A4, what actually transacted in the subsequent three different settlement deeds dated 04.05.1981 (Exs.B1 to B3) is only an undivided 1/3 share which comprises to the extent of 2 acre 50 cents comprised in S.Nos.277/3 & 277/5. The total extent covered under Survey No.277/3 is 1 acre 65 cents and Survey No.277/5 is 0.85 cents. If the total extent of these two survey numbers would workout to 2 acre 50 cents, according to the plaintiffs, the undivided 1/3rd share of the above 2 acre 50 cents alone have been settled by virtue of Exs.B5 to B7. However, by mistake in description of the property, the Survey Nos.277/2 and 277/4 have also been included.

13. The learned counsel for the appellant / defendant claimed that the first plaintiff herself has executed a sale deed in favour of one Vijayakumar through Ex.B6 and through which she had conveyed 0.86 ½ cents and that would represent the lands in Survey Nos.277/2 and 277/4 only. From the description of the property as seen in Ex.B6, it is only seen what has been stated in Ex.B3. The description of the property as seen in Ex.B6 does not mention only S.Nos.277/2 and 277/4 but it also mentions about S.No.277/3 and 277/5. So it cannot be claimed by the defendant that what was conveyed through Ex.B6 by the first plaintiff was the property settled in her favour vide settlement deed dated 15.12.1980. The other sister who has got 1/3



S.A.No.1436 of 2011

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share through the settlement deed dated 04.05.1981 does not have any grievance through Exs.B1 and B2 in respect of their enjoyment over the 1/3 share settled in her favour.

14. When the sisters of the first plaintiff have executed the sale deed in favour of Pounambal who is the mother of the defendant through Ex.B4 also, Pounambal did not have any grievance or claim stating that her sale deed had included the subject matter of Ex.A4 settlement deed. At no point of time there was any dispute between Pounambal and the first plaintiff in this regard. Only when Pounambal had settled the properties purchased by her in favour of the defendant vide Ex.B5 in the year 1999, the defendant started to make claim stating that what has been sold to his mother through Ex.B4 comprises a share in the lands mentioned in settlement deed Ex.A4 also.

15. Neither the defendant nor his mother or the vendors of Ex.B4 namely the sisters of the first plaintiff have filed any suit by claiming that the settlement deed dated 15.12.1980 is null and void and that it has not been acted upon. In fact in the evidence of the defendant, he himself has admitted that the patta stood in the name of the first plaintiff and that she has been



S.A.No.1436 of 2011

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paying kist in respect of the properties comprised in Ex.A4. After several years by taking advantage of the fact that the survey numbers which have been mentioned in Ex.A4 were replicated in the subsequent settlement deeds dated 04.05.1981 along with other survey numbers, the defendant has tried to make out a novel claim over the property settled in favour of the first plaintiff vide Ex.A4.

16. Even if it is presumed that the three settlement deeds dated 04.05.1981 (Ex.B1 to B3) also contain the subject matter of Ex.A4 settlement deed dated 15.12.1980, the settlor of Exs.B1 to B3 did not have any title to resettle the very same properties in favour of her daughters. Once the settlor has lost title in respect of properties comprised in Ex.A4 dated 15.12.1980, she cannot pass any title in favour of any third parties including her daughters just by mentioning the very same survey number in those settlement deeds Ex.B1 to B3. The fact that Ex.A4 settlement deed is not revocable is also not disputable by virtue of the irrevocable nature of the settlement deed dated 15.12.1980 and the subsequent transfer of revenue records in favour of the first plaintiff and thereby the settlement has been acted upon and the defendant cannot claim a fancy title in respect of the subject matter of Ex.A4 settlement deed.



S.A.No.1436 of 2011

WEB COPY 17. As the first plaintiff has got the valid title in respect of the properties comprised in settlement deed Ex.A4, she had passed the same in favour of the second plaintiff by virtue of the sale deed dated 20.09.2007 vide Ex.A10. Since the second plaintiff had purchased the property comprised in Ex.A10 from the first plaintiff who held the valid title, the courts below have rightly granted the relief of declaration as prayed by the second plaintiff. The first appellate court has rightly appreciated the merits of the matter and approved the appreciation of the evidence by the trial Court in a right perspective and chosen to confirm the judgment and decree of the trial Court.

18. In view of the above discussion, without any hesitation, I hold that Ex.A4 settlement deed has already been acted upon and the courts below have rightly held the above view basing on the material available before the court. So the first subsequent question of law is answered against the appellant. Since the second substantial question of law is consequent to the first substantial question of law, that also goes against the appellant. The third substantial question of law is superfluous in view of the detailed discussions and answers given to the substantial questions of law No.1 and 2



S.A.No.1436 of 2011

and hence the third substantial question of law is also answered against the
appellant.

19. In the result, the Second Appeal is devoid of merits and dismissed and the judgment and decree passed by the learned Subordinate Judge, Thindivanam dated 28.09.2011 made in A.S.No.8 of 2011 is hereby confirmed and the suit in O.S.No.13 of 2005 on the file of the learned District Munsif, Vannur, is decreed. No costs. Connected miscellaneous petitions are closed.

02.01.2025

Index:Yes/No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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Note to Office: Issue order copy by 28.03.2025.

To:

1. The Subordinate Judge, Tindivanam.
2. The District Munsif, Vannur.



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S.A.No.1436 of 2011

R.N.MANJULA, J.

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S.A. No.1436 of 2011

02.01.2025