

(2007) 07 MAD CK 0071

In the Madras High Court

Case No : Second Appeal No. 951 of 1994

Avudaiyammal (died) Vasantha, Mathanavenugopalsamy,
Rengaraj and Ramesh

APPELLANT

Vs

Seeniammal

RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Citation : (2007) 07 MAD CK 0071

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : K. Vijayakumar, for N. Damodaran, for the Appellant; V. Radhakrishnan, for S. Kadarkarai, for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.—Challenge in this appeal is the judgment and decree dated 21/6/1983 passed in Appeal Suit No. 76 of 1991 by the Sub-

Court, Srivilliputhur, wherein the judgment and decree dated 14/2/1991 passed in Original Suit No. 639 of 1989 by the Additional District Munsif

Court, Sathur are reversed.

2. The present respondent as plaintiff has instituted the Original Suit No. 639 of 1989 on the file of the Additional District Munsif Court, Sathur for

the reliefs of declaration, recovery of possession and also for arrears of rent, wherein the appellant has been shown as the sole defendant.

3. The nubble of the averments made in the plaint may be stated like thus:

The suit property and some other properties are originally belonged to one Alagarsamy Naicker, S/o. Sankarappa Naicker. The said Alagarsamy

Naicker has no issues and the plaintiff is his grand daughter. The plaintiff has looked after him and due to that he has executed a settlement deed

dated 11/12/1972 in favour of the plaintiff with regard to suit property. In the said settlement deed, it is recited that the settlor has no power to encumber property mentioned in the same. Both plaintiff and the settlor have enjoyed the suit property. In the year 1972, the settlor has passed away. On 1/4/1982, the defendant has agreed to enjoy the suit property for a monthly rent of Rs. 10/-. The defendant has used to pay monthly rents in aggregation to the plaintiff. From 1/4/1989 to 30/9/1989, the defendant has failed to pay monthly rent to the plaintiff. On 12/9/1989, the plaintiff has given a notice to the defendant and thereby terminated her tenancy. After receipt of the notice, the defendant has given a false reply notice. Since the defendant has denied the title of the plaintiff to the suit property, the plaintiff has chosen to file the present suit for the relief indicated supra.

4. The material averments made in the written statement filed by the defendant may be stated like thus:

It is true that the suit property is originally belonged to one Alagarsamy Naicker, S/o.Sankarappa Naicker. It is also true that he has no issues. It is false to contend that the said Alagarsamy Naicker has executed a registered settlement deed dated 11/12/1972 in favour of the plaintiff. There is no necessity for the settlor to execute the said settlement deed. The settlement deed mentioned in the plaint has not come into force. After getting settlement deed, the plaintiff has left the Village and she has not complied with the conditions imposed in the settlement deed. The defendant has alone looked after the said Alagarsamy Naicker and he cancelled the settlement deed dated 11/12/1972 and subsequently, executed a Will in favour of the defendant on 24/12/1974. After the demise of Alagarsamy Naicker, as per the terms of the Will, the defendant has become the absolute owner of the suit property. The plaintiff has not enjoyed the suit property along with Alagarsamy Naicker. The defendant has not taken the suit property as a lessee and therefore, she is not liable to pay arrears of rent claimed in the plaint. Since the defendant has been enjoying the suit property for more than a statutory period, she has acquired title to the same by adverse possession. There is no merit in the suit and the same deserves dismissal.

5. On the basis of the divergent pleadings raised by either party, the trial Court

has framed necessary issues and after perpending both the oral and documentary evidence has dismissed the suit without costs. The judgment and decree passed by the trial Court have been challenged in Appeal Suit 76 of 1981. The First Appellate Court after reappraising the evidence available on record has allowed the appeal whereby and whereunder the judgment and decree passed by the trial Court are set aside and ultimately, the suit has been decreed as prayed for. The judgment and decree passed by the First Appellate Court are now being challenged in the present Second Appeal.

6. At the time of admission of the present Second Appeal the following substantial questions of law have been formulated for consideration.

1. Whether the appellant had acquired title to the suit property by adverse possession and the lower Appellate Court was right in rejecting the claim of the appellant in this regard?

2. Whether the revocation of the settlement deed said to have been executed by the deceased Alagarsamy Naicker is valid in law and what rights accrued as a consequence thereof?

7. During the pendency of the appeal, the sole appellant has passed away and her legal heirs have been brought on record as appellants 2 to 4.

8. The learned Counsel appearing for the appellants has strenuously contended that the suit property is originally belonged to one Alagarsamy

Naicker and she has executed a settlement deed dated 11/12/1972 in favour of the plaintiff and even though the same has been styled as a

settlement deed, it is a Will and since the same is a Will, he has cancelled the same and subsequently, executed a Will dated 24/12/1974 in favour

of the defendant and after the demise of the settlor, the defendant has become the absolute owner of the suit property and now, the defendant has

been enjoying the same as a rightful owner and it is false to say that the plaintiff has let out the suit property to the defendant for monthly rent and

further, the defendant has enjoyed the suit property for more than a statutory period and thereby prescribed title to the same by adverse

possession and the trial Court after considering all the rival contentions raised by either party has clearly come to the conclusion that the plaintiff is

not entitled to get the reliefs sought for in the plaint. But the First Appellate Court without considering the contentions urged on the side of the

defendant has erroneously decreed the suit and therefore, the judgment and decree passed by the trial Court are liable to be interfered with.

9. In order to encrust the argument advanced by the learned Counsel appearing for the appellants, he has drawn the attention of the Court to the

decision reported in 2001 (1) CTC 520 P. Deivaprasad @ P.S. Veerabadran v. Dr. P.D. Balaji and Eleven Ors. wherein this Court has held that

Where conferment of right is postponed till life-time of executant and beneficiaries will get interest after life-time of executant it is Will. Description

of document is immaterial to determine whether particular document is in nature of Will or Settlement.

10. In the document referred to in the decision, it has been clearly stated that the beneficiaries should get absolute interest in the involved property

only after the demise of the settlor. Under the said circumstances, this Court has held that

the document in question is not a settlement deed and it is a Will.

11. In order to remonstrate the argument advanced by the learned Counsel appearing for the appellants, the learned Counsel appearing for the

respondent has succinctly contended that the original owner of the suit property viz., Alagarsamy Naicker has executed a settlement deed in favour

of the plaintiff on 11/12/1972 and the same has immediately come into effect and further, the Court has to look into the intention of the settlor and

the First Appellate Court after considering all the circumstances has rightly come to the conclusion that the deed in question is a settlement deed

and ultimately decreed the suit as prayed for.

12. In support of his contention, he has drawn the attention of the Court to the following decisions.

13. The first and foremost decision is reported in F.M. Devaru Ganapati Bhat Vs. Prabhakar Ganapathi Bhat, , wherein the Honourable Apex

Court has held that

The rule of construction is well settled that the intention of the executor of a document is to be ascertained after considering all the words in their

ordinary natural sense. The document is required to be read as a whole to ascertain the intention of the executant. It is also necessary to take into

account the circumstances under which any particular words may have been used.

14. The second authority is reported in Dhanalakshmi, T. Ravikumar, T. Geetha and T. Saravanan Vs. S. Thangavelu, , wherein this Court has

held that

Settlement contemplates instant disposition and document should convey specifically, clearly and absolutely such instant disposition and transfer of

interest in property in praesenti in favour of beneficiary under document, the same is settlement deed.

15. For better appreciation and also for easy reference, the Court has to narrate the recitals found in the deed dated 11/12/1972 which is in

controversy. The said deed has been marked as Ex. A.1 and the same reads as follows:

16. From the close reading of the recitals found in Ex. A.1, it is easily discernible that the settlor has really intended to execute the settlement deed

viz., Ex. A.1 in favour of the plaintiff. Further, in Ex. A.1, it has been clearly stated that both the settlor and settlee have been enjoying the property

in dispute. Further, it is recited that the settlor has no right to cancel the same. Therefore, from the recitals found in Ex. A.1, the Court can very

well come to a conclusion that Ex. A.1 is a settlement deed and not a Will. The specific case of the defendant is that Ex. A.1 has been cancelled by

the settlor under Ex. B.1. In Ex. B.1 also, it has been clearly stated that on 11/12/1972, the settlor has executed a settlement deed in favour of the

plaintiff. Therefore, even at the risk of jarring repetition, the Court would like to point out that the settlor viz., Alagarsamy Naicker has really

intended to create a settlement deed in favour of the plaintiff and has subsequently executed Ex. A.1. As per the decision rendered by the

Honourable Apex Court, intention of the settlor occupies a predominant role. In the instant case, through out in Ex. A.1, the same has been

described as settlement deed. Further, from the date of its execution, the plaintiff has obtained possession of the suit property. Therefore, viewing

from any angle, the Court cannot come to a conclusion that Ex. A.1 is a Will and not a settlement deed. Since Ex. A.1 is a settlement deed, the

revocation deed executed by the settlor is not valid in law. In view of the foregoing narration of both the factual and legal premise, this Court has

not found any force in the argument advanced by the learned Counsel appearing for the appellants and considerable force is found in the argument

advanced by the learned Counsel appearing for the respondent.

17. As adverted to earlier, the learned Counsel appearing for the appellants has also argued that the defendant has enjoyed the suit property for

more than a statutory period and thereby prescribed title to the same by adverse possession. In the written statement, at paragraph 9, it has been

pleaded to that effect.

18. At this juncture, the learned Counsel appearing for the respondent has ingeniously drawn the attention of the Court to the decision reported in

2006 (7) SCC 570 T. Anjanappa and Ors. v. Somalingappa and Anr., wherein the Honourable Apex Court has held that

Since possessor was not sure whether plaintiff was the true owner of the property claim of adverse possession is not maintainable?

19. In the instant case, the defendant has set up her title to the suit property by virtue of Ex. B.2, Will dated 24/12/1974 executed by the original

owner Alagarsamy Naicker in favour of her. In the written statement, it has not been specifically pleaded that the suit property is the absolute

property of the plaintiff and to her knowledge, the same has been enjoyed by the defendant for more than a statutory period and thereby the

defendant has prescribed title to the same by adverse possession. It is a well known principle of law that a person claiming adverse possession

must prove the following aspects.

a. The person claiming adverse possession has to show on what date he came into possession.

b. What is the nature of his possession?

c. Whether factum of possession is known to other party?

d. How long his possession has continued?

e. His possession must be open undisturbed. Such possession must start with a wrongful dispossession of rightful owner and be actual, visible,

exclusive, hostile and continued over the statutory period.

20. In the instant case, it is not an adulation to say that the aspects referred to above are not present. Therefore, the essential requirements of

adverse possession are totally bereft in the written statement. Under the said circumstances, the Court cannot come to a conclusion that the

defendant has perfected title to the suit property by adverse possession. In view

of the discussion made earlier, it is needless to say that the argument advanced by the learned Counsel appearing for the appellants is of no use.

21. The First Appellate Court after considering all the divergent contentions raised by either party has clearly come to the conclusion that the plaintiff is entitled to get the reliefs sought for in the plaint. In view of the foregoing elucidation of both the factual and legal aspects, this Court has not found even a flimsy ground to make interference with the well merited judgment passed by the First Appellate Court and therefore, the present

Second Appeal deserves dismissal.

22. In fine, this Second Appeal deserves dismissal and accordingly is dismissed with costs. The judgment and decree passed by the First Appellate Court in Appeal Suit No. 76 of 1991 are confirmed.