

indiramma Channatty Vs. Venugopal

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Court : Kerala

Decided On : Feb-04-2013

Judge : Honourable Mr.Justice S.S.Satheesachandran

Appellant : indiramma Channatty

Respondent : Venugopal

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN MONDAY, THE 4TH DAY OF FEBRUARY 2013 15TH MAGHA 193 SA.No. 545 of 2002 (F) ----- AGAINST THE JUDGMENT IN AS.11/1996 of ADDL.DISTRICT COURT-I,MAVELIKKARA AGAINST THE JUDGMENT IN OS.238/1993 of MUNSIFF COURT,KAYAMKULAM -----

APPELLANT/RESPONDENT/PLAINTIFF:: ----- INDRAMMA CHANNATTY, D/O. MEENAKSHY CHANNATTY, KAIMALUDEAYYATHU FROM KATTOOR, MALAMELBHAGOM MURI, KEERIKAD VILLAGE. BY ADV. SRI.BASANT BALAJI RESPONDENTS/APPELLANT/DEFENDANT::

----- 1. VENUGOPAL, S/O. BHASKARAN CHANNAR, KATTOOR VEEDU, MALAMEL BHAGOM MURI, KEERIKKAD VILLAGE.

2. SUBHASH CHANDRAN, S/O. BHASKARAN CHANNAR, KATTOOR VEEDU MALAMEL BHAGOM MURI, KEERIKKAD VILLAGE.

3. PRAMEELA CHANNATTY, D/O.NANI CHANNATTY, KALEECKAL VEEDU, EVOOR NORTH MURI, KEERIKAD VILLAGE. * 4. MEENAKSHY CHANNATTY, D/O.NANI CHANNATTY, KAIMALUDEAYYATHU VEEDU, MALAMEL BHAGOM MURI, KEERIKAD VILLAGE. (DIED) R4 IS DELETED FROM THE ARRAY OF PARTIES AT THE RISK OF THE APPELLANT, VIDE ORDER DATED 13.05.2005 ON IA.398/05. R2 BY ADVS.SMT.V.P.SEEMANDINI (SR.) SRI.M.S.UNNIKRISHNAN SRI.M.R.ANISON THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 03-01-2013, THE COURT ON 4.2.2013 DELIVERED THE FOLLOWING: VK S.S.SATHEESACHANDRAN, J.

----- S.A.NO.545 OF 2002.----- Dated this the 4th day of February, 2013

JUDGMENT

Plaintiff is the appellant. Suit was for declaration of title, possession and consequential injunction. Suit was decreed by the trial court. However, in appeal preferred by the 2nd defendant the lower appellate court reversed that decree and dismissed the suit. Against that decision, the plaintiff has preferred this second appeal.

2. Notice was ordered to the respondents on the substantial questions of law formulated in the memorandum of appeal. After considering the submissions made, later, the substantial questions of law have been reformulated and modified as hereunder, on which counsel on both sides have advanced arguments. (i) Has not the lower appellate court erred in not applying the principle of estoppel against 3rd defendant who disowned the transfers made under S.A.No.545/2002 2 Ext.A2 executed by her and also Ext.A1 deed executed in her favour earlier by the plaintiff (ii) Has not the lower appellate court erred in holding Exts.A1 and A2 as void when there was no specific challenge to such documents, and, also on such premise reversing the decree granted by the trial court in favour of the plaintiff 3. Plaintiff and 3rd defendant are sisters. 4th defendant is their mother. Under Ext.B1 partition deed (which was produced and exhibited by the contesting defendants 1 and

2) the plaintiff and 4th defendant obtained shares in their family properties. Plaintiff schedule property having an extent of 24 cents, a portion of 51.5 cents in Survey No.3349 of Keerikkad village, was allotted to the share of the plaintiff. Plaintiff executed Ext.A1 gift deed over such property in favour of 3rd defendant. Later the 3rd defendant executed Ext.A2 sale deed over that property in favour of plaintiff and ever since she continues to be in exclusive possession and enjoyment of such property, is her case. Defendants 1 and 2 are owners of the property situate on the western side of plaintiff property. Since their demand for sale of plaintiff property was not acceded to by the plaintiff, they obtained S.A.No.545/2002 3 a sale deed over the property from the 3rd and 4th defendants as if they retained title and interest over such property for effecting the transfer. Obtaining such sale deed defendants 1 and 2 are making attempts to trespass upon the plaintiff property was the case of plaintiff to seek the reliefs aforementioned. Defendants 1 and 2 resisted the suit contending that the plaintiff property situate on the western side of that property was allotted under Ext.B1 deed to the 3rd defendant and not to the plaintiff. Plaintiff was allotted 24 cents situate to the east of 24 cents allotted to 3rd defendant, and west of 3.5 cents allotted to another sharer, all of which formed part of 51.5 cents of land in the same survey number and partitioned under the deed. In Ext.A1 gift deed executed by plaintiff in favour of 3rd defendant, and also later in Ext.A2 sale deed executed by 3rd defendant in favour of plaintiff, property allotted under Ext.B1 partition deed in favour of plaintiff was shown as the western 24 cents in 51.5 cents whereas the allotment in her favour was over the middle portion of 51.5 cents. That mis-description shown in those documents would not entitle the plaintiff to claim title and possession over the plaintiff schedule property, was the case of the defendants. S.A.No.545/2002 4 They also contended that they have purchased 18 cents out of plaintiff property from 3rd and 4th defendants under Ext.B2 sale deed, what remained with 3rd defendant after acquisition of 6 cents of land from the property allotted to her share under Ext.B1 for the purpose of constructing a canal. Defendants 1 and 2 asserted that they are in enjoyment of the property covered under Ext.B2 sale deed as a compact plot with their properties situate on its eastern side. 3rd defendant filed a separate written statement supporting the contentions of the 1st and 2nd defendants disputing the plaintiff claim.

4. The learned Munsiff mainly relying on the description of property given in Ext.A1 gift deed and Ext.A2 sale deed, and also on a purchase certificate, Ext.A4, produced by plaintiff showing that ten cents of land from the property allotted to 3rd defendant had been given as kudikidappu, concluded that plaintiff under Ext.B1 got 24 cents of property on the western side of 51.5 cents in the plaint survey number partitioned among some sharers in the family and that property was lying adjoining to the property of defendants 1 and 2 situate on its western side. On such S.A.No.545/2002 5 conclusion formed a decree for declaration of title and possession over the suit property and a consequential injunction against defendants as applied for was granted to the plaintiff. The lower appellate court after re-appreciating the pleadings and materials produced in the case differing from the conclusion formed by the trial court held that the allotment of property to the sharers described under Ext.B1 partition deed is decisive and a different description given in Ext.A1 gift deed and Ext.A2 sale deed executed between plaintiff and 3rd defendant would not confer title and possession on the plaintiff over the plaint property. Plaintiff has not let in any independent evidence to substantiate her claim over the plaint property which admittedly was shown as a property allotted to the share of another member of the family, 3rd defendant, under Ext.B1 partition deed, was also taken into account by the lower appellate court to reverse the decree of the trial court and non-suit the plaintiff allowing the appeal of 2nd defendant.

5. Short question emerging for consideration is whether the plaintiff has established her title and possession over the S.A.No.545/2002 6 plaint property described as 24 cents situate on the western portion of 51.5 cents in plaint survey number which was partitioned and allotted among some members of her family under Ext.B1. The 4th defendant mother, on her behalf and also representing two minor children, with her other children, effected partition of the properties which belonged to her husband, after his demise under Ext.B1. She alone is shown as the signatory in that document. But that is of no consequence where there is no challenge against the validity of that deed by any of the parties. One among the items partitioned among the sharers under the deed is 51.5 cents in plaint survey number. Has the plaintiff obtained the plaint property as her share under Ext.B1 partition deed is the first question to be resolved. In the plaint she has alleged that

the plaint property was allotted to her as schedule No.4 under Ext.B1 deed, but the deed would show that the plaint property described as the western 24 cents in 51.5 cents in plaint survey number was allotted to the 3rd defendant as part of schedule No.4, and plaintiff was allotted the properties in schedule No.5. Allotment over 51.5 cents in the plaint survey number, one of the items covered, would show that S.A.No.545/2002 7 the eastern 3.5 cents was allotted to the share of a brother of plaintiff, the western most 24 cents to the share of 3rd defendant and 24 cents situate in between the above two allotments to the share of plaintiff. Plaintiff later executed Ext.A1 gift deed in favour of 3rd defendant as if she had been allotted the plaint property under 5th schedule in Ext.B1 partition deed. Subsequently, she got Ext.A2 sale deed from 3rd defendant over the plaint property. In both the above documents the property having an extent of 24 cents situate on the western portion of 51.5 cents in plaint survey number was shown as the property covered by transfer. Relying on Exts.A1 and A2 deeds, plaintiff has filed the suit for declaration of title and possession and for injunction. Where specific allotments have been made in Ext.B1 partition deed with meticulous particulars capable of identifying the properties allotted, the sharers who got such allotment cannot claim right over property allotted to another sharer unless it is shown there was some mistake in the description of the properties allotted. Plaintiff has no case that any mistake crept in the description of properties allotted under Ext.B1 partition deed. Her claim is solely based on Exts.A1 and A2 S.A.No.545/2002 8 deeds subsequently brought into existence after Ext.B1 partition deed, with the assistance of 3rd defendant. Statement made in Ext.A1 gift deed by the plaintiff that she got the plaint property as the 4th schedule in the partition deed is factually incorrect since she got only the property described under 5th schedule. She executed a gift deed describing a different property not covered by 5th schedule in favour of 3rd defendant does not indicate that there was any mistake in the description of properties allotted to the two sharers in Ext.B1 partition deed. At best, it would only indicate that in describing the property under Ext.A1 gift deed by the plaintiff there was a mistake over the schedule. She could not have gifted under that deed any property covered by the 4th schedule in Ext.B1 partition deed which was already allotted to 3rd defendant. Ext.A1 gift deed would no way affect title obtained by 3rd defendant and the transfer under that deed would have effect

only in respect of the property covered by 5th schedule allotted to plaintiff under Ext.B1 deed, which alone she was capable of disposing by way of gift or otherwise. Subsequently she got a sale deed from 3rd defendant would also not assist the plaintiff in any manner S.A.No.545/2002 9 where it is shown that she could not have transferred any portion of the property covered by 4th schedule in Ext.B1 deed.

6. What the plaintiff could have transferred by gift in favour of 3rd defendant was only the property she got under the 5th schedule in Ext.B1 partition deed and not a property which the 3rd defendant already obtained in 4th schedule under the same deed. Description of the property regarding its location as different from what is stated in Ext.B1 partition deed was stated in the transfers effected by the plaintiff and 3rd defendant under Exts.A1 gift deed and A2 sale deed executed by them would not enable the plaintiff to claim title over the plaint property which formed part of 4th schedule allotted to 3rd defendant. Non-production of partition deed by plaintiff and also that she has no case of any mistake over the description of the properties when allotment was made in her favour are clearly indicative that the claim canvassed on the basis of Exts.A1 and A2 deeds, that too after 3rd defendant with her mother executed Ext.B2 sale deed in respect of a portion of the plaint property, 18 cents out of 24 cents, in favour of defendants has no merit at all. After S.A.No.545/2002 10 closing of evidence Ext.A4 purchase certificate was produced by plaintiff to contend that from the property allotted to 3rd defendant, ten cents had been given as kudikidappu. So much so, according to plaintiff, the property allotted to 3rd defendant has to be treated as 24 cents situate to the east of plaint property. No commission was taken out by plaintiff to identify the suit property despite the defendants raising contention that what 1st defendant got under Ext.B2 sale deed executed by 3rd and 4th defendants was only 18 cents and the rest, six cents in the plaint property, had been acquired for constructing a canal. Property purchased by 1st defendant was lying contiguous with his 12 cents of land situate on its west was his further case. Still, the plaintiff who sought declaration of her title over the entire extent of 24 cents described in the plaint with a further relief of injunction against trespass from defendants 1 and 2 did not take any steps for identification of the suit property is a telltale circumstance that the suit claim canvassed by her was unworthy of any merit.

7. There is no merit in the challenge canvassed that 3rd S.A.No.545/2002 11 defendant is estopped in showing that description of the property made in Exts.A1 and A2 which is against the allotment made in Ext.B1 partition deed was incorrect. Description of property in a deed cannot be considered as one of its essential terms, and if there is any mistake over description it can be shown to be wrong. Plaintiff has to show that she has got title and possession over the property described in the suit. Where it is shown that under Ext.B1 partition deed the property obtained by her was different and distinct from the property covered by Exts.A1 and A2 deeds and she has no case of any mis-description when allotment was made of the property in favour of the sharers under the partition deed, and also on the facts established by the materials tendered that the 3rd defendant obtained title over 24 cents of property situate on the west of 51.5 cents in the plaint survey number Ext.B2 sale deed executed by her in favour of defendants 1 and 2 is unimpeachable at the instance of the plaintiff. Failure of plaintiff to establish her title over the suit property as described and also its identification despite specific contention raised by defendants 1 and 2 that a portion of plaint property has already S.A.No.545/2002 12 been acquired for construction of a canal, totally discredited her suit claim and it was rightly turned down by the lower appellate court. Substantial questions of law raised are found against the appellant, and the appeal is dismissed directing both sides to suffer their costs. S.S.SATHEESACHANDRAN JUDGE prp S.S.SATHEESACHANDRAN, J.

----- S.A.NO.545 OF 200.-----

JUDGMENT

4th day of February, 2013

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