

SUPREME COURT OF INDIA

P.V. Manickam(Dead) By Lrs.

Vs.

Gopalswamy Naicker Charities Trust

C.A.Nos.8430-8431 of 2002

(Tarun Chatterjee J.)

06.05.2009

ORDER

1. In our view, these appeals are concluded by the concurrent findings of fact arrived at by the courts below.

“The appellant as plaintiff filed a suit for declaration that the release and surrender deed dated 31st of October, 1971, executed by him was null and void and also for rendering accounts with regard to the rental income from the disputed property which was dismissed by the trial court.

The judgment of the trial court was affirmed in appeal which was also affirmed by the High Court in Second Appeal. The other appeal filed in this Court was against the Judgment passed in Second Appeal questioning the correctness of the concurrent findings of the Courts below in granting a decree for recovery of possession of the suit property from the first defendant with damages for use and occupation for the past and present. So far as this part of the common Judgment of the High Court is concerned, Mr. Sampath, learned counsel for the appellant, could not argue that the concurrent findings of fact arrived at by the Courts below on the question of possession and other incidental prayers can be upset by us in the exercise of our power under Article 136 of the Constitution.”

2. Having considered the entire evidence, both oral and documentary on record, the High Court as well as the Courts below came to the conclusion of fact that the appellant having failed to prove that the release and surrender deed dated 31st of October, 1971, was null and void and thereby, dismissed the suit of the appellant which was affirmed in appeal. Mr. A.T.M. Sampath, learned counsel for the appellant, however, sought to argue before us that the High Court had failed to consider the case of fraud in holding whether the release and surrender deed dated 31st of October, 1971 could be found to be null and void. We are unable to accept this contention of the learned counsel for the appellant simply for the reason that the case of fraud was not made out by the appellant in his plaint nor there was an issue for the same nor was there any finding on the question of fraud. That being the position, we

do not find any merit in these appeals. The appeals are thus dismissed. There will be no order as to costs.