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S.A.No.455 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.455 of 2017
and
CMP.No.11412 of 2017

Latvian Evangelical Lutheran Church
Rep.by its Vice President
Kazhuthur Village
Tittakudic Taluk

...Appellant

Vs.

Chitra

... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, aggrieved by the judgment and decree dated 15.12.2015 made in A.S.No.4 of 2015 on the file of the Additional Sub-Judge, Viruthachalam, reversing the judgment and decree dated 17.12.2014 made in OS.No.171 of 2003 on the file of the District Munsif Cum Judicial Magistrate, Tittakudi.



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For Appellant : Mr.R.Mubarak Basha

For Respondent : Mrs.Hema Sampath
Senior Counsel
for Mrs.R.Meenal

JUDGMENT

The defendant in the suit is the appellant. The respondent herein filed a suit for declaration of title, recovery of possession of vacant site and mandatory injunction to remove the superstructure found in the suit property. The suit was dismissed by the trial Court. Aggrieved by the same, the appellant preferred an appeal in A.S.No.4 of 2015 on the file of the Additional Sub-Court, Viruthachalam. The First Appellate Court reversed the findings of the trial Court and allowed the appeal granting decree as prayed for. Aggrieved by the same, the defendant is before this Court.

2. According to the respondent/plaintiff, the suit property originally belonged to the father of the plaintiff Ramanathan. He executed a settlement deed on 04.07.1977 in favour of the plaintiff's mother Marudhambal. The said settlement deed was executed at the time of Ramanathan marrying with Marudhambal. Since Ramanathan's wife



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Marudhambal was minor at that point of time, in the settlement deed Marudhambal was represented by her father Periyasamy. On the date of settlement deed the possession of suit property and other properties were handed over to Periyasamy on behalf of Marudhambal. As per the terms of settlement, the suit property was settled in favour of unborn children of Marudhambal and Ramanathan with life estate in favour of Marudhambal. Being the daughter of Marudhambal the plaintiff was entitled to the suit property under the terms of settlement deed. It was also stated in the settlement deed that during the life time of Marudhambal, she was not entitled to alienate the property to the third parties. Violating the terms of settlement the settlor namely Ramanathan sold the property in favour of the third parties and now the defendant had been in possession and enjoyment of the suit property. It was claimed that the plaintiff was born on 03.06.1983 and the suit was filed within three years from the date of attaining majority.

3. The appellant/defendant filed a written statement raising a plea that the settlement deed dated 04.07.1977 executed by Ramanathan was not acted upon and the possession was not given to Marudhambal or her father Periyasamy. The appellant also disputed the paternity of the plaintiff. In the additional written statement it was pleaded by the appellant that document



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dated 04.07.1977 was only a Will not settlement and therefore, during his life time Ramanathan was entitled to alienate as per his wish.

4. The appellant/defendant also raised a plea of non joinder of necessary party viz., Ramanathan and Marudhambal. It was also averred by the appellant that Ramanathan sold the suit property to one Samikannu on 29.08.1980 and from that person the appellant purchased the property under documents dated 18.02.1986, 11.08.1987 and 19.09.1990. After purchase the appellant had put up a church, school and memorial in the suit property by spending amount and the appellant had been in possession and enjoyment of the suit property for several years. It is also averred by the appellant that it was a bonafide purchaser of the suit property. On these pleadings the appellant sought for dismissal of the suit.

5. Before the trial Court, the respondent/plaintiff was examined as PW1 and her mother Marudhambal was examined as PW2. The attesor to the settlement deed Ex.A1 was examined as PW3. On behalf of the respondent/plaintiff 13 documents were marked as Ex.A1 to Ex.A13. On behalf of the appellant/defendant, Victor Deva Sagayam (Vice President of Latvin Evangelical Lutheran Church) was also examined as DW1 and witness



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to Ex.B3 sale deed in favour of the appellant was examined as DW2. The father of the respondent/plaintiff was examined as DW3. On behalf of the appellant 4 documents were marked as Ex.B1 to Ex.B4.

6. On appreciation of oral and documentary evidence available on record, the trial Court came to the conclusion that Ex.A1 was a settlement deed and the same was acted upon. The trial Court also found that the respondent was born to Marudhambal and Ramanathan. However, the trial Court dismissed the suit on the ground that during the life time of Marudhambal and Ramanathan, the respondent/plaintiff was not entitled to file a suit claiming title over the same.

7. Aggrieved by the same, the respondent preferred an appeal in A.S.No.4 of 2015 on the file of the Additional Sub-Court, Virudhachalam. The first Appellate Court also concurred with the findings of the trial Court that Ex.A1 was a valid settlement deed and the same was acted upon. The first Appellate Court also came to the conclusion that paternity of the respondent was proved and she was born to Marudhambal and Ramanathan.

8. On consideration of Ex.A1 settlement deed the First Appellate



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Court came to the conclusion that as per the terms of settlement deed Ramanathan could not alienate the suit property on his own and therefore, the alienation made by him in favour of Samikannu and subsequent alienation in favour of the appellant were not sustainable. Therefore, the First Appellate Court came to the conclusion that the respondent proved her title under Ex.A1 and consequently entitled to declaration of title, recovery of possession of vacant site as prayed for. Aggrieved by the said judgment and decree, the unsuccessful defendant has come up with this Second Appeal.

9. At the time of admission, this Court formulated the following substantial questions of law:

“i) Whether the Lower Appellate Court is right in granting declaration of title in favour of plaintiff while her mother is alive and no transfer of title was made by her?

ii) Whether the Courts below are justified in holding that Ex.A1 is a valid settlement and the same is acted upon?”

10. The learned counsel for the appellant submitted that reading of



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Ex.A1 document makes it clear there was no transfer of interest *inpresenti*.

Therefore, both the Courts below committed an error in coming to the conclusion that Ex.A1 was settlement deed. The learned counsel for the appellant further submitted that as per terms of Ex.A1 Ramanathan during his life time, was entitled to sell the suit property to third parties as per his wish. Therefore, the appellant acquired title under the documents executed by Ramanathan infavour of Samikannu and subsequent sale deeds.

11. The learned counsel for the appellant further submitted that even assuming Ex.A1 can be treated as settlement deed it confers only a life estate in favour of the plaintiff/respondent's mother and hence, during life time of mother, the respondent could not maintain the suit.

12. In support of his contention, the learned counsel for the appellant relied on the judgment of the Hon'ble Apex Court in ***Vishwambhar and others, Vs. Laxminarayan (Dead) through LRs and another***, reported in ***(2001) 6 SCC 163***.

13. The learned Senior Counsel for the respondent/plaintiff submitted that reading of Ex.A1 document clearly establish that the transfer of



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interest had taken place under the document and therefore, it should be treated as settlement deed. The learned Senior Counsel for the respondent further submitted that both the Courts below on appreciation of recitals found in Ex.A1 and other evidence available on record came to the conclusion Ex.A1 was settlement deed and the same had been acted upon.

14. The learned Senior Counsel for the respondent further submitted that under Ex.A1 the life estate is created in favour of mother of the respondent with absolute estate in favour of the respondent/plaintiff. In such circumstances, the declaration of absolute title cannot be granted in favour of respondent and however Court can declare lesser right of vested remainder in favour of respondent. When a question was posed to the learned Senior Counsel for the respondent whether the respondent could maintain a suit for relief of recovery of possession when life estate holder is alive, the learned Senior Counsel for the respondent submitted that the recovery of possession can be enforced after the life time of estate holder to that extent the relief prayed for can be moulded by the Court.

15. In support of her contention, the learned Senior Counsel for the respondent relied on the judgment of the Hon'ble Apex Court in



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Rukhmanbai Vs. Shivram, reported in ***AIR 1981 SC 1881***.

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16. It is not disputed that the property originally belonged to Ramanathan and at the time of marrying Marudhambal, the mother of the respondent, he executed a document dated 04.07.1977 marked as Ex.A1. Since Marudhambal was minor at that point of time, she was represented by her father.

17. The relevant recital in Ex.A1 document reads thus:

“நான் உன்னை திருமணம் செய்து கொள்ள உன் பெற்றோர்கள் பெண் கேட்டதற்கு உன் பெற்றோர்கள் உன் பெயருக்கு சொத்து ஆதரவு செய்து வைக்க வேண்டும் என்று சொன்னதின் பேரில் நானும் அதற்கு சம்மதித்து உன் பெயருக்கு சில சொத்து ஆதரவு செய்து வைக்க எண்ணியும் நானும் உன்னை திருமணம் செய்து இல்லறத்துணைவியாக ஏற்றுக்கொள்ளப்போகும் உன்பேரில் எனக்குள்ள-----P.Ramanathan3-----அன்பிலும் பிரியத்தாலும் எனக்கு பாத்தியமான இதனடியில் கண்ட ரூபாய் 21000.00 இருபத்தி ஒன்றாயிரம் பொருமானமுள்ள சொத்துக்கள் இந்த செட்டில் மெண்டு பத்திரம் மூலம் உன்னிடம் ஒப்புக்கொடுத்துவிட்டேன். இதனடியில் கண்ட சொத்துக்களையும் நீ தனித்து எந்தவிதமான பெந்தகபராதீனம் செய்யாமல் அனுபவித்து என்னுடன்-----P.Ramanathan 4-----ஒற்றுமையாக இருக்கவேண்டியது நம்முடைய வாழ்நாளில்



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நமக்குள் ஏற்படும் சந்ததிகள் இதனடியில் கண்ட சொத்துக்கள் சர்வ
சுதந்திரமாய் சம்பாக்கமாய் அடைந்து கொள்ள வேண்டியது அப்படி
ஒருக்கால் சந்ததிகள் இல்லாவிடில் நம் இருவர்கள் ஆயுளுக்கு பிறகு
என்னுடைய வார்க்தாரார்கள் அடையவேண்டியது இதனடியில் கண்ட
சொத்துக்களில் பராதீனம் செய்தாலும் நாம் இருவரும் ஒற்றுமையாக
வினியோக செய்ய வேண்டியது நம்மில் தனித்து ஒருவர்க்கொருவர்
செய்யக்கூடாது அப்படி செய்தாலும்

அது-----P.Ramanathan

5-----செல்லத்தகுந்ததல்ல இனி இந்த செட்டில் மெண்டு
பத்திரத்தை எவ்விதகாரணத்தை முன்னிட்டு மாற்றவும் ரத்து செய்யவும்
எனக்கு அதிகாரம் இல்லை அப்படி செய்தாலும் அது
செல்லத்தகுந்ததல்ல.”

18. A perusal of Ex.A1 would suggest that the document was styled as settlement deed. It was also clearly recited on the date of document the possession of the property was given to the settlee. It was further recited that the settlement deed was irrevocable. Under the document life estate had been created in favour of Marudhambal with absolute estate in favour of unborn children of Marudhambal and Ramanathan. The settlee has been prohibited from encumbering the property during her life time. The learned counsel for the appellant by reading the recitals in the document stated that the settlor and settlee can alienate the property jointly. He further submitted that



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the said recital in the document proves settlor retained his right over the property and hence, the same cannot be treated as a gift deed. However, a perusal of Ex.A1 would suggest that the settlor created life estate in favour of settlee with absolute estate in favour of unborn children of both Marudhambal and Ramanathan. Therefore, once the property is settled in favour of settlee and her unborn children, the settlor divested of his right over the property under earlier clause in the deed. Any subsequent clause enabling the settlor and settlee to jointly encumber the property is repugnant to the gift already made under earlier clause. It is settled law in case of non testamentary document, in case of conflict between earlier clause and later clause, the earlier clause will prevail over the later clause. (***Radha Sundar Dutta Vs. Mohd. Jahadur Rahim & Ors***, reported in ***AIR 1959 SC 24*** and ***Uma Devi and Ors., Vs. T.C. Sidhan (Dead, reported in MANU/SC/1026/2003)***. In ***Radha Sundar Dutta Vs. Mohd. Jahadur Rahim & Ors***, the Hon'ble Apex Court observed as follows:

“16...If, in fact, there is a conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa. In Forbes v. Git (1922) 1 A.C. 256, Lord Wrenbury stated the rule in the following terms:



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“If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant and the earlier clause prevails. In this case the two clauses cannot be reconciled and the earlier provision in the deed prevails over the later.”

Even otherwise, the clause in the document enabling settlor and settlee to jointly encumber the property is repugnant to the gift made under the document and therefore, the same is not valid.

19. In view of the discussions made earlier, this Court comes to the conclusion that Ex.A1 document is only a settlement deed in favour of the plaintiff's mother Maruthammal creating life interest in her favour with absolute estate in favour of unborn child namely the plaintiff. Therefore, the said document creates contingent right in favour of the plaintiff. The right acquired by the respondent/plaintiff under Ex.A1 is contingent on the death of Marudhambal. In this regard it should be appropriate to refer the judgment of the Hon'ble Apex Court in ***Rukhamanbai Vs. Shivram, reported in AIR 1981 SC 1881***. The relevant portion of the Hon'ble Apex Court judgment reads thus:



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“19...It was next contended that in any event the appellant having been given a life estate with the vested remainder in her children, she had no vested interest in the property during her lifetime but her interest would be contingent interest and therefore even during her lifetime, the children would be the owners and as they were minors the date of statutory purchase would be postponed under section 32 F. Looking to the terms of the deed of settlement, subject to the limitations therein prescribed the appellant had a vested interest with a right to take over management on attaining majority and to deal with the property in her own way. Assuming without deciding that she had no right to will, gift, sell or encumber the property yet assuming she did deal with it in the manner prohibited it would nonetheless be binding during her lifetime. The property would devolve on the heirs named in the deed and the devolution would take place on her death. Therefore, upon a pure literal construction of deed coupled with intendment of the settlement it is difficult to accept Mr. Sanghi's submission that her interest in the property during her life time was contingent interest. This will further be borne out by the provision contained in section 13 of the Transfer of Property Act inasmuch as she was given life or limited interest and the remainder to her children none of whom was in existence at the time of transfer. Even if transfer is in favour of unborn



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person, at the date of transfer to be valid there has to be a prior interest created by the very transfer. This prior interest though limited would not be contingent but vested interest. In fact the interest of future born children would be contingent till the death of the appellant. The deed of settlement cannot be construed as a transfer in favour of unborn person, yet it settles property on trust and the unborn children, under trust, may be beneficiaries but they can claim interest only after the death of the appellant and no interest in her life time. Under the deed of settlement an interest is created in favour of the children of the appellant and the interest would take effect on the happening of specified uncertain event-uncertain as to time-namely, the death of the appellant, then till the death of the appellant the interest of the children would be contingent. It is nothing short of spes successionis...

20. Having examined the trust deed before us, we are satisfied that the appellant had the vested interest in the property during her life time and the children had only contingent interest during that period.”

20. Therefore, this Court comes to the conclusion that the respondent/plaintiff has contingent interest in the suit property till the death of the respondent's mother Marudhambal to that extent the right of the respondent



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over the suit property can be declared. However, the respondent is not entitled to get declaration of absolute title over the suit property till the death of Marudhambal.

21. Both the Courts below on appreciation of Ex.A2 and other documents evidence available on record came to the conclusion that the settlement deed executed under Ex.A1 was acted upon and the respondent is a daughter born to Marudhambal and Ramanathan. The said factual findings were based on proper appreciation of the evidence available on record and the same requires no interference by this Court. Once this Court affirms the findings of Courts below that settlement deed was valid, the alienation by Ramanathan in favour of Samikannu and subsequent alienation in favour of appellant are all invalid and appellant has no right to remain in possession of suit property as against the respondent who has got better right.

22. In view of discussion earlier, this Court has come to the conclusion that the respondent is entitled to declaration of her contingent interest over the suit property till death of Marudhambal. Marudhambal has got vested interest in the suit property during her life time and the right of the respondent is only a contingent on her death. The contingent event is a certain



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one namely the death of Marudhambal, however the timing of event is uncertain. In such circumstances, it is not depending on purely uncertain event, therefore, the respondent is entitled to declaration of her contingent interest over the suit property. When the respondent's mother has got vested interest in the suit property, during her life time, it is not open to the respondent to seek recovery of possession. However, the respondent is entitled to recovery of possession based on her title after happening of the contingent event namely the death of Marudhambal. Hence, it is clarified that the decree for recovery of possession granted by the first Appellate Court cannot be enforced during the life time of Marudhambal.

23. It is settled law even if Court is not inclined to grant a larger relief prayed for, it can grant lesser relief based on evidence. In the case on hand even if respondent is not entitled to declaration of absolute title, this Court is inclined to declare her contingent interest till death of Marudhambal. In view of the discussions made earlier, the first question of law is partially answered in favour of the respondent and the respondent is entitled to get lesser relief of declaration of her contingent right over the suit property till the death of her mother Marudhambal (namely, right to get absolute right on death of Marudhambal). The substantial question of law No.2 is answered against the



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appellant and in favour of the respondent that exhibit A1 is valid settlement deed and the same was acted upon. In view of the matter, the Second Appeal is partly allowed by modifying the judgment and decree passed by the First Appellate Court as indicated above.

24. a) In the result, the Second Appeal is partly allowed. The judgment and decree of the First Appellate Court is modified by declaring the contingent right of the respondent/plaintiff over the suit property till the death of Marudhambal and her absolute right on death of Marudhambal.



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S.SOUNTHAR, J.

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b) the respondent is entitled to recovery of vacant possession of the suit property after removal of superstructure only after the life time of Marudhambal.

c) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

06.12.2023

Index : Yes
Internet : Yes
Neutral Citation Case : Yes
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To

1.The Additional Sub-Judge, Viruthachalam

2.The District Munsif Cum Judicial Magistrate, Tittakudi.

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and
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