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S.A.No.239 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM
THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

S. A. No. 239 of 2018
and
C M P. No. 6001 of 2018

Pavunambal

.. Appellant/ Defendant

Vs.

K.Archuna Goundar

..Respondent/Plaintiff

P R A Y E R: Second Appeal is filed under Section 100 of C.P.C to set aside the judgement and decree dated 03.12.2013 made in A.S.No.8 of 2012 by the learned Ist Additional Subordinate Judge, Villupuram and also to reversing the Judgement and Decree dated 16.11.2011 passed by the learned Principal District Munsif, Ulundurpet, in O.S.No.81 of 2008.

For Appellant : Mr..S.Natarajan
for T.K.Saravanan, M.Viruthagiri

For Respondent : M/s.R.Meenal



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J U D G M E N T

This Second Appeal has been preferred by the sole defendant against the judgment and decree made in A.S.No.8 of 2012, on the file of the 1st Additional Sub-Court, Villupuram, dated 03.12.2013, reversed the judgment and decree made in O.S.No.81 of 2008, on the file of the Principal District Munsif Court, Ulundurpet, dated 16.11.2011.

2 . For convenience, the parties will be referred to according to their litigative status before the Trial Court.

3 . A v e r m e n t s m a d e i n t h e P l a i n t n a r r a t e d i n b r i e f :

The suit properties came to the plaintiff based on an oral partition that had taken place in his family and he was in possession and enjoyment of the suit properties and he was paying Kist. The defendant is his wife and they do not have any issues after their marriage. The defendant had filed a suit for maintenance before the District Munsif Court, Thirukovilur. The matter was settled on the intervention of the village elders, and she withdrew the said suit. It was settled that the defendant has to stay with him in the family, and the



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plaintiff has to settle some of the properties on her without absolute rights with right of enjoyment. After her lifetime, the legal heirs would be entitled to own the property. As per the settlement, the plaintiff executed a settlement deed on 01.12.1988 in favor of the defendant in respect of the suit properties and other properties situated in Kallakurichi Regn. Dist. Rishivandhiyam Sub Registration District at Kaattu Edayar Village.

3.1. But, contrary to the settlement made, utilizing his illiteracy it is worded in the settlement deed that absolute right is given to the defendant. As agreed upon the defendant did not come forward to live with the plaintiff. Therefore, he did not hand over the possession of the properties in terms of the settlement deed and so also the defendant did not enjoy the suit property and the suit properties are in the possession of the plaintiff. Because of the difference of opinion between himself and the defendant, the defendant was arranging to dispose of the properties. Therefore, he executed a cancellation deed dated 24.12.2007, thereby cancelled the settlement deed dated 01.12.1988. Enraged by the action of the plaintiff, the defendant tried to interfere with the possession of the plaintiff. Hence this suit is filed for



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declaration of title and for permanent injunction not to interfere with his peaceful possession of the suit properties. The suit properties are four items of landed properties. The details are given hereunder:

"Description of Suit Properties

Kallakurichi Regional District, Rishivandhiyam Sub Regional District at Kaattu Edayar Village:

- 1.Dry S.No.200/2 0.11.5 Ares 0.06 1/4 Kist 0.48
- 2.Dry S.No.201/1Ac.0.17 1/2 out of Ac.0.70 Kist 1.18
- 3.Dry S.No.201/4Ac.0.101/4 out of Ac.0.41 Kist 0.69
- 4.Dry S.No.201/6Ac.0.06 cents out of Ac.0.43 Kist 0.73"

4. Contending contra, the defendant by filing her written statement would state that the entire plaint statements are stoutly denied by the defendant, accepting the execution of the settlement deed and cancellation deed. The plaintiff does not have any right to cancel the settlement deed.

5. The following issues are framed by the Trial Court:

"1. Whether the plaintiff is the owner of the suit properties?"



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2. Whether the plaintiff is entitled to the relief of declaration and

permanent injunction?

3. To what relief the plaintiff is entitled to?"

6. Evidence and documents:

Before the Trial Court, on the plaintiff side, the plaintiff has examined himself as P.W.1, and 5 documents were marked. Settlement deed executed by the plaintiff in favour of the defendant in respect of 4 items of the suit properties and as regards yet another property is Ex.A1 dated 01.12.1988. Cancellation deed executed by the plaintiff dated 24.12.2007 is Ex.A2. Computerized Chitta/s in respect of Patta No.225 and Patta No.226 in the name of Kesava Coundar, father of the plaintiff herein dated 31.03.2008, are Ex.A3 and Ex.A4. On behalf of the defendant, the defendant has examined herself as DW.1, and nine documents were marked. Certificate copy of Ex.A1 settlement deed is Ex.B1. House tax receipts [18 in numbers] in the name of the defendant are Exs.B2 to B.9. Ex.B2 to Ex.B9 are not connected to the suit properties.

7. The plaintiff was non-suited for the following reasons:



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(i)The plaintiff is given absolute right to the defendant in respect of the suit properties through Ex.A1;

(ii) The plaintiff does not have any right to cancel the settlement deed as per the settlement deed EX.A1;

(iii) Ex.A1 settlement deed reads that he has handed over the possession of the suit property to the defendant;

(iv) There is no condition imposed by the plaintiff against the defendant in Ex.A1;

(v)Ex.A1 has been acted upon is proved by Ex.B2 to Ex.B9 tax receipt;

(vi)After 19 years from the date of Ex.A1 the plaintiff has executed Ex.A2 is not valid in law;

(vii)when the plaintiff has deposed that he had lodged a complaint against the defendant not to interfere with the suit properties; thereby it is seen that only the defendant was in possession and enjoyment of the suit properties.

(viii) The plaintiff has not filed any documents to show that he is in possession and enjoyment of the suit properties.



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In view of the above said arguments the plaintiff was not suited.

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8 . Aggrieved, the defendant preferred appeal before the I Additional Sub Court-I Villupuram in A.S.NO.8/2012. Upon consideration, the Appellate Court reversed the judgment of the Trial Court based on the following points:

(i) Based on Ex.A3 to Ex.A5, patta the properties are the properties of the plaintiff's father Kesava Counder till the year 2008; no partition took place.

(ii) The defendant has not proved about possession after the execution of Ex.A1 settlement deed. Therefore, it was construed that the suit properties are in possession of the plaintiff and based on the said reasons the appeal was allowed by setting aside the judgment and decree of the Trial Court. Against the said judgment of the Sub Court, the defendant herein has preferred this second appeal.

9. Substantial questions of law:

The following substantial questions of law arises for consideration:



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"Whether the judgment and decree passed by the Lower Appellate

Court is vitiated in law in as much as the Lower Appellate Court

did not consider the aspect that a deed of cancellation which

amounts to rescission of contract is valid only if it is made

bilaterally and that a unilateral cancellation is legally

impermissible?"

10. Heard Mr. S.Natrajan, the learned counsel for the appellant and M/s.R.Meenal, the learned counsel for the respondent and perused the material records.

11. The learned counsel for the Appellant would contend that if a registered document is sought to be cancelled, he has to approach the civil court and in order to strength his arguments the following judgments were referred to:

1. *B.K.Rangachari and others Vs. L.V.Mohan*

reported in 2015 (2) MWN (Civil) 165;

2. *Satya Pal Anand Vs. State of M.P.* reported in

(2016) 10 Supreme Court Cases 767 and



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3. *Illoth Valappil Ambunhi Vs. Kunhambu*

***Karanavan* reported in (2020) 18 Supreme Court Cases 317.**

12. M/s. R.Meenal, learned counsel for the respondent rather contended that as the suit properties are undivided properties and settlement deed was not acted upon by the defendant, the plaintiff duly cancelled the settlement deed [Ex.A1]. To buttress her arguments, the following judgments were referred: .

1. *Chennupati Venkatasubbamma Vs. Nelluri*

***Narayanaswami* reported in 1953 SCC Online Mad 82 and**

2. *Kali Naicker and others Vs. Jaganathan*

***and others* reported in 2013 (1) CTC 318.**

DISCUSSION:

13. To put it in a nutshell, the plaintiff had executed an irrevocable settlement deed on 01.12.1988 in favor of his wife, Ponnamal, the defendant



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herein, in respect of four items of the suit properties and yet another property.

The plaintiff has cancelled the settlement deed Ex.A1 by way of executing the cancellation deed on 24.12.2007. It is further stated that the properties are undivided suit properties and they are in the possession and enjoyment of the plaintiff, and therefore, it has to be construed that a settlement deed was not acted upon and sought for a declaration of title and a permanent injunction.

14. Rather, the learned counsel for the defendant/DW.1 would contend that the settlement deed is an irrevocable document and he does not have any legal right to cancel the said document, and the cause of action mentioned in the plaint is an imaginary one and seeks dismissal of the suit.

15. Ex. A1 settlement deed, is an irrevocable settlement deed. Further, Ex.A1 settlement deed states that possession of the suit properties is handed over to the defendant on the date of Ex.A1 itself. Subsequent to the date of Ex.A1, the plaintiff did not file any revenue document to prove his possession and enjoyment. The defendant has also not marked any revenue documents to prove her possession. By way of Ex.A2 cancellation deed, the plaintiff has cancelled the settlement deed. Whether Ex. A1 is legally correct or not is the



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moot question in this appeal.

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16. Ex.A1 is an irrevocable settlement deed as worded in the document. Therefore, absolute rights are conferred on the defendant through Ex.A1 settlement deed. As per Section 126 of the Transfer of Property Act, an irrevocable settlement deed cannot be revoked. Section 126 of the Transfer of Property Act is extracted hereunder for proper understanding:

"126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations (a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants dies before A. B dies without descendants in A's lifetime. A may take back the field. (b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at



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pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs.10,000, which continue to belong to A.

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17. In the judgment reported in ***K. Balakrishnan Vs. K. Kamalam*** [2004 (1) CTC 146 (SC)], the Apex Court has observed that apart from non delivery of possession and non exercising of any rights over the ownership of the property, the fact that the donee has failed to make mutation in the official records would not make gift deed invalid. The case was in respect of a minor. The minor was held to be a competent person to accept the gift under Section 127 of the Transfer of Property Act, 1882.

18. As per Section 6 of the Transfer of Property Act 1882, "property of any kind may be transferred except those mentioned in clauses (a) to (i)." The said provision is culled out as given hereunder:

"6. What may be transferred.—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force "

19. In the judgment reported in ***S. Ganesan Vs. Bharathirajan***



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[2009 (5) CTC 558], this Court observed that the settlement deed being a registered settlement deed and irrevocable, there is no power vested with the settlor to revert the same under Ex.A.57 therein. Therefore, the Courts below have rightly held that the unilateral cancellation of the settlement deed by the settlor is void. since he did not have title to the suit property. The Trial Court has also referred to that specific clause in the settlement deed.

20 . Whether the execution of revocation deed Ex.A2 by the plaintiff is valid or not has to be analyzed. In this regard, it is profitable to refer judgment of this Court [Full Bench] in the case of *M / s. Latif Estate Line India Ltd. Vs. Mrs. Hadeeja Ammal and others* reported in 2011-1-L. W. 673 . The scope of Section 17, 18 and 22(a) of the Registration Act and Section 31 of the Specific Relief Act, Section 54 of the Transfer of Property Act were dealt with as the first question formulated by this Court is extracted hereunder:

" Whether cancellation of a registration of a registered sale deed of a immovable property having valuation of more than one hundred rupees can be registered either under Sections 17 or 18 or any other provision of the Registration Act? "



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21 . It has been observed by the Hon'ble Full Bench of this Court is as

follows:

"58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy. "

22. In the case of *Muppudathi Pillai Vs. Krishnaswami Pillai*, reported in *AIR 1960 Madras 1* an extensive discussion is made by this Court [Full Bench] and relevant portion is culled out and given hereunder:

"12. The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of potential mischief. The jurisdiction under Section 39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence, etc. and as it has been stated it was to



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prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated. A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared. Section 39 embodies the principle by which he is allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in quia timet actions. "

23 . In the case of *D. V. Loganathan Vs. The Sub Registrar (dead) by L. Rs* reported in 2008(6) CTC 237 (SC), this Court has observed that:

"6. In fact the registration of cancellation of the Settlement Deed is against the Public Policy as it was not open to the Sub-Registrar to register the cancellation of the Deed, when the Settlement Deed is unconditional and irrevocable. If at all the party who has executed the document is aggrieved by the Settlement Deed, he could have very well approached the Civil Court to set it aside, but certainly could not unilaterally cancel it, by getting the Deed of Cancellation registered with the Sub-Registrar. The Cancellation Deed and its registration, therefore, being without jurisdiction, is liable to be set aside. "



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24. Therefore, it is clear that, as per Section 31 of the Specific Relief Act [old Section 39], the transferors have only one remedy, i.e., to institute a civil suit to get documents adjudged as void or voidable. Therefore, as per Section 31 of the Specific Relief Act 1963, it enables any person who is affected by any void or voidable document to sue for its cancellation.

25. From going through the above-mentioned details of the judgments, it is deducible that the irrevocable settlement deed, the one that was executed by the plaintiff, can never be cancelled, except based on the ground of fraud, misrepresentation, and undue influences or coercion.

26. It is not the case of the plaintiff that the settlement deed Ex.A1 suffers from the above-mentioned ailments. A careful reading of the Ex.A1 and Ex.A2 [settlement deed and revocation deed] put together that the settlement deed was very consciously worded. After 19 years from the date of execution, he has come forward with a vexatious suit to declare his title and for a permanent injunction. The law is so well settled that once the plaintiff has executed irrevocable settlement deed, it can be revoked only by filing a suit



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before the civil court.

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27 . In view of the aforesaid discussions, the substantial question of law is answered in favour of the defendant/appellant.

28 . In the result, this Second Appeal stands allowed on the following terms:

(i) The judgment and decree dated 03.12.2013 made in A.S.No. 8 of 2012 by the learned Ist Additional Subordinate Judge, Villupuram stands set-aside, and the Judgement and Decree dated 16.11.2011 passed by the learned Principal District Munsif, Ulundurpet, in O.S.No.81 of 2008 stands confirmed.

(ii) Ex.A2 dated 24.12.2007 Doc.No.1153/1988 on the file of the Sub Registrar of Book No.1, Volume 45, Pages 169 to 171 stands consequently set-aside. (iii) No costs. consequently, the connected civil miscellaneous petition is closed.



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Speaking/ Non-Speaking

Internet: Yes/No

Neutral :Yes/No

jrs

Note: The Registry is directed to send a copy of this judgment to the Sub Registrar of Rishivanthiyam, in order to cancel Ex.A2, dated 24.12.2007.

R. K A L A I M A T H I . J .

jrs

To .

- 1 . The Ist Additional Subordinate Judge, Villupuram
- 2 . The Principal District Munsif, Ulundurpet
- 3 . The Section Officer, V.R.Section, High Court, Madras.

C o p y t o :

The Sub Registrar of Rishivanthiyam,
Ulundurpet.

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