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A.S.No.412 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2023

DELIVERED ON : 05.01.2024

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

A.S.No.412 of 2014
and M.P.No.1 of 2014

1. A.Rajamani Ammal (died)
2. A.Vijayalakshmi

...Appellants

-Vs-

1. A.Devarajan
2. A.Nagarajan
3. A.Sounder Rajan
4. A.Krishna Kumar @ Krishna Rajan
5. Latha

(R5 brought on record as LR's
of the deceased 1st appellant
viz., A.Rajamani Ammal vide
order dated 16.09.2021
made in C.M.P.No.15255 of 2021
in A.S.No.412 of 2014)

... Respondents

Prayer: First Appeal filed under Section 96 of CPC read with Order 41 Rule 1 of CPC, praying to set aside the Judgment and decree dated 29.10.2013 passed in O.S.No.162 of 2009 by the learned 3rd Additional District and Session Judge, Thiruvallur at Poonamallee, Chennai-600 056 and dismiss the said Original Suit Number 162 of 2009.



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For Appellants : Mr.R.Balachandran
for Mr.A.Ramaswamy

For R1 to R3 : Mr.M.Raja Sekar

For R4 : Mr.C.Umashankar

For R5 : Mr.Suresh Sampath

JUDGMENT

This appeal suit has been filed challenging the Judgment and decree dated 29.10.2013 passed in O.S.No.162 of 2009 by the learned 3rd Additional District and Session Judge, Thiruvallur at Poonamallee, Chennai-600 056.

2. The defendants are the appellants and the plaintiffs are the respondents. The fifth respondent is the legal heir of the deceased first appellant. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.

3. The suit in O.S.No.162 of 2009 was filed for declaration and permanent injunction. The case of the plaintiffs is that the plaintiffs and the second defendant are the sons and daughter of one Alaganandam.



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The first defendant is the wife of the said Alaganandam. The fifth respondent herein is another daughter of the said Alaganandam. The said Alaganandam had purchased the suit property by the registered sale deed dated 10.04.1980, out of his own income in the name of his wife viz., the first defendant. He had constructed a house out of his retirement benefits. He died on 19.12.1987. After his demise, they were continuously living in the suit property. The second defendant and the fifth respondent herein got married. During their marriage, they were sufficiently presented with jewels and other articles. After the demise of the said Alaganandam, the plaintiffs had developed the property by digging up Bore Well, plastering work and erection of car shed. Out of love and affection, the first defendant had executed a registered Settlement Deed dated 06.01.1995, thereby settled a portion of the suit and building thereon in the suit property in favour of the plaintiffs. By way of second registered Settlement Deed dated 01.03.1995, she also settled the remaining property in favour of the plaintiffs. Both the settlement deeds were duly accepted by the plaintiffs and were acted upon. Both the settlement deeds are unconditional and no obligations were imposed upon the plaintiffs. In



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pursuant to the settlement deeds, the plaintiffs became the absolute owners of the suit property. The second defendant was deserted by her husband and as such, she is living with the first defendant. It was not objected to by the plaintiffs, she being their sister. Utilizing the said circumstances, the second defendant started poisoning the mind of the first defendant and made to execute two Cancellation Deeds dated 12.06.2006 registered vide Document Nos.4272 of 2006 and 4273 of 2006, thereby the settlement deeds dated 06.01.1995 and 01.03.1995 were cancelled. Thereafter, the first defendant had executed a settlement deed dated 19.06.2008 in favour of the second defendant. The cancellation of settlement deeds were executed after a period of ten years. Therefore, both the cancellation deeds are not valid. Hence, the suit.

4. Resisting the same, the defendants filed a written statement stating that the first defendant was running a Mess in the police quarters and also conducted monthly chit since the income derived from her husband viz., Alaganandam was not sufficient to maintain the family. Therefore, out of her own income, she had purchased the suit property by



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the sale deed dated 10.04.1980 registered vide Document No.1164 of 1980. Thereafter, she started construction of house. After completion of construction, they were living in the suit property. After the demise of her husband, the plaintiffs never invested any money for renovation of the suit property. In fact, the defendants never lived with the plaintiffs comfortably under the care and custody of them. After marriage of the plaintiffs, they are living separately in different places. Therefore, the first defendant never intended to settle the suit property in favour of the plaintiffs. However, the plaintiffs approached the first defendant to right a Will in favour of their children in respect of the suit property. Therefore, the first defendant, with an intention to execute a Will, had come to the Registrar Office and signed the same on 06.01.1995. Another Will was also executed on 01.03.1995. Later, she came to understand that both are settlement deeds and as such, she had rightly cancelled both the settlement deeds, on 12.06.2006, that too after duly informing the plaintiffs. In fact, the plaintiffs filed a suit for permanent injunction as against the defendants in O.S.No.290 of 2007 and the same was withdrawn without seeking any leave to file the present suit.



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5. On perusal of the pleadings, the Trial Court framed the following issues:-

“ எழுவினாக்கள்

i. வழக்கு சொத்தில் வாதிகளுக்கு விளம்புகை பரிகாரம் கிடைக்கத்தக்கதா?

ii. 06.01.1995ஆம் தேதி மற்றும் 01.03.1995ஆம் தேதி ஏற்பட்ட தான பத்திரங்கள் செல்லத்தக்கதா?

iii. 12.06.2006ஆம் தேதி இரண்டு தான பத்திரங்களையும் ரத்து செய்தது செல்லத்தக்கதா?

iv. 19.06.2008ஆம் தேதி முதல் எதிர்வாதி 2வது எதிர்வாதிக்கு எழுதி கொடுத்த தானப் பத்திரம் செல்லத்தக்கதா?

v. வாதிகள் கோரியுள்ள நிரந்தர உறுத்துக் கட்டளை பரிகாரம் வாதிகளுக்கு கிடைக்கத்தக்கதா?

vi. வாதிகளுக்கு வேறு என்ன பரிகாரம் கிடைக்கத்தக்கது?”

6. On the side of the plaintiffs, they had examined P.Ws.1 to 3 and marked Exs.A1 to 5. On the side of the defendants, they had examined D.Ws.1 to 3 and marked Exs.B1 and 18. On perusal of oral and documentary evidence, the Trial Court decreed the suit as prayed for. Aggrieved by the same, this appeal suit.



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7. The learned counsel for the defendants would submit that the plaintiffs had already filed a suit in O.S.No.290 of 2007, on the file of the Additional District Munsif Court, Poonamalee, for permanent injunction against the defendants from alienating or registering any documents in respect of the suit property. However, the said suit was dismissed as withdrawn without any liberty to file the present suit. Therefore, the present suit is hit by Order II Rule 2 of CPC. The Settlement deeds which were marked as Exs.B4 and 5, were obtained by committing fraud on the first defendant by the plaintiffs. Even as per the first settlement deed, which was marked as Ex.B4, the first defendant had retained the first floor portion of the suit property for herself. Insofar as the second settlement deed is concerned, the remaining portion was settled in favour of the plaintiffs. Therefore, the plaintiffs cannot seek declaration for the entire suit property. Further, the suit itself is not maintainable without seeking the relief of recovery of possession, since the defendants are in possession and enjoyment of the suit property. Even after the demise of the first defendant, the second defendant is in possession and enjoyment of the suit property. In fact, the third palintiff



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did not accept the settlement deed and filed a suit for permanent injunction in respect of the suit property. In terms of Section 34 of the Specific Relief Act, the suit is not maintainable without the relief of recovery of possession.

8. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in *AIR 1993 SCC 957* in the case of *Vinay Krishna Vs Keshav Chandra and another* and the judgment of this Court reported in *1939 (1) MLJ 337* in the case of *Papathi Ammal (deceased) and others Vs Doraiswamy Naicker and others*.

9. Per contra, the learned counsel for the plaintiffs would submit that the suit is very much maintainable, since the present suit has been filed for the entire property under Exs.B4 and 5. Exs.B4 and 5 were unilateral cancelled by the first defendant and as such, both are void and need not be challenged by way of declaration. That apart, Exs.B4 and 5 were cancelled unilaterally by the first defendant that too after a period of



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ten years. Immediately after the execution of Exs.B4 and 5, both were acted upon. In fact, the revenue records were mutated in their name and they are in possession and enjoyment of the suit property. The suit in O.S.No.290 of 2007 was filed by the third plaintiff for permanent injunction. Before even filing of written statement and framing of issues, the suit was dismissed as withdrawn. That apart, it is only for permanent injunction and has nothing to do with the present suit. Therefore, he prayed for dismissed of the appeal suit.

10. Having regard to the pleadings, evidence and submissions made by the learned counsel appearing on either side, the following points arise for consideration in this appeal:-

“(i) Whether the plaintiffs are entitled for the relief of declaration and injunction in respect of the suit property, when Exs.B4 and 5 were cancelled by the deeds of cancellation which were marked as Exs.B6 and 7?”

“(ii) Whether the settlement deed dated 19.06.2008 is valid or not?”

“(iii) Whether the plaintiffs have accepted the settlement deeds Exs.B4 and 5 and acted upon?”



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11. Admittedly, the plaintiffs and the second defendant are sons and daughter of the said Alaganandam. The first defendant is his wife. He was employed in Tamil Nadu Police Service and retired during the year 1982. During his service, he had purchased the suit property in the name of his wife viz., the first defendant by the registered sale deed dated 10.04.1980. He died on 19.12.1987. Even before his demise, a house was constructed in the suit property and all were living there. Since the first defendant was under the care and custody of the plaintiffs and due to love and affection, she had executed the settlement deeds in favour of the plaintiffs, which were marked as Exs.B4 and 5.

12. A perusal of Ex.B4 revealed that the first defendant had settled the ground floor undivided share of land ad-measuring 1332 sq.ft in favour of the plaintiffs except the first floor. The first floor was not subjected for any settlement. Thereafter, on 01.03.1995, another settlement deed was executed which was marked as Ex.B5.

13. A perusal of Ex.B5 revealed that the remaining property, to an



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extent of 1368 sq.ft, was also settled in favour of the plaintiffs, thereby plaintiffs became the absolute owners of the entire suit property.

14. Though the learned counsel for the defendants submitted that as per the first settlement deed, the first floor was retained by the first defendant, a perusal of Ex.B5 shows that the entire property was settled in favour of the plaintiffs. Further, both the settlement deeds do not contain any clause to revoke or modification. As per Exs.B4 and 5, the plaintiffs had mutated the revenue records in their favour and both the settlement deeds were acted upon. Both the settlement deeds were duly accepted by the plaintiffs. The third plaintiff filed a suit for bare injunction in respect of the suit property as against the defendants.

15. The plaint in O.S.No.290 of 2007 was marked as Ex.B1. A perusal of Ex.B1 revealed that both the settlement deeds executed by the first defendant are unconditional gift deeds. Possession was also already handed over to the plaintiffs. In pursuant to the settlement deeds, the third plaintiff also had executed equitable mortgage deed for a loan.



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Further, he also reserves his right to file a suit for declaration, declaring that the cancellation deeds dated 12.06.2006 as null and void. However, even before filing of written statement, the said suit was dismissed as withdrawn. Therefore, the said suit has nothing to do with the present suit. Further, the plaintiffs rightly did not challenge the cancellation deeds, since both the cancellation deeds are void and need not be challenged. In fact, both the deeds of cancellation were executed unilaterally without the knowledge of the plaintiffs. That apart, both were executed after a period of ten years.

16. The Hon'ble Full Bench of this Court reported in ***MANU/TN/6694/2022*** in the case of ***Sasikala Vs The Revenue Divisional Officer, cum Sub Collector, Devakottai and others***, wherein it was held as follows:-

“(a)A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.

(b)Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property.



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(c)Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.

(d)The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration.

(e)However, an absolute deed of sale or deed of conveyance which is duly executed by the transferor may be cancelled by the Civil Court at the instance of transferor as contemplated under Section 31 of Specific Relief Act.

(f)As regards gift or settlement deed, a deed of revocation or cancellation is permissible only in a case which fall under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgment.

(g)The legal principles above stated by us cannot be applied to cancellation of Wills or power of Attorney deed which are revocable and not coupled with interest.”

17. Therefore, the plaintiffs need not challenge the unilateral cancellation of settlement deeds, which were marked as Exs.B6 and 7. Therefore, the subsequent settlement deed dated 19.06.2008 registered vide Document No.6450 of 2008 executed by the first defendant in favour of the second defendant is also void, since the first defendant had no title or right over the suit property.

18. Therefore, all the points are answered in favour of the



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plaintiffs and the Trial Court had rightly decreed the suit in favour of the plaintiffs and this appeal fails and is liable to be dismissed.

19. Accordingly, this Appeal Suit stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

05.01.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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To

The Third Additional District and Session Judge, Thiruvallur
at Poonamallee, Chennai-600 056.



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G.K.ILANTHIRAIYAN. J.

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Pre-delivery Judgment made in

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