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AS.105/2



THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	22.03.2024
PRONOUNCED ON	30.10.2024

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

A.S.No.105 of 2023

Mrs.Ramani Bai (died)

1.Mrs.C.Uma Rani

..

Appellant

Vs

1. Mr.G.Bakthavatsalam

2. Mrs.S.Usha Rani

3. Mr.C.Ramesh Babu

4. Mr.C.Suresh Babu

(R2 to R4 are daughter and
sons of deceased Ramani Bai

...

Respondents

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code against the order and decretal Order dated 21.03.2019 passed in I.A.No.8014 of 2018 in O.S.No.257 of 2018 by the IV Addl. City Civil Court at Chennai who allowed the application to reject the plaint under Order VII, Rule 11 of C.P.C.

For Appellant : Mr.V.Raghavachari, Sr. Counsel
for Mr.T.Easwara Dhas

For Respondents : Mr. Venkataseshan, Sr. Counsel
for Mr.V.V.Sathya for R1
R2 to R4 - No appearance

JUDGMENT

Pursuant to the judicial order passed in A.S.No.105 of 2023 and administrative order passed by My Lordship the Honourable the Chief



Justice, the Appeal Suit and connected Second Appeals are posted before this Court. The arguments are heard, orders are reserved.

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2. For the sake of convenience, the parties are referred to as per the litigative status before the trial court.

3. The brief facts leading to filing of the first appeal are as under:

a] One G. Ramanibai [original plaintiff] filed O.S.No.257 of 2018 before the City Civil Court, IV Addl. Judge, Chennai, seeking a declaration that Release Deed executed by the plaintiff in favour of the defendant on 27.05.201 at Sub Registrar Office, Velacherry as null and void and consequential relief of permanent injunction. The sole defendant G.Bakthavatsalam is none other than her own brother.

b] The suit summons were served upon the sole defendant and he entered appearance. Subsequently, he filed I.A.No.8014 of 2018 under Order VII, Rule 11 (c) and (d) of CPC to reject the plaint. The plaintiff in the suit/respondent in I.A. Filed her counter.

c] After enquiry, by an order dated 21.03.2019, the learned IV Addl. City Civil Judge, Chennai allowed the application and consequently dismissed the suit O.S.No.257 of 2018 and hence the appeal.



4. For the sake of brevity, there are four more suit surrounding the very same property.

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5. It is not in dispute that the paternal grant father of the plaintiff as well as the defendant Lakshmana Naidu is the owner of the property. After the death of the grand father, there was a partition between his two sons namely Ganesa Naidu and Varadarajulu Naidu on 24.12.1945. Ganesa Naidu died on 07.08.1995 leaving behind his two sons and one daughter namely the plaintiff herein. The plaintiff along with the two brothers as clause one heirs, consequently entitled to one share in 1/3 share of Ganesa Naidu. Legal heir certificate is filed along with the plaint.

6. The plaint further proceeds that the property was given on lease to one Govindthasamy Naicker, however, he has not vacated the property, hence there is some Civil Suit between the landlord and tenant.

7. Initially, the original plaintiff Ramani Bai filed a partition suit in C.S.No.310 of 2019 before the High Court Original Side for her share from the suit property.



8. The plaintiff further averred in the suit that defendant/brother approached the plaintiff sister to withdraw the suit, since the tenant Ganesan Naicker was not vacating the suit property and the defendant promised the plaintiff sister and her that since her second son is mentally retarded, he will deposit a sum of Rs.20 lakhs in the bank account of the plaintiff, so that he could manage the family expenses and also look after the mentally retarded child. Though the property value as on that date was 50 lakhs, since defendant brother promised to deposit 20 lakhs in her bank account initially to manage the family expenses from the interest earned from the deposit amount and on further promise he could deposit the remaining amount of 30 lakhs once the suit for evicting the property is decided. At para 10 of the plaint, she stated as follows;

'Being an innocent woman she was not knowing the fraudulent intentions of the Defendant, she completely believed and trusted the Defendant in good faith that he will deposit Rs.20,00,000/- (Twenty Lakhs only) in her bank account as promised by the Defendant and executed release deed vide Doc.No.2692 of 2010 dated 27.05.2010 at SRO at Velacherry.

....But the defendant as pre-planned in his mind deceived the plaintiff and he never ever deposited the said amount of Rs.20,00,000/- (Twenty lakhs only) in her bank



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account against his own promise. Now the plaintiff is struggling to manage her daily family expenses as well as expenses to maintain her mentally retarded son who is living along with her. The plaintiff further states that the defendant did not even deposited a single rupee in her bank account until now.'

9. At paragraph 12 of the plaint, she specifically stated that he executed a Release Deed in favour of the defendant taking into consideration the payment of 50 lakhs and deposit amount so as to manage her mentally retarded son. However, her brother, as promised, has not honoured his commitment, deceived her and never deposited the amount in her bank account. Hence the suit.

10. In the application I.A.No.8014 of 2018, at the instance of sole defendant brother, filed under Order VII Rule 11 (c) and (d) and CPC to reject the plaint, he would state that the plaintiff released her share in his favour and she has not prosecuted the partition suit in C.S.No.310 of 2009 and the same was dismissed for non prosecution on 22.10.2010 and further stated that there is another suit pending before the City Civil Court and in respect of the sale agreement entered by the plaintiff and also he filed a suit



to set aside the sale deed were initially pending. It is further stated by the defendant in the interlocutory application to reject the plaint that he filed a suit for declaring the alleged sale agreement dated 14.07.1997 between the plaintiff sister Ramani Bai with alleged purchaser Vijayalakshmi as null and void, never acted upon and the said Vijayalakshmi also filed a suit for specific performance of the agreement entered between Vijayalakshmi and sister Ramani Bai was decreed, hence two appeals have been filed before the City Civil Court in A.S.No.10 of 2015 and A.S.No.11 of 2015 and both the appeals are tried together since the subject matter of the suit sale agreement dated 14.07.1997 is one and the same, wherein, the appeal filed by the brother was allowed and the specific suit filed by the proposed purchaser Vijayalakshmi was dismissed. Consequently two second appeals S.A.Nos.689 and 690 of 2017 were pending before this court.

11.As stated supra, by administrative order, the second appeals S.A.Nos.689 and 690 of 2017 were posted along with this appeal since decision rendered in this appeal shall have a bearing upon the second appeals, the same are disposed off by separate judgment, however on same date since, evidence are recorded separately.



12. The present petition is filed only on the premise that there is a delay of 8 years in seeking declaration relief to set aside the release deed by the plaintiff's sister in favour of the defendant brother on the ground that court fee paid is lesser and point of limitation. The plaintiff filed counter in I.A.No.8014 of 2014. The sum and substance of the said counter are that the defendant never paid consideration of 20 lakhs for release deed and the defendant never made fixed deposit in the bank as per the recitals of the release deed. Documents of statements of accounts were filed as plaint documents. It is the plaintiff's specific case that since the defendant/her brother promised to pay a sum of Rs.20 lakhs for maintenance of herself and her mentally retarded child, in good spirit and good faith, plaintiff dropped the prosecution in CS.310/2009.

13. According to the plaintiff, she properly valued the suit under section 40 of the Tamilnadu Court fee and Valuation Act and paid the court fee of Rs.60,000/-.

14. Heard Mr. V. Raghavachari, for Mr.T.Easwara Dhas learned senior counsel appearing for the appellant and Mr.Venkateseshan, learned Senior Counsel for Mr.V.V.Sathya appearing for the 1st respondent. There



is no representation for the respondents 2 to 4.

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15. After perusing the order passed by the learned Judge in allowing the I.A.No.8014 of 2018, whereby he allowed the rejection of the plaint and consequently dismissed the suit.

16. In the Release Deed executed by plaintiff, it is recited as follows;

' நான் தபசில் கண்ட எனது 1/9 பாக சொத்தை உனக்கு விடுதலை செய்து கொடுப்பதற்கு ஆதரவாக நானும், முனநிலை பாதிக்கப்பட்ட எனது மகனின் எதிர்கால நலன் கருதி, நீ என்னிடம் தபசில் சொத்திற்காக ரூ.20,00,000/- (எழுத்தால் ரூபாய் இருபது லட்சம் மட்டும்)-ஐ பெற்றுக்கொண்டு எனது பங்கை விட்டுக் கொடுக்கும்படி கேட்டுக் கொண்டதற்கிணங்க நானும் இனி மேலும்

மேற்படி சொத்தை என்னால் பராமரிக்க முடியாத நிலையில் இருப்பதாலும், சம்மதித்து மேற்கண்ட தொகையை பெற்றுக் கொண்ட தபசில் கண்ட சொத்தில் 1/9 உள்ள எனது பாகத்தை இன்று விடுதலை செய்து கொடுத்துவிட்டேன்.

மேற்கண்ட ரூ.20,00,000/- (எழுத்தால் ரூபாய் இருபது லட்சம் மட்டும்)-ஐ வங்கியில் வைப்புத் தொகையாக முதலீடு செய்து, ஆதிலிருந்து வரும் வட்டியை வைத்து நானும், முனநிலை பாதிக்கப்பட்ட



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எனது மகனும் எங்கள் ஜீவனத்தை நடத்திக்
கொள்கிறோம். இனி தபசில் கண்ட சொத்தில்
எனக்குரிய 1/9 பாகத்திற்கும், எனக்கோ, அல்லது
எனது வாரிசுக்கோ எவ்வித சம்பந்தமும் கிடையாது '

17. Admittedly, the recital is clear. As per the recital, a deposit of 20 lakhs be made for the welfare of the mentally retarded child as well as for the plaintiff. Plaintiff document is perused, plaintiff averment also perused along with plaintiff documents.

18. The main contention of the plaintiff in the rejection of plaintiff enquiry is that non payment of consideration of Rs.20 lakhs for the Release Deed and not paid the amount for making the fixed deposit in the bank as per the recital in the Release Deed. Only under the promise to settle Rs.20 lakhs by the defendant brother, the plaintiff sister has, in good spirit, dropped the prosecution in C.S.No.310 of 2009. It is the vital aspect that the brother has deceived the sister by promising her to pay the amount and to deposit the amount so as to take care of the mentally retarded child of the plaintiff, was not even considered by the trial court. The plaintiff document substantiated the plaintiff averment that no amount is deposited in the bank account of the plaintiff. It is specifically pleaded that he made a



commitment and failed to honour the commitment which resulted in continuous cause of action and hence the point of limitation raised by the defendant on the facts and circumstances becomes a mixed question of fact and law and hence, in my considered view, the trial court ought not to have decided the appeal by mere arithmetic calculation. The plaint averment and plaint document shows that Rs. 20 lakhs, as promised by the defendant brother is not deposited and it is matter for trial and answers to be elicited from the cross examination of PW1 as to what had happened and hence, I find that the facts and circumstances of the case, as described in detail in the preceding paragraph, does not fall under Order VII, Rule 11 (c) and (d) of CPC and hence, I find that the order is liable to be set aside. The trial has to go on and the matter has to be decided based upon the evidence only.

19. Accordingly, in the result,

(1) the appeal in O.S.No.105 of 2023 is allowed. No costs.

(2) The decree and judgment made in O.S.No.257 of 2018 pursuant to the order in I.A.No.8014 of 2018, dated 21.03.2019 is set aside.



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(3)The suit O.S.No.257 of 2018 is remitted back to the City Civil Court, IV Addl. Judge for trial in accordance with law.

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Index:Yes/No
Internet:Yes/No
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RMT.TEEKAA RAMAN, J.

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Pre-Delivery judgment in
A.S.No.105 of 2023



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