

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2015

CORAM:

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

S.A.No.1029 of 1999

Thaiyanayagi

... Appellant/Plaintiff

Vs.

1.Kaliya Perumal

2.Elumalai

... Respondents/Defendants

Second Appeal is filed under Section 100 C.P.C against the judgment and decree dated 14.8.1997 in A.S.No.40 of 1996 on the file of the Principal District Judge, Pondicherry confirming the judgement and decree dated 29.3.1996 made in O.S.No.217/95 on the file of the First Additional District Munsif, Pondicherry.

For appellant : Mr.T.Sathiyamoorthy for
M/s.G.M.Mani Associates

For respondents: Mr.M.Velusamy
for Mr.V. Vijay Shankar for R1
Mr.K.Surendranath for R2

J U D G M E N T

The unsuccessful plaintiff in both the courts below, who is the mother of the defendants, is the appellant herein. The suit was filed by the mother to declare the registered settlement deed purported to be executed by the plaintiff in favour of her two sons/defendants 1 and 2 as null and void and not binding on the plaintiff and for the cancellation of the same.

2.The mother has come forward with such relief on the ground that her signature was obtained in the document by misrepresenting the same as Will and as she was bed ridden due to ill-health, her signature was obtained without reading out the contents of the same. It is her specific case that she came to know about the nature of the document as that of the settlement deed and not Will, only much after the registration of same, as such, the document so obtained by the parties fraudulently by exercising undue influence and misrepresentation is null and void and is liable to be cancelled.

3.The suit was contested by both the sons. According to them, there was no fraud, coercion and undue influence practiced on the plaintiff and the settlement deed was executed in favour of the defendants by reserving her life estate in the suit property and the settlement was acted upon and the first defendant has been in possession and enjoyment of the property.

4.The parties in support of their respective contentions, examined PW1 and DW1 to DW3 witnesses and marked Exs.A1 to A5 documents on their side. The trial court held that the plaintiff, having settled the property upon her sons under Ex.A1, out of her love and affection and with the knowledge about the nature and contents of document and she having retained life estate in the same in her favour, cannot now be permitted to deny the validity of the same on the grounds as mentioned in the plaint and dismissed the suit. Aggrieved against the same, the plaintiff filed AS.No.40/1996, which was also dismissed by the lower appellate court. Both the courts below have held so, on the basis of the oral and documentary evidence adduced by the parties. Correctness of the finding so given by the courts below is challenged before this court by way of present second appeal.

5.The Second Appeal is admitted on the following substantial questions of law:

i. Whether the courts below were correct in holding that Ex.A1 settlement deed is valid and binding on the appellant, even though the respondents had not accepted the gift and also had not acted upon the same?

ii. Whether the courts below were right in rejecting the case of the appellant that the settlement deed was fraudulently brought about by coercion, force and threat, when the appellant was ill and under the care of the respondents?

iii. Whether the courts below were correct in ignoring the material evidence, in the admission of DW3, that it was the 1st respondent, who had procured the stamp papers in his name alone, leaving other beneficiary, by spending his money, which by itself would prove that Ex.A1 was fraudulently brought about?

iv. Whether the courts below were right in dismissing the suit on assumptions and presumptions alone?

6.Heard the rival submissions made on both sides and perused the records.

7.The facts and circumstances made out herein and the conduct of the parties and the oral and documentary evidence adduced before the courts below would very well support the findings rendered by the courts below regarding voluntary nature and validity of the settlement deed and the due execution of the same by the plaintiff/mother on her own volition and with her consent and knowledge about the nature of the document and the recitals contained in the same. The very fact that the life estate is reserved in favour of the executant of the document, would probablise the defendants' theory that no fraud, coercion and undue influence or misrepresentation was played on the plaintiff in getting the document executed in favour of them. Thus, the factual findings rendered by the courts below to that effect, based on sufficient evidence and supported by proper reasoning, in my considered view, need no

interference by this court and the substantial questions of law are hence answered against the plaintiff.

8.At this juncture, the first respondent/first defendant in the suit by name Kaliyaperumal filed an affidavit dated 19.1.2015 before this court to the effect that the suit land is an agricultural land, which has been presently looking after by himself and his brother Elumalai/2nd respondent/2nd defendant in the suit and their mother/plaintiff and the entire income derived from the same is being enjoyed by both the parties and the mother along with her son Elumalai is entitled to enjoy the property and income therefrom till her life time, without any encumbrance and alienation of the same and after her life time, both the sons as per the terms of the settlement deed, are entitled to equal shares with absolute right over the same. Considering the nature of the findings rendered by the courts below, the claim so made by the first defendant in the affidavit cannot be disputed either by the plaintiff or by the second defendant.

9.In the result, the plaintiff/mother, who is now in enjoyment of the suit property, is held entitled to be in possession and enjoyment of the suit property and to enjoy the income derived therefrom, till her life time and thereafter, the sons/defendants 1 and 2 shall get their right over the property, as per the terms of the settlement deed. The affidavit dated 19.1.2015 filed by the first respondent/first defendant in the suit shall form part of the decree and the second appeal is accordingly disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rk

To

- 1.The Principal District Judge, Pondicherry.
- 2.The First Additional District Munsif, Pondicherry.

+ 1 cc to M/s. G. M. Mani, Associates, Advocates Sr.3170
+ 1 cc to Mr.V. Vijaya Shankar, Advocate SR.3215

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KGK (CO)
EU 20.07.15