

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-08-2015

CORAM:

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

SECOND APPEAL No.341 of 2007

B.Banumathi

.. Appellant/Defendant

vs.

Rajkumar

.. Respondent/Plaintiff

Second Appeal is preferred under Section 100 CPC against the judgment and decree of the learned Additional Subordinate Judge's Court at Salem, dated 31.8.2006 in A.S.No.28 of 2006, confirming the judgment and decree of the learned Principal District Munsif Court at Salem, dated 19.12.2005 in O.S.No.85 of 2005.

For Appellant : Mr.R.Kannan
For Respondent : Mr.N.Manokaran

J U D G M E N T

The defendant in the original suit is the appellant in the Second Appeal. The plaintiff in the original suit is the respondent in the Second Appeal.

2. For the sake of convenience, the parties are referred to in accordance with their ranks in the suit and at appropriate places, their ranks in the Second Appeal will also be indicated, if necessary.

3. The respondent herein/plaintiff filed the suit for permanent injunction restraining the appellant herein/defendant from, in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property and in particular from forcibly evicting him from the house in the suit property in which he claims to be residing.

4. The said prayer was based on the following plaint averments:

The suit property originally belonged to Angammal, Wife of Ramasamy Naidu. As she had no issues, she executed a registered Settlement Deed dated 29.1.1965 in favour of her sister's daughter Chinna Pappal in respect of half of the suit property. Under the said Settlement Deed, a right was conferred on Chinna Pappal to enjoy the property till her lifetime without any power of alienation or

encumbrance and directing the vesting of the absolute rights on the male issues of Chinna Pappal. Chinna Pappal died in the year 1995, leaving the plaintiff and one Natarajan as her sons and also the defendant as her daughter. After the death of Chinna Pappal, the property devolved upon the plaintiff and his brother Natarajan as per the abovesaid Settlement Deed. The Settlor Angammal on the same day executed another Settlement Deed in respect of the other half share of the suit property in favour of Dhanam, another daughter of her sister. Similar clauses were incorporated in the said Settlement Deed also. However, in the said Settlement Deed executed in favour of Dhanam, a further clause was also incorporated to the effect that in case Dhanam would have no male issue, half of the property settled on her should go to her brothers Venkatachalam and Bangaru and the remaining half should go to the male issues of Chinna Pappal. The said Dhanam died issueless in the year 1979. After the death of Dhanam, the said property also devolved upon the plaintiff and his brother and on Venkatachalam and Bangaru, the brothers of Dhanam. However, no partition took place in respect of the suit properties between the plaintiff and the other sharers. The defendant, claiming that Angammal executed a Will in her favour in the year 1993 in respect of the suit property after cancelling the Settlement Deeds dated 29.1.1965 by Cancellation Deeds dated 29.9.1983, was often coming to the suit property with their men and demanding the plaintiff to vacate the house bearing Door No.33 in which the plaintiff was residing and was threatening the plaintiff he would be evicted by force. She was also threatening the tenant who occupies Door No.33. She made an attempt to forcibly evict the plaintiff and his tenant on 19.1.2005 which attempt was thwarted with the help of the neighbours. Hence the plaintiff was forced to approach to the Court with the suit for bare injunction.

5. The suit was resisted by the defendant contending that the Settlement Deeds relied on by the plaintiff were not, in fact, Settlement Deeds and they were only Wills capable of being cancelled by the Testatrix during her lifetime and that by the Cancellation Deeds dated 29.9.1983, the said documents wrongly titled as 'Settlements' were cancelled and a fresh Will came to be executed and that the same was the last Will and Testament of Angammal by which she had bequeathed the entire suit property in favour of the defendant. It was also contended by the defendant that even assuming that the Settlement Deeds dated 29.1.1965 were Gift Settlement Deeds, they were not valid and they were not acted upon and that hence the cancellation of the same before acceptance was legally valid. Based on the said contention, the defendant prayed for the dismissal of the suit.

6. Necessary issues were framed by the Trial Court (the Court of Principal District Munsif at Salem), based on which the parties went for trial. Three witnesses were examined as PWs-1 to 3 and 17 documents were marked as Exs.A-1 to A-17 on the side of the plaintiff. Five witnesses were examined as DWs-1 to 5 and 52 documents were marked as Exs.B-1 to B-52 on the side of the defendant.

7. At the conclusion of trial, the learned Trial Judge, upon considering the pleadings and evidences adduced on both sides in the light of the arguments advanced on both sides, rendered a finding that the documents dated 29.1.1965 which were marked as Exs.A-1 and A-2 were Gift Settlement Deeds and the Settlor had not reserved a right to cancel the same. It was also held by the learned Trial Judge that the Cancellation Deeds allegedly executed by Angammal on 29.9.1983 produced as Exs.A-3 and A-4 were of no consequence and that the Will relied on by the plaintiff did not confer any title on the defendant on the death of Angammal. Accordingly, the learned Trial Judge sustained the claim of the plaintiff and decreed the suit by a judgment and decree dated 19.12.2005.

8. Aggrieved by and challenging the same, the defendant preferred an appeal before the lower Appellate Court (the Court of Additional Subordinate Judge, Salem) in A.S.No.28 of 2006. The learned lower Appellate Judge, after hearing, concurred with the findings of the Trial Court in all respects and dismissed the appeal by a judgment and decree dated 31.8.2006 and confirmed the decree passed by the Trial Court. The said decree of the lower Appellate Court dated 31.8.2006 is the subject matter of challenge before this Court in the Second Appeal.

9. The Second Appeal came to be admitted on 16.3.2007 identifying the following questions to be the substantial questions of law that have arisen for consideration in the Second Appeal:-

(i) Whether the Courts below are correct in holding that the plaintiff is in possession of the property before his right of succession on the suit property as vested remainder only after the demise of Settlor and his mother Chinnapappal, life estate holder, who did not take possession of the property at any point of time pursuant to Ex.A-1?

(ii) Whether the conditional Settlement Deeds would constitute the consideration within the meaning of Section 122 of Transfer of Property (sic) Act rendering as invalid in law?

(iii) Whether the conditional Settlement Deeds Exs.A-1 and A-2 are cancelled by the Settlor under Exs.A-3 and A-4 for non-compliance of such conditions that the Settlee had to maintain the Settlor Angammal and her husband Ramasamy Naidu is correct?

10. The arguments advanced by Mr.R.Kannan, learned counsel for the appellant and by Mr.N.Manokaran, learned counsel for the respondent are heard. The judgments of the Courts below and the material records received from the Courts below are perused and taken into consideration.

11. It is the contention of the learned counsel for the appellant that though Exs.A-1 and A-2 were titled as 'Settlement Deeds', the nomenclature used shall not be conclusive proof as to the nature of those documents and that the nature of disposition made therein alone shall be taken into account to decide whether they are Wills or Gift Settlements. It is the further contention of the learned counsel for the appellant that when the alleged Settlor reserves a life interest for herself and confers a life interest on the Settlee with a direction that some other persons or persons yet to be born would get the property after the lifetime of the executant and after the lifetime of the subsequent life estate holder, the same will indicate that the device made by the executant was nothing but an expression of her Wills as to how her properties are to be distributed on her death and that hence such documents cannot be construed as Gift Settlement Deeds. Based on the abovesaid contention, the learned counsel for the appellant contends that Exs.A-1 and A-2, being Wills, were capable of being cancelled by the maker of those documents at any point of time during her lifetime and that Angammal rightly exercised her right of cancellation of those two documents by executing Exs.A-3 and A-4.

12. It is the further contention of the learned counsel for the appellant that even without specific cancellation of those documents the former Wills could have been very well cancelled by executing fresh Wills and the last Will and Testament of Angammal alone should have been given effect to. Based on the said contention, the learned counsel for the appellant contends that both the Courts below committed an error in law in considering the Exs.A-1 and A-2 to be Gift Settlement Deeds rather than Wills. It is the further contention of the learned counsel for the appellant that even assuming Exs.A-1 and A-2 to be Settlement Deeds, before the gifts made under the said Settlement Deeds were accepted by the Donees, the transaction did not become complete and that before acceptance of the gifts Donor did have every right to cancel the Gift Settlement Deeds. The learned counsel for the appellant further contends that since the maker of Exs.A-1 and A-2 had reserved life interest not only for herself but also for her husband, the Settlees under the said documents, namely, Chinna Pappal and Dhanam did not get possession of the property and there was nothing to show their acceptance.

13. Per contra, it is the contention of the learned counsel for the respondent that the Courts below, on proper construction of the documents Exs.A-1 and A-2, rendered a correct and concurrent finding that they were none the less Gift Settlement Deeds in which the Settlor did not reserve a right to revoke the settlements in the

event of happening of any event and that the Revocation Deeds dated 29.9.1983 marked as Exs.A-3 and A-4 do not have any legal effect on the Settlements which became concluded on the execution and registration of Exs.A-1 and A-2. It is the further contention of the learned counsel for the respondent that the contention raised on behalf of the appellant that the gift was not accepted and possession was not taken by the Settles was against the recital found in Exs.A-1 and A-2 and that on preponderance probabilities, based on the evidence adduced on both sides, the Courts below rendered a correct finding that Settlement Deeds were acted upon and were valid and that on the other hand, the Cancellation Deeds did not have any legal effect.

14. In this regard, the learned counsel for the appellant relied on a judgment of a learned Single Judge of this Court in R.Jamuna Bai vs. M.A.Anusuya and 3 others {2001 (2) CTC 277} in support of his contention that when the Settlor reserves life interest for herself/himself and the Settlee is not given the vested remainder but only a life interest which is to take effect after the lifetime of the Settlor and the vested remainder should go to some other persons after the lifetime of the Settlor and the Settlee in succession, the device should be construed only as a Will and not a Settlement. Of course, the learned Judge has referred to a number of previous judgments, including the judgments of the Supreme Court in support of the ratio decided therein. However, as rightly contended by Mr.N.Manokaran, learned counsel for the appellant, the said judgment does not have any application to the facts of the case on hand, as the case on hand could be distinguished from the case dealt with by the learned Single Judge in the said case reported in {2001 (2) CTC 277}.

15. This Court also after considering the ratio decided in {2001 (2) CTC 277}, is not in a position to accept the contention of the learned counsel for the appellant that the said decision will be applicable to the case on hand. One remarkable distinction could be pointed out to rule out the applicability of the ratio decided therein to the case on hand. Learned counsel for the appellant proceeded on the assumption that the Settlor Angammal reserved a life interest for herself and for her husband and that only after the death of herself (Angammal) and her husband, the life interest conferred on the Settles Chinna Pappal and Dhanam were to take effect. The said misconception alone has led to the citing of the abovesaid judgment by the learned counsel for the appellant in support of his contention. As rightly pointed out by the learned counsel for the respondent, a perusal of Exs.A-1 and A-2 will make it clear that no life interest was created or retained by the Settlor, namely, Angammal in either of the Settlement Deeds marked as Exs.A-1 and A-2. While reciting the reason for executing Gift Settlement, a reference was made to the fact that the Settles were supporting the Settlor and her husband and a recital to the effect that she reposed confidence in them to continue their support till their lifetime as

the reason for making such Settlement. The same has been misunderstood and misinterpreted by the appellant and the same resulted in the abovesaid argument advanced on the side of the appellant. Hence, this Court comes to the conclusion that the contention of the learned counsel for the appellant that Exs.A-1 and A-2 are not Settlement Deeds and they are only Wills capable of being cancelled by the maker of those documents during her lifetime cannot be sustained and the same deserves to be rejected as untenable. The Courts below rightly rejected the said contention and this Court is of the view that there is no scope for any interference with the said findings rendered by the Trial Court as well as the lower Appellate Court.

16. The alternative argument advanced on behalf of the appellant is that though Exs.A-1 and A-2 could be taken as Settlement Deeds, they were not acted upon and before ever the Gift Settlement was accepted by Donees, the Settlor legally revoked the same under Exs.A-3 and A-4 and that therefore, there was no impediment for the Settlor to execute a Will under Ex.B-2. It is the further contention of the learned counsel for the appellant that since Exs.A-1 and A-2 had been validly revoked, the property bequeath made by Angammal under Ex.B-2-Will took effect on her death and that therefore the plaintiff could not claim any right in respect of the suit property.

17. As an answer to the abovesaid contention, the learned counsel for the respondent cited the following precedents:-

(i) NARAMADABEN MAGANLAL THAKKER vs. PRANJIVANDAS MAGANLAL THAKKER AND OTHERS {(1997) 2 SCC 255}.

(ii) RENIKUNTALA RAJAMMA (D) BY L.Rs. vs. K.SARWANAMMA {2014 (4) CTC 572}.

Both the judgments cited by the learned counsel for the appellant are the judgments rendered by larger Benches of the Supreme Court consisting of three Hon'ble Judges. In the former of the judgments cited by the learned counsel for the respondent, a Gift Settlement Deed was executed in favour of the Donee reserving a life interest by the Donor pursuant to which possession was not parted with by the Donor. The Supreme Court held that the Donor was legally right in cancelling the Gift Deed on the non-fulfillment of the conditions subject to which the Gift Settlement was made and that the conditions were orally agreed between the Donor and the Donee. Of course, the said judgment being one in respect of a Settlement Deed wherein the Donor reserved a life interest, may not be applicable to the facts of the case on hand.

18. The second one cited by the learned counsel for the respondent directly applies to the facts of the case on hand and it provides a complete answer to the contention of the learned counsel for the appellant that the Gift Settlement Deeds (Exs.A-1 and A-2)

were not acted upon and hence they were capable of being cancelled at the Will of the Donor. Referring to Sections 122 and 123 of the Transfer of Property Act, the Hon'ble Supreme Court held that the retention of possession by the Donor, who reserves a life interest, will not militate against the completion of the gift when the gift in respect of the immovable property is made by a Registered Gift Deed and the document is accepted by the Donee. Their Lordships have also made it clear that apart from registration of the Gift Deed, delivery of possession of the gifted property is not an essential condition for the completion of gift and mere retention of right to use the property during the lifetime of the Donor does not in any way affect the transfer of ownership in favour of the Donee.

19. In the case on hand, as pointed out supra, there is no recital either in Ex.A-1 or Ex.A-2 that the Donor Angammal reserved a life interest for herself or for her husband. On the other hand, she expressed her confidence that the Donees would be supporting them during their lifetime from the income derived from the property gifted under the Settlement Deeds. That itself will make it clear that possession was handed over and the Donee got possession of the property. The Donees were expected to use a part of the income derived from the gifted property for the welfare/maintenance of the Donor and her husband. It will be quite apt to point out here that the said expectation was not made a condition so as to say that the Settlor reserved a right to revoke the Settlement in case the Settles failed to fulfill the said condition.

20. Therefore, the contention raised on behalf of the appellant that the Settlement was not acted upon before they were cancelled and the Settles did not take possession pursuant to the Settlement Deeds have not been substantiated by reliable evidence and on the other hand, the recitals in the concerned documents and the evidence adduced on both sides make it probable that the Settles got possession of the properties on the date of Settlements themselves.

21. At the cost of repetition, it is again pointed out that there is no condition imposed on the Settles that they should maintain the Settlor and her husband during their lifetime and in case of their failure, the Gift Settlements were liable to be cancelled. Hence the findings of the Courts below that the Cancellation Deeds dated 29.9.1983 marked as Exs.A-3 and A-4 had no legal effect got to be countenanced and upheld. The necessary corollary shall be, the Will allegedly made by Angammal bequeathing the property in favour of the defendant, which has been marked as Ex.B-2, turns out to be a Will made by a person not having any right of disposition over the property and it will not affect the right already conferred on the persons under Exs.A-1 and A-2.

22. For all the reasons stated above, this Court comes to the conclusion that all the substantial questions of law formulated at the time of admission of the Second Appeal deserves to be answered against the appellant and in favour of the respondent. There is no merit in the Second Appeal and the same deserves to be dismissed.

23. In the result, the Second Appeal is dismissed. However, considering the relationship of the parties, there shall be no order as to costs.

Svn

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Additional Sub Judge,
Additional Sub Court,
Salem.
2. The Principal District Munsif,
Principal District Munsif Court,
Salem.
3. The Section Officer,
V.R.Section, High Court,
Madras.

+ 1 cc to Mr.N.Manokaran, Advocate SR 41877

+ 1 cc to Mr.R.Kannan, Advocate SR 42090

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