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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.89 of 2015 & M.P.No. 1 of 2015

Manonmani

.. Appellant/Plaintiff in Trial Court

-Vs-

1. K.Palanivelu

2. P.Amuthesan

.. Respondents/Defendant in Trial Court

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 11.04.2014 made in A.S.No.56 of 2011 on the file of the II Additional District-cum-Sessions Judge, Tiruppur, reversing the judgment and decree dated 11.03.2011 made in O.S.No.746/2010 on the file of the Principal Subordinate Judge, Tiruppur.

For Appellant : Ms.P.T.Asha
for M/s.Sarvabhauman Associates

For Respondents: ...
- - -

J U D G M E N T

The plaintiff in O.S.No.746/2010 on the file of the learned Principal Subordinate Judge, Tiruppur is the appellant herein and the respondents are the defendants. The said suit was filed for declaration that the Release Deed dated 01.09.2006 registered as Document No.7540/2006 on the file of the Sub-Registrar, Avinashi, executed by the plaintiff in favour of the defendants is null and void. By decree and judgment dated 11.03.2011, the trial court decreed the suit as prayed for. As against the same, the respondents herein filed an appeal in A.S.No.56 of 2011. The learned II Additional District-cum-Sessions Judge, Tiruppur, by decree and judgment dated 11.04.2014, allowed the appeal thereby reversing the decree and judgment of the trial court and dismissing the suit. As against the same, the appellant/plaintiff is before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.



3. The case of the plaintiff is as follows:

The suit properties were originally owned by one Mr. Kumarasamy Gounder. Mr. Kumarasamy had a wife by name Sivakamiammal. Some of the properties were also owned by Sivakamiammal. The 1st defendant is their only son. The plaintiff is the daughter and the 2nd defendant is the son of the 1st defendant. Kumarasamy Gounder died intestate on 11.04.2004. Sivakamiammal also died. According to the plaintiff, she has got an undivided share in the suit properties. But the defendants by abusing the love and affection she had for them, requested her to execute some document in their favour so as to have a convenient administration of the properties. Though the plaintiff and her husband had initial hesitation to execute such a document, the defendants managed to convince the plaintiff to execute a document thereby promising her that they would give some other property to her. Induced by the words of the defendants, the plaintiff, accordingly, signed the document which was prepared by the defendants on 01.09.2006. When she signed the document, she did not even look into the contents of the document. Believing the defendants, she signed the same and the said document was also registered on the same day on the file of the Sub-Registrar, Avinashi. Subsequently, she came to know that the said document executed on 01.09.2006 is in the nature of a release deed thereby relinquishing all her rights over the properties in favour of the defendants. The said deed further reads as though a sum of Rs.10,00,000/- was paid in cash to her in consideration of the same. In fact, according to her, Rs.10,00,000/- was not at all paid as it is averred in the document. Thus, according to the plaintiff, the Released Deed dated 01.09.2006 is not a genuine document as it was obtained by fraud and coercion and therefore, the same should be declared as null and void.

4. The 1st defendant filed a written statement in which he admitted that the property was originally owned by Kumarasamy and some other properties were owned by his wife Sivakamiammal. But, it is his case that the plaintiff executed the disputed document, namely, Release Deed, only after having received a sum of Rs.10,00,000/- as consideration. The said amount was paid by means of a cheque drawn in her favour under Cheque No.176097 dated 01.09.2006 through Indusind Bank, Avinashi Branch. Having executed the said Release Deed, according to the defendants, the plaintiff has got no right whatsoever to allege that the said document is void. It is the further case of the defendants that the plaintiff is highly educated and also a business woman. Thus, according to the defendants, knowing the contentions of the document, the plaintiff consciously executed the said document. Thus, according to the defendants, the suit is liable to be dismissed.



5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, 10 witnesses were examined and as many as 41 documents were exhibited. On the side of the defendants, 3 witnesses were examined and as many as 3 documents were exhibited. Having considered all the above, the trial court decreed the suit which was reversed by the lower appellate court. That is how, the appellant is before this Court with this Second Appeal.

6. In this Second Appeal, the learned Counsel for the appellant, referring to the grounds of appeal, would submit that the very fact that such a document was obtained from the plaintiff under the name and style of 'Release Deed' would go to show that the plaintiff had undivided share in the properties left behind by Kumarasamy Gounder and Sivakamiammal. The learned Counsel would further point out that but for the right of the plaintiff to have share in the properties, there would have been no occasion for the defendants to have obtained such a release deed in their favour from the plaintiff. It is also contended that the properties, which are covered in the release deed, are worth several Crores and it is highly unbelievable that for a paltry sum of Rs.10,00,000/-, the plaintiff would have relinquished her right in favour of the defendants in respect of the suit properties.

7. The learned Counsel for the appellant would next contend that the recitals of the document would go to show that the entire amount of Rs.10,00,000/- was paid at the time of execution of the deed in cash, whereas, according to the written statement, the said amount of Rs.10,00,000/- was not paid in cash, but by way of cheque. The learned Counsel would further point out that there was a joint venture business involving the plaintiff also and the said amount of Rs.10,00,000/- was paid from the account of one Kumaran Engineering which is a joint family business. According to the learned Counsel, Kumaran Engineering Concern is owned by the defendants and the mother of the plaintiff. It is also stated that the said amount of Rs.10,00,000/- was paid through the cheque and it has got nothing to do with the execution of the Release Deed. Thus, according to the learned Counsel for the appellant, it has been clearly established that the Release Deed is not genuine and the plaintiff had no intention at all to release her undivided share in the suit properties in favour of the defendants. The learned Counsel for the appellant would conclude her argument stating that the trial court had appreciated the evidence in their proper perspective, whereas without assigning any valid reason, the lower appellate court has reversed the same in a mechanical fashion. Thus, according to the learned Counsel for the appellant, the decree and judgment of the lower appellate court is liable to be set aside.

8. I have considered the above submissions.



9. This Second Appeal has come up today for admission. But, I do not find any substantial question of law involved warranting admission of this Second Appeal. My reasons are many. First of all, as to whether the Release Deed-in-question was executed by the plaintiff by knowing the contents of the document with an intention to release the properties in favour of the defendants is essentially a question of fact. The lower appellate court has considered the oral as well as the documentary evidence let in by both sides and has come to the conclusion on this factual aspect that the release deed is genuine. In this conclusion arrived at by the lower appellate court, I do not find any infirmity. Though it is stated that the plaintiff signed the document without reading it and without knowing the contents of the document, the lower appellate court has held that such a stand taken by the plaintiff is highly unbelievable. In my considered opinion too, it is highly unbelievable that the plaintiff would have signed the document without knowing the contents of the same. The plaintiff does not claim that she is an illiterate woman. Admittedly, she is highly educated and she is also involved in business. Therefore, the lower appellate court has rightly concluded that it is highly unbelievable that she would have signed the document without knowing the contents of the same. This is the initial defect in the case of the plaintiff. Had it been true that the said document was obtained from her by making her to sign the document without knowing the contents of the same, it is not explained as to when, she came to know that the document executed by her is a Release Deed.

10. The lower appellate court has taken note of the long delay between the date of execution of the document and the date of filing of the suit so as to draw reasonable inference that the document would have been executed consciously by the plaintiff. In other words, had it been true that the plaintiff had been cheated, she would have certainly rushed to the court without losing any time. The very fact that she filed the suit belatedly would also give strength to the fact that the document was executed genuinely.

11. Nextly, the learned Counsel for the appellant would submit that though it is stated in the document that a sum of Rs.10,00,000/- was paid in cash, in the written statement, it has been stated that the said amount was paid by means of a cheque. By proving Ex.B.1 which is the Statement of Account, it has been established by the defendant that the cheque under Ex.A.17 for Rs.10,00,000/- was encashed by the plaintiff. The cheque is dated 01.09.2006. The release deed is also dated 01.09.2006. Though it is stated in the Release Deed that a sum of Rs.10,00,000/- was paid in cash, the lower appellate court has appreciated the same by accepting the explanation offered by the defendant in his evidence and has come to the conclusion that the Release Deed is supported by consideration. This is again a question of fact in which I do not find any infirmity.



12. The learned Counsel for the appellant would contend that the plaintiff had undivided share in the property which is evident from the fact that the defendants had chosen to obtain the release deed in question from her. This Court finds it difficult to accept the said contention. Admittedly, Kumarasamy Gounder died on 11.04.2004 i.e. long prior to coming into force of Amendment Act of 2005 to the Hindu Succession Act. Therefore, as on the date of demise of Kumarasamy Gounder, the plaintiff was not a member of the Coparcenary and therefore, she had no right over the suit properties. It is also not the case of the plaintiff that she was not married as on date of coming into the force of the Tamil Nadu Amendment Act making the daughters as Coparcenars because it is in evidence that the plaintiff got married in the year 1997.

13. The learned Counsel for the appellant would next contend that it is in evidence that the properties-in-question are worth several Crores and therefore, it is highly unbelievable that the plaintiff would have executed the Release Deed for paltry sum of Rs.10,00,000/-. This contention has also been considered by the lower appellate court. In my considered opinion, this is only out of surmise that such kind of argument is advanced in which I do not find any force.

14. Though it is the case of the plaintiff that no amount was paid, the defendants have proved that Rs.10,00,000/- was paid. In the plaint, it is not at all the case of the plaintiff that she would not have executed a deed for such a paltry sum of Rs.10,00,000/-. This argument of the learned Counsel for the appellant also deserves to be rejected. In view of all the foregoing discussions, I find that absolutely, there is no substantial question of law involved warranting admission of the Second Appeal. The Second Appeal has to be necessarily fail.

15. In the result, the Second Appeal fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar



To

1. The II Additional District-cum-Sessions Judge, Tiruppur.

2. The Principal Subordinate Judge, Tirupur

+1 cc to M/s. Sarvabhauman Associates, SR.15880.

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& M.P. No. 1 of 2015