

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.Nos.718 and 883 of 2009
& M.P.Nos.1 & 2 of 2009 in A.S.No.718 of 2009
& M.P.Nos.1 to 4 of 2009 in A.S.No.883 of 2009

1. M.Kamala
2. G.Sasikala
3. M.Babu

... Appellants in A.S.No.718 of 2009

- 1.Uma Ravichandran
 - 2.S.Vinayakamoorthy @ Venkatesan (died)
- ... Appellants in A.S.No.883 of 2009

Vs

1. Uma Ravichandran
2. S.Vinayagamoorthy @ Venkatesan (died)
3. R.Santhi
4. Elumalai @ Venkatesan
5. C.Anand @ Senthil

... Respondents in A.S.No.718 of 2009

- 1.M.Kamala
- 2.R.Shanthi
- 3.G.Sasikala
- 4.Elumalai @ Venkatesan
- 5.C.Anand @ Senthil
- 6.M.Babu

... Respondents in A.S.No.883 of 2009

(R2, S.Vinayagamoorthy @ Venkatesan died on 13.08.2011, the appellants 1 and 2 and respondents 1 and 3 are declared as L.Rs. of the deceased 2nd respondent based on the memo dt.16.09.2014, in A.S.No.718 of 2009)

(In AS.No.883 of 2009 also, the Second appellant, S.Vinayagamoorthy @ Venkatesan died on 13.08.2011, the 1st appellant and respondents 1 to 3 are declared as L.Rs. of the deceased 2nd respondent based on the order already made in the memo dt.16.09.2014, filed in in A.S.No. 718 of 2009.)

Prayer in A.S.No.718 of 2009

This appeal is filed against the Judgment and Decree, dated 20.11.2008 made in O.S.No.8173 of 2006, on the file of the Additional District Judge, Fast Track Court No.IV, Chennai-1, is against the appellants herein is liable to be set aside.

Prayer in A.S.No.883 of 2009

This appeal is filed to set aside the decree and judgment, dated 20.11.2008 passed in O.S.No.8173 of 2006, on the file of the Additional District Judge, Fast Track Court No.IV, Chennai-1.

A.S.No.718 of 2009

For Appellants	: Mr.N.Damodaran
For Respondents	: Mr.Uma Shankar (for R1) Mr.T.V.Krishnamachari (for R2) Mr.P.Chandrasekaran (for R4 and R5)

A.S.No.883 of 2009

For Appellants	: Mr.Uma Shankar
For Respondents	: Mr.N.Damodaran(for R1, R3 and R6) Mr.M.Muthappan (for R2) Mr.P.Chandrasekaran (for R4 and R5)

J U D G M E N T

These appeals are arise out of the suit in O.S.No.8173 of 2006. The plaintiffs 1 and 2 in the said suit are the appellants in A.S.No.883 and defendants 1, 3 and 6 are the appellants in A.S.No.718 of 2009.

2. The suit was filed by the plaintiffs seeking partition and separate possession of their 2/5 share in the suit property. The second plaintiff is a mentally ill person and the first plaintiff has been appointed as the guardian under Order 32 Rule 15 of C.P.C. According to the plaintiffs the suit 'A' Schedule property being a House belonged to one Sengalani Chettiar, who died on 19.01.1988, leaving behind his wife Kuppammal, the plaintiffs and the defendants 1 to 3, who are the children through Kuppammal. The said Kuppammal wife of Sengalani Chettiar also died on 25.08.2005. It is also further claimed that the first plaintiff who was employed had given up her job and has been looking after the second plaintiff and her mother since 1996. The plaintiff have also claimed that the said Sengalani Chettiar had left behind about 31 sovereigns of jewels shown as Schedule B to the plaint. According to the plaintiffs the jewels which were in the custody of the first plaintiff were removed by the husband of the 3rd defendant and he has possession of the said jewels. Pending the suit the defendants 4 and 5 sought impleading, contending that they are the sons of one Chandran, who is the son of Sengalani Chettiar through his first wife Rukmani Ammal. The said Chandran died on 09.12.1978 leaving behind the defendants 4 and 5. They being sons of pre-deceased son of Sengalani Chettiar, the defendants 4 and 5 are also the clause 1 heirs of Sengalani Chettiar. The said impleading petition was allowed and the

defendants 4 and 5 were impleaded in the suit. The 6th defendant M.Babu had filed an application in IA.No.438 of 2007 seeking to implead himself contending that he is the son of Devaki, who is the daughter of Sengalani Chettiar through the second wife Kuppammal. The said Devaki had predeceased Sengalani Chettiar. Therefore, the 6th defendant also claimed to be the class 1 heir of the deceased Sengalani Chettiar. The application for impleading in I.A.No.438 of 2007 filed by the said Babu, was allowed on 31.10.2007 and he was also impleaded in the suit as 6th defendant. The second defendant though represented by a counsel did not file a written statement. The defendants 1, 3 and 6 filed a common written statement contending that:

The shares claimed by the plaintiff as well as the defendants 4, 5 and 6 were not denied. The dispute mainly was regarding the existence or otherwise of the suit B schedule jewellery and the validity of the release deed dated 12.11.1975 said to have been executed by Chandran, viz., the father of defendants 4 and 5 relinquishing his interest in the properties belonging to the Sengalani Chettiar including the suit A schedule property. The defendants 4 and 5 filed a separate written statement. Though they admitted the execution of the release deed dated 12.11.1975, they would contend that the same is not

legally valid and binding on them. In as much as the properties were self acquired properties of the deceased Sengalani Chettiar and as such the deceased Chandran had no right to relinquish a chance of succession and such a transfer is bad in the eye of law, in view of Section 6 (a) of the Transfer of Property Act 1882.

3. On the above pleadings, the learned Additional District Judge, Fast Track Court-IV, Chennai, framed the following issues for consideration:-

1) Are the plaintiffs entitled to claim for a partition and separate possession of their 2/5th share of 'A' Schedule suit property by metes and bounds?

2) Are the plaintiffs entitled for a partition of their 1/4 share of 'B' schedule jewels, or in the alternative, the then value at the time of dividing the jewels at the time of partition?

3) Are the proposed defendants 4 & 5 entitled to claim any share in the 'A' schedule suit property through their father Chandran?

4) Is the 6th defendant Mr.Babu could claim any right in the 'A' schedule suit property through his mother Devaki?

4. On considering the evidence and documents that were produced, the learned Additional District Judge came to the conclusion that the release deed, Exhibit A19, said to have been executed by Chandran on 12.11.1975, though a

true document will not be valid and binding on the defendants 4 and 5, so as to debar them from claiming share in the property of Sengalani Chettiar. As regards the suit B schedule property, the learned Additional District Judge came to the conclusion that the existence of the said B schedule property, viz., 30 sovereigns of jewellery, had not been proved by the parties, the suit in respect of the B schedule property is liable to be dismissed.

5. On the above findings, the learned Additional District Judge granted the preliminary decree declaring that the plaintiffs and defendants 1, 2, 3 and 6 are entitled to 1/7 share each and the defendants 4 and 5 put together are entitled to 1/7 share.

6. Aggrieved by the said judgment and decree the plaintiffs 1 and 2 preferred an appeal in A.S.No.883 of 2009 and the defendants 1, 3 and 6 have filed an appeal in A.S.No.718 of 2009.

7. Heard Mr.Sivaraman, learned counsel appearing for the appellants in A.S.No.718 of 2009 (defendants 1, 3 and 6 in O.S.No.8173 of 2016), Mr.C.Uma Shankar, learned counsel appearing for the appellants in A.S.No.883 (plaintiffs in O.S.No.8173 of 2006) and Mr.P.Chandrasekaran, learned counsel appearing for the respondents 4 and 5 in both the appeals.

8. There is no controversy in respect of the suit B schedule property. No arguments were advanced, challenging the findings of the trial court on the availability of the suit B schedule property and such findings of the trial court in respect of the suit B schedule properties are confirmed and dismissal of the suit in respect of the suit B schedule properties is upheld.

9. Pending the above appeal, the second plaintiff / second appellant in A.S.No.883 of 2009 and the second respondent in A.S.No.718 of 2009 died on 13.08.2011. He died unmarried and his mother pre-deceased him, and so, there are no class I heirs. The sisters, viz., first plaintiff / first appellant in A.S.No.883 of 2009, first respondent in A.S.No.718 of 2009, the respondents 1 to 3 in A.S.No.883 of 2009, the appellants 1 and 2 and respondent 3 in A.S.No.718 of 2009, would be his legal heirs as per Entry 2 of Schedule to Section 8 of the Hindu Succession Act. Therefore, whatever share he would be entitled to, will have to be equally divided among the said 4 persons. On this also, there is no controversy at the bar. Considering the narrow scope of the appeal the following points arise for determination:-

- 1) Whether the release deed dated 12.11.1975 said to have been executed by Chandran, son of Sengalani Chettiar, relinquishing his rights over the properties of Sengalani

Chettiar would be legally valid and binding on his sons, namely respondents 4 and 5.

2) Whether the release deed dated 12.11.1975, marked as A19 has been proved in accordance with law.

Point No. 1

10. The learned Counsel Mr.C.Uma Shankar, appearing for the appellants in A.S.No.883 of 2009 would rely upon the judgment of the Hon'ble Supreme Court in the case of Gulam Abbas vs. Haji Kayyum Ali and others reported in AIR 1973 SC 554. Relying upon the observations of the Hon'ble Supreme Court, in the said decision, the learned counsel for the appellants in A.S.No.883 of 2009 would contend that the release deed dated 12.11.1975 would be binding on the legal heirs of Chandran and they cannot now lay their claim over the property of the deceased Sengalani Chettiar. The learned counsel also relied upon the following observations made by the Supreme Court in para 7 of the judgment, which runs as follows:

"....Sir Roland Wilson, in his "Anglo Mohamadan Law" (p.260, paragraph 208) states the position thus:

"For the sake of those readers who are familiar with the joint ownership of father and son according to the most widely prevalent schools of Hindu Law, it is perhaps

desirable to state explicitly that in Muhammadan, as in Roaman and English Law, *nemo est heres viventis* - a living person has no heir. An heir apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession; see Adbdul Wahid, (1885) 12 Ind App 91 (PC) and (1885) ILR 11 Cal 597 which was followed in Hasan Ali, (1889) 11 A11 456. The converse is also true; a renunciation by an expectant heir in the lifetime of his ancestor is not valid, or enforceable against him after the vesting of the inheritance." This is a correct statement, so far as it goes, of the law, because a bare renunciation of an expectation to inherit cannot bind the expectant heir's conduct in future. But, if the expectant heir goes further and receives consideration and so conducts himself as to mislead an owner into not making dispositions of his property *inter vivos* the expectant heir could be debarred from setting up his right when it does unquestionably vest in him. In other words, the principle of estoppel remains untouched by this statement."

The Hon'ble Supreme Court had further gone on to observe as follows:

"....12. As already indicated, while the Madras view is based

upon the erroneous assumption that a renunciation of a claim to inherit in future is in itself illegal or prohibited by Muslim Law, the view of the Allahabad High Court, expressed by Suleman, C.J., in Latafat Hussain's case, AIR 1936 All 573 (supra), while fully recognising that "under the Mahomedan Law relinquishment by an heir who has no interest in the lifetime of his ancestor is invalid and void", correctly lays down that such an abandonment may, nevertheless, be part of a course of conduct which may create an estoppel against claiming the right at a time when the right of inheritance has accrued. After considering several decisions, including the Full Bench of the Madras High Court in Asa Beevi's case, ILR 41 Mad 365 = (AIR 1918 Mad 119) (supra), Suleman, C. J., observed at page 575:

"The question of estoppel is really a question arising under the Contract Act and the Evidence Act, and is not a question strictly arising under the Mahomedan Law".

He pointed out (at pages 575-576):

"It has been held in this Court that contingent reversioners can enter into a contract for consideration which may be held binding on them in case they actually succeed to the

estate: See 19 All LJ 799= (AIR 1922 All 297) and 21 ALJ 235 = (AIR 1923 All 387). It was pointed out in 24 All LJ 873, at pp. 876-77 = (AIR 1926 All 715), that although a reversionary right cannot be the subject of a transfer, for such a transfer is prohibited by Section 6, T. P. Act, there was nothing to prevent a reversioner from so acting as to estop himself by his own conduct from subsequently claiming a property to which he may succeed. Among other cases reliance was placed on the pronouncement of their Lordships of the Privy Council in ILR 40 All 487 = (air 1918 PC 70), where a reversioner was held bound by a compromise to which he was a party"....."

11. This judgment of the Hon'ble Supreme Court was followed by this Court in Mukkammal vs. Subramanian and others, SA (MD) No.342 of 1998 dated 19.11.2009. This Court by following the judgment of the said Supreme Court (cited supra) held that renunciation by her would be valid and binding, though it could be termed as invalid strongly in terms of Section 6 (a) of the Transfer of Property Act. By applying the principles of estoppel as enunciated in Section 115 of the Evidence Act, the said renunciation could be upheld.

12. The learned counsel appearing for the respondents 4 and 5 viz., the sons of deceased Chandran invite my attention to the judgment of this Court in R. Santhi alias Gowthami vs. Nallammal (Deceased) and others reported in 2014 (4) Law weekly 176, wherein a learned Judge of this Court has held renunciation of expectant right of succession will not be valid based on Section 6(a) of the Transfer of Property Act. Unfortunately, the earlier decisions of this Court as well as the decision of the Supreme Court reported in AIR 1973, Supreme Court 554 (cited supra), were not brought to the notice of the learned Judge who decided in the case in 2014 (4) law weekly 176 (referred to supra). I now find a situation where there are two decisions rendered by 2 Hon'ble Judges of this Court which take a diametrically opposite view. The question as to whether which one of the two decisions I must follow no longer *res integra*. A Full Bench of the Patna High Court in Amar Singh Yadav vs. Shanthi Devi reported in AIR 1987 Patna 191 held as follows:

"...24. To conclude on this aspect, it is held that where there is a direct conflict between two decisions of the Supreme Court rendered by co-equal Benches, the High Court must follow that judgment which appears to it to state the law more elaborately and accurately. The answer to question (1) posed at the outset is rendered in these terms...."

This Full Bench decision of the Patna High Court was followed by this Court in Neyveli Lignite Corporation Ltd. vs. Special Tahsildhar No.3, Land Acquisition Lignite Project, Neyveli [(1988), 2 Law Weekly 79]. Applying the above principles laid down, I am of the considered opinion that the judgment of the learned judge in Second Appeal (MD) 342 of 1998, dated 19.11.2009, though rendered earlier in point of time is more elaborate and accurate and apart from that, it is also based on 3 Judge Bench decision of the Hon'ble Supreme Court. In the light of the above, I am compelled to follow the decision of this Court in Second Appeal (MD) 342 of 1998, than the decision reported in 2014 (4) law weekly 176.

13. In the light of the foregoing discussion, the first point is to be answered in favour of the appellants. The release deed dated 12.11.1975 having been executed by Chandran, after receiving consideration, his legal representatives cannot claim a share based on the principles of estoppel.

Point No.2

14. Having held that the sons of 4 and 5 are estopped from claiming right, the next point that should be considered is as to whether the execution of the release deed had been proved in accordance with law. It is to be noted that what has been produced before the Court is only a xerox copy of the release

deed dated 12.11.1975 and the same has been marked as Exhibit A19 with objections. The defendants 4 and 5 were the legal representatives of the deceased Chandran, who in fact admitted the execution of the said document by their father. In the written statement filed by them, it is stated as follows:

“The so called release deed executed by Chandran on 12.11.1975 in favour of and second plaintiff is not legally valid and binding on these defendants.”

15. However, in the proof affidavit filed before the trial court by the 4th defendant Elumalai, it has been stated as follows:

"I state that my father Chandran executed released a deed on 12.11.1975 filed exhibit Ex.D in favour of Sengalani Chettiar and the second plaintiff herein relinquishing his right over the suit property and the land at Mananpathi Village."

16. Even in the cross examination of the said 4th defendant as DW2 he had accepted the execution of the release deed. Though he would claim that he came to know about the execution of the release deed only after coming to Court, the document that has been marked is only a xerox copy of the certified copy. On a perusal of the same, it would show that it was the 4th defendant Elumalai, who had obtained certified copy of the said document and the same

has been produced in the trial Court through his counsel Mr.P.Chandrasekaran. However, it came to be marked through PW1. It should be pointed out at this juncture that the plaintiffs had not whispered anything about the release deed in the plaint, i.e., because they had ignored the very existence of the defendants 4 and 5 while filing the plaint. The defendants 4 and 5 were impleaded at their instance in the suit.

17. The learned counsel Mr.Chandrasekaran would contend that the plaintiffs have not made out a case for producing his xerox copy of the certified copy of Exhibit A19 viz., the release deed dated 12.11.1795. Therefore, he would contend that, in the light of the provisions of Sections 64 and 65 of the Evidence Act, the document in question can be looked into. I am afraid that such a plea cannot be countenanced at this stage. In fact, the document was marked as Exhibit A19 before the trial court and the defendants 4 and 5 cannot raise any objections for marking of the document. However, the execution of the document is expressly admitted by the defendants 4 and 5 in the written statement as well as in the proof affidavit. Though, during cross examination, a faint attempt has been made by the 4th defendant (DW2) to claim ignorance about the said document, I am, of the considered opinion that the execution of the document by Chandran, has been established by the plaintiffs.

18. Thus, the defendants 4 and 5 will not be entitled to claim a share over the properties of the deceased Sengalani Chettiar. The trial court has rejected the claim of the plaintiffs that the release deed is true, valid and acted upon, on the ground that there has been no pleadings in the plaint and that only as xerox copy of the document has been produced and the same has not been proved in accordance with law.

19. For the reasons stated above, particularly that the execution of the document having been specifically admitted by the defendants 4 and 5, and that they themselves have produced the document into the Court, I am unable to agree with the conclusions of the learned Additional District Judge in this regard.

20. In the light of the above, the judgment and decree of the trial court are liable to be modified and accordingly modified as follows:

- i) The plaintiffs, D1 to D3 and D6 would be entitled to $\frac{1}{6}$ share each in the suit A schedule property.
- ii) On the death of the second plaintiff, his $\frac{1}{6}$ share would devolve upon the first plaintiff and D1 to D3 alone. Each of them would get $\frac{1}{24}$ share, i.e., $\frac{1}{4}$ of $\frac{1}{6}$.
- iii) the first plaintiff and defendants 1 to 3 each would get $\frac{5}{24}$ share and

the 6th defendant will get 4/24 share.

- iv) the first plaintiff is directed to render accounts to the defendants 1, 2, 3 and 6 with reference to the income from the suit A schedule properties
- v) In other respects, the suit in OS.No.8173 of 2006 stands dismissed
- vi) Thus, there will be a preliminary decree of partition declaring that the first plaintiff is entitled to 5/24 share in the suit 'A' schedule property. In other respects, the suit will stand dismissed and 4th and 5th defendants are not entitled to any share.

The appeal is partly allowed as indicated above. There will be no order as to costs. Connected, Miscellaneous Petitions are closed.

20.10.2016

Index : Yes/No
Internet: Yes/No
pvs

To

1. The Additional District Judge, Fast Track Court No.IV, Chennai-1
2. The Record Keeper, V.R. Section, High Court, Madras.

R.SUBRAMANIAN,J

pvs

A.S.No.718 of 2009
& A.S.No.883 of 2009

20.10.2016