

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2016

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.M.SUNDRESH

Civil Suit No.678 of 2015

D.Kameswari Reddy ... Plaintiff

Vs.

1.D.Varada Reddy
2.Girija Reddy ... Defendants

Plaint filed under Order 4, Rule 1 of O.S. Rules read with Order VII, Rule 1 of Civil Procedure Code.

Prayer - (i) Declare the document titled "Deed of Settlement" dated 23rd June 2011 registered as Document No.568 of 2011 on the file of the Joint Sub-Registrar-I, Chennai Central as null and void, not binding on the Plaintiff and consequently issue a decree of mandatory injunction, directing the First Defendant to deliver up the original of the document titled "Deed of Settlement" dated 23rd June 2011 registered as Document No.568 of 2011 on the file of the Joint Sub-Registrar-I, Chennai Central and to cancel the same; (ii) Pass a decree of permanent injunction restraining the First Defendant, his family members, his men, agents, servants, employees or anyone claiming through or under him from in any manner whatsoever alienating, dealing with or interfering with the Plaintiff's peaceful possession and quiet enjoyment of the Suit Property and (iii) costs of the suit.

For Plaintiff : Mr.P.S.Raman
Senior Counsel
for
M/s.R.Venkatavaradan

For Defendants : Ms.Chitra Sampath
Senior Counsel
for
Mr.T.S.Baskaran for D1
Mr.V.Srikanth for D2

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The plaintiff has filed the suit for declaration and permanent injunction against her son/first defendant impleading the second defendant as formal party, being the daughter. The declaration is sought qua the document titled "Deed of Settlement" dated 23.6.2011, duly registered, to be declared as null and void and not binding on the plaintiff, as also seeking direction against the first defendant to deliver up the original of the document titled "Deed of Settlement" referred to aforesaid and restraining the first defendant and his family members etc. from claiming through or under him from disturbing the plaintiff's peaceful possession and quiet enjoyment of the suit property.

2. The plaintiff at the stage of filing of the suit last year claims to be aged about 87 years and stays alone in the suit property being Old Door No.15-A, New No.30, Cenotaph Second Street, Chennai-600 086. This property was purchased vide sale deed dated 10.9.1987, duly registered. The adjacent property is stated to have been purchased allegedly by the plaintiff's husband in the name of the first defendant. The plaintiff claims that some funds were received from her daughter/second defendant, who resides in America and all the amounts alleged to have been obtained for purchase of the adjacent property for her son were duly returned.

plaintiff, her husband and all the children that after her life time, the suit property would devolve on the second defendant, while the adjacent property purchased in the name of the first defendant would continue to vest with him. There are stated to be three daughters, and one son and two daughters have also stated to have received some properties. The title documents of the suit property are stated to have been handed over to the second defendant since she had financed for purchase of the property.

4. A house is stated to have been constructed by the late husband of the plaintiff in the year 1989 post purchase, in which the husband and wife resided, till her husband passed away on 23.11.2012.

5. It appears that some differences have arisen between the plaintiff and her son (first defendant) earlier and thus it is alleged there was absence of good relationship with the first defendant for long time even during the life time of her husband. The cause of action for filing of the suit has arisen allegedly on account of the fact that the first defendant informed her that he was proposing to move into the suit property with his family and belongings, as he was on the verge of retirement and that she will have to move to one bed room, while the rest of the house would be available for the first defendant.

On further enquiry, it is alleged that the plaintiff was shocked to know that the first defendant claims to be the

sole legal owner of the suit property and on further enquiry from the first defendant, a photo copy of a document titled "Deed of Settlement" dated 23.6.2011 was handed over to her. This document is a "Deed of Settlement", which in effect, gives absolute right of the property to the first defendant. We may note here that all kinds of allegations have been made about the document being fraudulently obtained.

6. The plaintiff, along with the suit, filed an application (O.A.851 of 2015) for interim injunction under Order 39, Rule 1 and 2 of Code of Civil Procedure, 1908 and ad-interim exparte injunction was granted on 14.8.2015. The first defendant filed A.No.6075 of 2015 to vacate the interim injunction granted on 14.8.2015, which has been subsequently modified vide order dated 18.02.2016, against which O.S.A.Nos.35 and 36 of 2016 were filed, which came up before this Bench. It is in the course of hearing of the appeals that the plaintiff and the first defendant being the two contesting parties, have been able to resolve their disputes. At request of the learned counsel for parties, the suit File was called for recording of the compromise filed vide Joint Memo of Compromise.

7. It may be noticed that as per the order dated 18.02.2016, it was noted by the learned Single Judge that the plaintiff has failed to disclose that the residential house constructed was partly on the suit property and

partly on the property owned by the first defendant. The total built up area consists of ground floor of 1962 square feet and 981 square feet of first floor. Only 524 square feet of ground floor is built on her portion of the property, which is the suit property. It is this which persuaded the learned Single Judge to observe that the first defendant cannot be deprived of the right of enjoyment of his own property along with the construction made thereon, even if it meant dividing the house. In fact, the plaintiff came with the second defendant before the learned Single Judge and stated that she would not permit the first defendant to reside with her and thus, the learned Single Judge worked out an arrangement that the upstairs portion with separate entrance with walls segregating, a small kitchen would be made by the first defendant and that he would not come to the ground floor. Since the plaintiff was not agreeable to any settlement, the learned Single Judge, analysing these facts, permitted the residence of the first defendant in the property to the extent the structure was constructed on his portion with the modification that the ground floor would be kept for the plaintiff. The result was, by this interim arrangement, the plaintiff was enjoying larger share of the constructed property than was built over her land.

8. We have recited the aforesaid facts to

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appreciate the contents of the Joint Memo of Compromise

dated 4th April, 2016 now filed by the appellant and the first defendant with the second defendant staying away from it. We may note that no relief was claimed against the second defendant in this case and that the second defendant, though initially claimed to be assisting the plaintiff, has clearly stated that the papers of the suit property are with her and she would not part with the same as she may at some stage like to assert her claim arising from the monies advanced to her parents. The rights of the second defendant to claim monies or otherwise, however, are not being adjudicated in the present proceedings.

9. The Joint Memo of Compromise, which is exhibited as Exhibit-A1 duly signed by the plaintiff and the first defendant, prays for the suit to be decreed in terms of the Joint Memo of Compromise. The terms of Joint Memo of Compromise reads as under:-

"1. That the Plaintiff hereby withdraws her claim for setting aside the deed of settlement dated 23/06/2011 made in this suit.

2. That the Plaintiff hereby assures the first defendant that she will not question the right, title and interest of the first defendant to the property covered by the deed of sale deed 10/09/1987 in the name of the plaintiff forming the subject

matter of the deed of settlement dated 23/06/2011.

3. That the Plaintiff is entitled to exclusive right of residence in the property having door no.30, Cenotaph 2nd street, (2nd Main Road), Teynampet, Chennai-600 018, during her life time as well as peaceful and quiet enjoyment of the property without any let, hindrance or disturbance in any manner whatsoever either by the first defendant, his immediate family members, legal heirs, successors or anyone claiming through or under him.

4. The Plaintiff shall not create any encumbrance over the subject property by way of Lease/Rentals, mortgage, charge, lien, sale etc. Likewise, the first defendant shall not disturb the peaceful possession and enjoyment of the right of residence of the Plaintiff as elaborated in clause (3) above.

5. Subject to clause (3) above, the 1st defendant and or his legal heirs shall take possession of the property in door No.30, Cenotaph 2nd street, (2nd Main Road) Teynampet, Chennai-600 018 upon the demise

of the Plaintiff, the 1st defendant and his legal heirs will be entitled to occupy the said property in door no.30, Cenotaph 2nd Street, (2nd Main Road), Teynampet, Chennai-600 018 without recourse to any proceeding in any court of law."

10. The effect of the aforesaid compromise is that the plaintiff has withdrawn her claim for setting aside the Deed of Settlement dated 23.6.2011 and has agreed not to question the right, title and interest of the first defendant arising from the Sale Deed dated 10.9.1987 read with the Deed of Settlement dated 23.6.2011. In turn, the first defendant has granted to the plaintiff the exclusive right of residence over the constructed property during her life time without any hindrance in any manner and thus, the first defendant would be making his own arrangement for stay in some other rented property or otherwise during the life time of the plaintiff.

11. The plaintiff has also agreed not to encumber the property or lease it out and has further agreed that the first defendant or his legal heirs shall take possession of the property and occupy the same after her life time without recourse to any proceeding in any Court of law. The effect of the aforesaid clause is thus is that as and when the plaintiff is no more, the first defendant or his legal heirs shall be deemed to be

forthwith in the actual and physical possession of the suit property, to the exclusion of all other legal heirs.

12. If there is any remaining disputes to be settled, which cannot be mutually resolved between the first defendant and the second respondent, that would be a matter of separate lis for the parties to prefer, if they so please. But the effect of the decree is that there is no entitlement for the second defendant in any manner to occupy the suit property, except in accordance with law in pursuance to the legal proceedings which may be instituted by her.

13. We, therefore, pass a decree in terms of the Joint Memo of Compromise, which is taken on record and accepted by us, which we find lawful. Decree sheet be drawn up in terms thereof and the observation made by us. No costs.

sd/.S.K.K.,CJ., & M.M.S.J.

07.04.2016

//Certified to be a true copy//
Dated this the day of 2016.

S.s/29.04.2016

COURT OFFICER

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