

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21 / 09 / 2016

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL NO.342 OF 2006

- 1.K.A.Mary (Died)
- 2.Deepu Charles
- 3.David Charles

(Appellants 2 and 3 brought on record
as LRs of the deceased sole appellant vide
order dated 08.02.2011 made in CMP Nos.
1765 to 1767 of 2010)

... Appellants /
Plaintiffs

Versus

K.V.Anthony
Since deceased represented by
his legal representatives
No.21, (Second Floor) Village Road,
Nungambakkam, Chennai - 600 034.

- 1.K.V.Thandamma
- 2.K.A.Alice
- 3.K.A.Joseph
- 4.K.A.Thomas
- 5.K.A.Francis

(Respondents 1 to 5 impleaded as LRs' of
the deceased 1st respondent as per order
dated 03.01.2001 in CMP No.766 of 2000
in A.S.No.146 of 1998)

... Respondents /
Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.146 of 1998 dated 22.12.2003 on the file of VII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree made in O.S.No.3516 of 1988 dated 30.07.1996 on the file of II Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.S.V.Jayaraman
Senior Counsel
for Mr.M.M.Abdul Razack

For Respondent 1to5:Mr.T.P.Manoharan
LRS Senior Counsel for Mr.M.Baskar

J U D G M E N T

The original plaintiff is the appellant. The second appeal is filed challenging the concurrent findings of the Court below in a suit for declaration and title and for the consequential injunction and for a direction to hand over the sale deed of the property or in the alternative, directing the defendant to pay the same to the plaintiff.

2. The original plaintiff is the daughter of the original defendant, who is the father. The defendant was allotted a plot of land by the Tamil Nadu Housing Board in 1968 and he has been in possession of the same. Though the father was allotted the plot, he was financially not sound to develop the same by putting up a construction till the year 1983. As there was a move for resumption of the land that were not constructed, the plaintiff helped the defendant by financially assisting him with necessary funds. Therefore, she sold her jewels and raised loan from her friends to the tune of Rs.30,000/- and put up the foundation of the plot. It is further stated that she was also helping him to pay the monthly instalments to the Tamil Nadu Housing Board. As the plaintiff had extended her help in safeguarding the plot, the defendant had executed a registered settlement deed dated 27.04.1984 from which date the plaintiff claims to be in possession.

3. Subsequently, the sale was executed by the Tamil Nadu Housing Board in the year 1987. The plaintiff apprehending that her father was trying to alienating the suit property issued a lawyer's notice on 25.01.1998 calling upon him to hand over the sale deed he got from the Tamil Nadu Housing Board. In reply, the defendant had mentioned that the said settlement deed dated 27.04.1984 was cancelled by a deed of revocation dated 10.10.1987 which was also registered. According to the plaintiff, the defendant had no right to revoke the settlement deed and the revocation is only with a view to cheat the plaintiff. The settlement deed is acted upon and that the defendant has no right to revoke the same. Hence, the suit has been filed for the reliefs claimed.

4. The relationship between the parties are not disputed and the factual details of execution of the settlement deed, sale deed, and the revocation deed are all correct. However, the statement of the plaintiff that the defendant was not in a position to develop the plot or put up a construction were all denied.

5. The defendant who is the father had specifically pleaded in the written statement that the plaintiff never helped the family even with a single paise, on the other hand, she was only taking money from the defendant every month. It is stated

by the defendant that the settlement deed was executed by him on the representation made by the plaintiff that if the plot is transferred to her name by way of settlement, she can obtain loan in her name and that the defendant can pay the loan in instalments and after the loans are cleared, the property will be conveyed back to the defendant. On such representation, the defendant had executed the settlement deed in favour of the plaintiff. As the plaintiff did not keep up the promise, the defendant realised the fraud played by the plaintiff on him and executed a deed of cancellation on 10.10.1987 cancelling the settlement deed. Even after that the plaintiff did not extend any help to the defendant. Hence, the revocation of settlement deed was executed. The acknowledgment of receipt of Rs.30,000/- by the defendant also is denied. The plaintiff, defendant and other members of the family were living jointly and they were all making contributions to the plaintiff and the defendant was handing over his entire salary to the plaintiff. A property was also purchased in the name of the plaintiff by the defendant in Korattur. Hence, the defendant prayed for dismissal of the suit.

6. The Courts below had concurrently found against the plaintiff and dismissed the suit. Aggrieved by the same, the above appeal has been filed.

7. At the time of admission, the following substantial questions of law were framed:-

"(a) Whether the Courts below are right in holding that the revocation of the Settlement Deed (Ex.A-1) is valid and legal, while there is no reservation of power under that Deed to revoke the same by the Settlor?

(b) Whether the conclusion and decision arrived at by the Lower Court as well as the first appellate Court that the action of the first respondent in revoking the Settlement Deed is not hit by Section 115 of the Evidence Act, and there is no estoppel are legal and valid on the facts and circumstances of the case?

(c) Whether the Courts below have not acted illegally in holding that the revocation of Settlement is valid and not against the principles of equity and not against the doctrine of estoppel by representation, because a party accepting the benefit under the transaction cannot challenge it after enjoying the benefits under the said transaction?"

8. The relationship between the parties, execution of

the settlement deed on 27.06.1984 as per Ex.A1, the sale deed executed in favour of the defendant as per Ex.B7, the cancellation of the deed executed by the defendant as per Ex.B8 were all admitted. In the year 1968, the Tamil Nadu Housing Board has allotted the suit property in favour of the first defendant, from which date he has been in possession. After the settlement deed in favour of the plaintiff, the same was cancelled by a registered deed on 10.10.1987, which is now under challenge, as there was no right of revocation mentioned in the settlement deed. Therefore, in the absence of a right to revoke the settlement deed, it is contended that the cancellation of the same is not valid and the same is void. The plaintiff had specifically admitted in the evidence that on the date of execution of Ex.A1 - settlement deed, the defendant did not have a valid title, as he was only an assignee / allottee of the land and the title of the same did not pass.

9. It is also further admitted that only on 11.09.1987, the Tamil Nadu Housing Board had executed a sale deed in favour of the defendant. The plaintiff, who is the appellant, encouraged by the findings of the lower Appellate Court that Exs.A3 to A9 reveal that the plaintiff had taken steps to improve the property by expending certain amount.

10. It was also argued that as per Section 43 of the Transfer of Property Act, though on the date of the sale, the defendant did not have a title, as he had obtained title subsequently, it has to be deemed that the defendant had valid title on the date of execution of Ex.A1. Section 43 of the Transfer of Property Act reads as follows:

"43.Transfer by unauthorised person who subsequently acquires interest in property transferred - Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

11. A reading of the above provision of law would show that the claim of the plaintiff is unsustainable as Section 43 of the Transfer of Property Act is applicable only when there was a sale by fraudulent or erroneous representation and

transfer was made for a valid consideration. In the case on hand, there is no fraudulent or erroneous representation, as it is a settlement deed by the father in favour of the daughter and the valid consideration is only love and affection. Hence, the applicability of Section 43 of the Transfer of Property Act does not arise for consideration. Even assuming that the same is applicable, a notice under Section 43 of the Transfer of Property Act ought to have been issued. There is no such notice issued by the plaintiff. Hence, the claim of the plaintiff under Ex.A1 cannot stand, as on the date of the document, the executant himself did not have a valid title. While so, when Ex.A1 itself did not confer any title, the challenge to the revocation of the same is unnecessary.

12. Though the plaintiff has claimed an alternative relief of refund of whatever amount she had advanced to her father, both the Courts have concurrently held that there is no proof for such payment and there is no finding on that issue and also that no Court fees paid for the same. Therefore, the question of granting alternative relief also does not arise for consideration.

13. In fine, the substantial questions of law are answered against the plaintiff and the second appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The VII Additional Judge
City Civil Court
Chennai.

2.The II Assistant Judge
City Civil Court
Chennai.

3.The Section Officer,
V.R.Section, High court, Madras.

+1 cc to Mr.M.Baskar, Advocate,sr.53524.

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krd 25/10

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