

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.10.2016

PRONOUNCED ON : 02.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No. 58 of 2011

and

M.P.No.1 of 2011

1.Janaki Ammal

2.Ramesh

3.Suresh

4.Rajesh

...

Appellants

Vs.

D.Karunanidhi

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against decree and judgment dated 04.08.2010 in A.S.No.7 of 2006 on the file of Additional Sub Court, Thiruvannamalai reversing the decree and judgement dated 29.11.2005 in O.S.No.34 of 2004 on the file of Additional District Munsif, Thiruvannamalai.

For Appellants : Mr. G.Rajan

For Respondent : No appearance

JUDGMENT

Challenge in this second appeal is made by the defendants against the judgement and decree dated 04.08.2010 made in A.S.No.7 of 2006 on the file of the Additional Subordinate Judge, Thiruvannamalai reversing the Judgement and Decree dated 29.11.2005 made in O.S.No.34 of 2004 on the file of the Additional District Munsif, Thiruvannamalai.

2. The suit has been laid by the plaintiff for declaration and permanent injunction in respect of the suit ABC schedule properties.

3. Insofar as this second appeal is concerned, no challenge has been made with reference to the plaintiff's right and title over the suit "A" and "B" schedule properties. The second appeal is confined only to certain items of "C" schedule properties. Therefore, the case of the parties with reference to the "C" schedule properties alone are discussed in this second appeal.

4. As regards the suit "C" schedule properties, according to the plaintiff, they are the ancestral joint family properties of the plaintiff and his father and they have been enjoying the same as co-owners and co-sharers and after the demise of the plaintiff's father, the plaintiff's mother with a view to give up her shares executed a registered settlement deed dated 02.04.2002 relating to the entire ancestral properties in favour of the plaintiff and the plaintiff also duly accepted the said settlement deed and took possession of the same from the date of settlement itself and since then the plaintiff has been in exclusive possession and enjoyment the suit "C" schedule properties as absolute owner and thus, the plaintiff alone is the absolute owner of the suit "C" schedule properties. Inasmuch as the

defendants, without any right over the suit properties inclusive of "C" schedule properties attempted to dispute the title of the plaintiff in respect of the suit properties, the plaintiff has been constrained to file the suit.

5. As regards the suit "C" schedule properties are concerned, particularly with reference to certain items purchased by the second defendant from the plaintiff's mother, according to the defendants, the plaintiff was leading a wayward life and not looking after his mother and consequently, the plaintiff's mother borrowed money from the 3rd parties and in order to meet her medical expenses and to settle the debt incurred by her, she had alienated certain items in the "C" schedule properties in favour of the second defendant, who is the sister of the plaintiff's mother on 08.04.2002 for a valuable consideration of 51,000/- and the said sale deed was registered and executed on the same day. The said sale deed was also attested by their brother R.T.Krishnan, who is also a resident of the same locality and the plaintiff's mother, even now, is under the care and custody of her brother. On coming to know about the alienation made by the plaintiff's mother, the plaintiff by impersonating her had created the settlement deed dated 02.04.2002 as if his mother had executed the settlement deed in respect of the "C" schedule properties. Hence, the above settlement is a void document and no right will flow to the

plaintiff under such a settlement deed in respect of the properties covered under the document. Further, the plaintiff had also caused a notice in the name of his mother on 03.05.2002, to which, the defendants have also given a suitable reply and if really the plaintiff mother had executed the settlement deed voluntarily out of her free will and consent, the plaintiff would have referred to about the settlement deed in the said notice dated 03.05.2002. The above factor alone would go to show that the plaintiff fraudulently created the settlement deed and hence, the plaintiff's suit has to be dismissed.

6. In support of the plaintiff's case, PWs1 to 3 were examined and Ex.A1 to 22 were marked. On the side of the defendants, DWs1 to 3 were examined and Exs.B1 and 2 were marked.

7. On a consideration of the oral and documentary evidence adduced by the parties, the trial Court was pleased to dismiss the suit in respect of certain items in the "B" and "C" schedule properties and decreed the suit as prayed for in respect of other properties. Aggrieved over the judgement and decreed of the trial Court, the plaintiff preferred the first appeal. The first appellate court set aside the judgement and decree of the trial Court and decreed the suit in entirety as prayed for. Aggrieved over the same, the second appeal

has been preferred by the defendants, however, only challenging the judgement and decree of the first appellate court with reference to certain items in the "C" schedule properties.

8. The second appeal has been admitted on the following substantial questions of law;

(a)Whether the first Appellate Court is correct in decreeing the suit on the weak presumption that the date mentioned in the settlement deed is the date of execution in the absence of clear and cogent evidence and against the ratio laid down by this Hon'ble High Court in 1996 (1) Law Weekly Page No.622?

(b)Is not the decree and judgment of the first Appellate Court wrong when the settlement deed is found to be ante dated to the sale deed executed in favour of the plaintiff without considering the glaring contradictions, discrepancies and variations in the evidence let in on the side of the plaintiff?

9. The plaintiff claims title to the "C" schedule properties in particular under the settlement deed dated 02.04.2002 marked as Ex.A4. According to the plaintiff, the aforesaid settlement has been executed by his mother Rajambal ammal voluntarily out of her free will and consent and the plaintiff had accepted the same and consequent upon which, the plaintiff is the absolute owner of the "C" schedule properties and the same are in possession and enjoyment of the plaintiff.

10. Per contra, it is the case of the defendants that Rajambal ammal had executed a sale deed in respect of certain items of "C" schedule properties to the second defendant for a valid consideration on 08.04.2002 in order to meet her medical expenses and also, to discharge debts and the said sale deed has been executed and registered on the same day and therefore, the defendants lay claim in respect of the properties covered under the sale deed as belonging to them. The said sale deed has been marked as Ex.B1. Further, according to the defendants, on coming to know that Rajambal ammal had executed the sale deed in favour of the second defendant, in order to defeat the same, the plaintiff had fraudulently created Ex.A4 settlement deed by antedating it, as if his mother executed the sale

deed on 02.04.2002 and therefore, according to the defendants, inasmuch as Ex.A4 settlement deed is not a true document, the same should not be accepted and the plaintiff's claim in respect of the properties purchased by the second defendant under Ex.B1 should be rejected.

11. Ex.A4 is dated 02.04.2002. Ex.B1 is dated 08.04.2002. No doubt, Ex.B1 has been executed and registered on the same date. However, it could be seen that though Ex.A4 was executed on 02.04.2002, it came to be registered only on 18.04.2002. The defendants' claim to have purchased three items of properties described in the "C" schedule properties under Ex.B1.

12. In the light of the position taken by the parties with reference to their title, it has to be seen, which deed has come into force immediately. Whether, Ex.A4 has come into force on 02.04.2002 or whether Ex.B1 has come into force on 8.04.2002 is the short point for consideration involved in this second appeal.

13. In this connection, it could be seen that the Courts below had placed reliance on the decision reported in **1996-1-L.W.622 (Krishnan Vs. Sivalinga Gounder and another)** with reference to the above issue and relying upon section 47 of the Indian Registration

Act, it was found that "even though it can be presumed that a document was executed on the date on which it purports to have been executed and bears the date, that is only a weak presumption and the weak presumption so made will apply only between the parties to the transaction and not against the third person". Pointing to the above position of law, as adumbrated in the said decision, it is argued by the appellants counsel that the Courts below should have taken a weak presumption and the lower appellate Court has erred in taking the presumption as regards Ex.A4, as if the settlement deed had been executed and come into force on 02.04.2002 and that too the presumption should have been taken only against the parties to the transaction concerned and not against the second defendant and inasmuch as the plaintiff failed to establish the truth and validity of Ex.A4 by acceptable and reliable evidence, the lower appellate Court should have rejected the case of the plaintiff made under Ex.A4 and upheld the case of the defendants based upon Ex.B1. However, on considering the materials produced by the parties before the courts below, it could be seen that the above argument of the counsel of the defendants does not merit acceptance. According to the defendants, on coming to know Ex.B1, the plaintiff has fraudulently created the settlement deed Ex.A4.

14. In such circumstances, as per the above cited decision, it

could be seen that when the date of execution of the document is challenged, it is the bounden duty of the purchaser to prove by the best evidence that the document was executed on the date it bears. It has to be therefore seen, whether the plaintiff has established that Ex.A4 has been executed by Rajambal ammal on 02.04.2002 as pleaded by him and why, it has not been registered on the same date, but, registered only on 18.04.2002. In this connection, the plaintiff has examined the attestor to the settlement deed Thiru. T.Krishnan as PW2. PW2 in his evidence has deposed that Ex.A4 had been executed on 02.04.2002 and Rajambal ammal had executed the above said settlement deed in favour of her son, the plaintiff and that, he had attested the document and therefore, it could be seen that by examining the attestor PW2, the plaintiff has established that Ex.A4 had been executed by Rajambal ammal only on 02.04.2002. Further, the stamp papers on which Ex.A2 has been engrossed were also purchased in the name of Rajambal ammal on 02.04.2002. The plaintiff has also examined his mother Rajambal ammal as PW3, who is the author of Ex.A4. Pw3 in her evidence has also clearly testified that she had executed the document in favour of her son, the plaintiff, voluntarily and out of love and affection and as the execution of the document had taken time and there was some delay in presenting the document for registration on the same date, they were directed to come for registration on the next day and as the plaintiff

was forced to leave to his mother-in-law's house, on account of some calamity, on his return after 15 days, the document has been registered on 18.04.2002 and further, she has also deposed that she had not executed the sale deed as Ex.B1 in favour of the second defendant as claimed by the defendants and according to her, the defendants have misled her and on the pretext that, she has to sign only in the mortgage deed, fraudulently obtained her signature in the document purchased by them and therefore, it is the specific case of PW3 that, she had not executed the sale deed on 08.04.2002 as projected by the defendants. With reference to the same, she has also deposed that she has sent a notice repudiating and impugning Ex.B1 and the said notice was marked as Ex.B2.

15. No doubt, the defendants have sent a reply to Ex.B2. Further, the plaintiff has also examined himself as PW1 and he has also deposed about the execution of the settlement deed Ex.A4 in his favour by his mother and also about the due attestation of the same by PW2 and also, the reasons for the delay in having the document registered. As regards the above evidence of PWs1 to 3 with reference to Ex.A4 and also their challenge against Ex.B1, as rightly found by the lower appellate court, nothing has been projected by the defendants' counsel to discredit and disbelieve their evidence in any manner. Therefore, it could be seen that the plaintiff has clearly

established that Rajambal ammal out of her free will and consent voluntarily without any compulsion or coercion on account of love and affection had executed Ex.A4 settlement deed dated 02.04.2002 and for the reasons given by the plaintiff, the said document has come to be registered only on 18.04.2002. Further, it could also be seen from the evidence of PW3 Rajambal ammal that she had not executed Ex.B1 sale deed voluntarily and that, she had been misled by the defendants in executing the same on the pretext that it is only a mortgage deed. Even otherwise, when it is found that Rajambal ammal had executed the properties covered under Ex.B1 also, under Ex.A4 settlement deed dated 02.04.2002 in favour of the plaintiff on the plaintiff and thereby, conferred the absolute ownership of the properties on the plaintiff under the settlement deed, it can be seen that Rajabal ammal would have no title over the properties covered under Ex.B1 to convey the same to the defendants on 08.04.2002. Looking at from any angle, it could be seen that Ex.B1 cannot be termed as a valid and legal document.

16. It is contended by the defendants counsel that no proper explanation has been offered by the plaintiff as to why, Ex.A4 settlement deed has come to be registered only on 18.04.2002 and not on the same date of execution. With reference to the same, as adverted to earlier, the plaintiff has given cogent reasons as on

account of some calamity in his family, it could not be registered on the same date and it has come to be registered on 18.04.2002. Therefore, no exception could be taken to the same to disbelieve that merely on account of some delay in the registration of the document, the document would have been fraudulently created by the plaintiff. On the other hand, as found supra, the plaintiff has established by clear, cogent and acceptable evidence that Ex.A4 had been executed by Rajambal ammal on 02.04.2002, voluntarily and out of her free will and consent.

17. It is also argued by the defendants counsel that if really Ex.A4 had come to be executed by Rajambal ammal on her own accord on 02.04.2002 nothing prevented her from disclosing the same in Ex.B2 notice. Though reference about Ex.A4 is conspicuously absent in Ex.B2, on that ground alone, the Court could not disbelieve Ex.A4 settlement deed. Merely because, Rajambal ammal had not spoken anything about Ex.A4 in Ex.B2, it could not be construed as if she had disregarded the settlement executed by her in favour of her son. On the other hand, it could be seen that in Ex.B2, Rajambal ammal had seriously impugned the execution of the alleged sale deed said to have been made by her in favour of the defendants on 08.04.2002 and such being the position, non mentioning of Ex.A4 in Ex.B2 would not in any manner undermine or vitiate the plaintiff's

case.

18. It is argued by the defendants counsel that the relationship between the plaintiff and his mother has become strained and therefore, Ex.A4 settlement would not have been executed by Rajambal ammal. The above argument has to be rejected straightaway on noting that Rajambal ammal had deposed in favour of the plaintiff as PW3 and also spoken about Ex.A4 settlement and she has not stated anything about strained relationship between her and her son, the plaintiff. Such being the reality, the above defence put forth by the defendants does not merit acceptance.

19. In the light of the above reasons, it could be seen that the lower appellate Court has not upheld Ex.A4 settlement deed merely based upon the weak presumption that could be raised under Section 47 of the Indian Registration Act and on the other hand, it could be seen that the lower appellate Court has also analysed the evidence adduced by the parties concerned in all aspects and accordingly found that Ex.A4 settlement had been executed by Rajambal ammal on 02.04.2002 as projected by the plaintiff and when the best evidence with reference to the same as discussed above had been placed by the plaintiff before the Courts below, it could be seen that no exception could be taken to the findings of the lower appellate court

as regards Ex.A4 as being a true and valid document and also with reference to Ex.B1 that it is not a true and valid document.

In conclusion, it could be seen that sans any substantial question of law being involved in this second appeal as projected by the appellants, the second appeal is devoid of merits and accordingly, the second appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

02.11.2016

Index : Yes/No
Internet:Yes/No
sms

To

1. The Additional Sub Court,
Thiruvannamalai.
- 2.The Additional District Munsif,
Thiruvannamalai.

T.RAVINDRAN,J.

sms

S. A.No. 58 of 2011
and
M.P.No.1 of 2011

02.11.2016

Pre -delivery judgment
in S.A.No.58 of 2011
and
M.P.No.1 of 2016

To

The Hon'ble Mr.Justice T.Ravindran

Respectfully submitted by
sms
(P.A.to the Hon'ble Judges)