

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-3-2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CIVIL SUIT No.880 of 2010

and

O.A.Nos.1122 to 1124 of 2010

1.G.Senthilkumar
2.G.Vigneshwar
3.M.G.Harish Kumar (minor)
represented by his father
and natural guardian
M.A.Gopinath ... Plaintiffs

vs

1.M.A.Kamakshi Ammal
2.M.N.Arumugam
3.B.Vijayalakshmi
4.T.S.Suseela
5.S.Jayanthi @ Dhanalakshmi
6.S.Manjula @ Rajeswari ... Defendants

Civil Suit filed under Order VII Rule 1 of the Code of Civil Procedure read with Order IV Rule 1 of Original Side Rules praying for a judgment and decree declaring that the cancellation deed dated 25.2.2010, executed by the first defendant and registered as Document No.720 of 2010, on the file of the Office of the Sub-Registrar, Purasawalkam, cancelling the settlement deed dated 9.12.2002, with regard to the property bearing Door

comprised in R.S.No.3098/13, Purasawalkam Division, Block No.49, which is more fully described in the schedule is null and void and not binding on the plaintiffs; declaring that the settlement deed dated 24.3.2010, executed by the first defendant in favour of the defendants 3 to 6, and registered as Document No.1107 of 2010, on the file of the Office of the Office of the Sub-Registrar, Purasawalkam, with regard to the property bearing Door No.191, Purasawalkam High Road, Kilpauk, Chennai 10, comprised in R.S.No.3098/13, Purasawalkam Division, Block No.49, which is more fully described in the schedule is null and void and not binding on the plaintiffs and granting permanent injunction restraining the defendants 1 and 2 from interfering with the plaintiffs' joint possession and enjoyment of the property bearing Door No.191, Purasawalkam High Road, Kilpauk, Chennai 10, comprised in R.S.No.3098/13, Purasawalkam Division, Block No.49, which is more fully described in the schedule and permanent injunction restraining the defendants 3 to 6 from interfering with the peaceful possession and enjoyment of the property bearing Door No.191, Purasawalkam High Road, Kilpauk, Chennai 10, comprised in R.S.No.3098/13, Purasawalkam Division, Block No.49, which is more fully described in the schedule and permanent injunction restraining the defendants from alienating or encumbering or otherwise dealing with the property bearing Door No.191, Purasawalkam High Road, Kilpauk, Chennai 10, comprised in

R.S.No.3098/13, Purasawalkam Division, Block No.49, which is more fully described in the schedule and for costs.

For Plaintiffs : Mr.K.Rajasekaran

For Respondents : Mr.K.Venkataraman
for DD1 & 2
D3 to D6 - set ex-parte

JUDGMENT

The plaintiffs would aver in the plaint, as follows:-

(a) The plaintiffs 1 to 3 are brothers. The third plaintiff is a minor and he is represented by his father and natural guardian M.A.Gopinath. The first defendant is the mother of M.A.Gopinath (paternal grandmother) and the second defendant is the father of M.A.Gopinath (paternal grandfather) and husband of the first defendant. The defendants 3 to 6 are sisters of M.A.Gopinath (paternal aunts of the plaintiffs).

(b) All their paternal aunts were married and living with their husband separately and the plaintiffs' father and mother and defendants 1 and 2 are living as a joint family in the suit schedule property, which is the absolute property of the first defendant as she had purchased the same vide registered sale deed bearing Document No.1344 of 1980, dated 16.6.1980, on the file of the Office of the Sub-Registrar, Purasawalkam, Chennai. In the ground floor of the said property, there are four portions in the front side and one portion on the rear side. Out of the four portions in the front side of the ground floor, two portions were let

out in favour of the tenants, and one portion is under the occupation of the plaintiffs' mother, where she is running a tea and snack stall and the fourth portion is vacant. Similarly, the rear portion in the ground floor, is under the occupation of the plaintiffs' mother, where the workers employed in the tea and snack stall, are staying, and the first floor of the suit property consists of four portions, out of which, two were let out in favour of the tenants, and one portion is under the occupation of the first plaintiff, where he is running a business, and the other portion is under the occupation of the father of the plaintiffs for his office purposes and thus, the entire suit schedule property are in joint possession of the plaintiffs, their parents and their grandparents.

(c) During October, 1998, the first defendant, out of love and affection, wanted to settle the suit schedule property in favour of the plaintiffs' father viz. M.A.Gopinath, who was reluctant to accept the same, and after much persuasion, the first defendant has executed a deed of general power of attorney dated 30.10.1998, appointing the father of the plaintiffs as her Power of Attorney Agent, which was also registered as Document No.531 of 1988, on the file of the Office of the Sub-Registrar, Purasawalkam.

(d) During December, 2002, the first defendant called the father of the plaintiffs viz. M.A.Gopinath, and

informed him that if he did not want to accept the schedule property, the same could be settled upon his three three sons - grandsons of defendants 1 and 2. Accordingly, the father of the plaintiffs in compliance of the request made by his mother, has executed a registered deed of settlement dated 9.12.2002, (Document No.4218 of 2002, on the file of the Office of the Sub-Registrar, Purasawalkam), settling the property in favour of his three sons viz. the plaintiffs. Since the plaintiffs were minors at the relevant point of time, their mother acted as the next friend and natural guardian on their behalf. Subsequent to the above said settlement deed, mutation of Revenue Records also took place in respect of the suit schedule property, replacing the names of the first defendant and it was also acted upon. Certain errors had crept in in the registered settlement deed dated 9.12.2002, and it was also rectified by means of a registered rectification deed bearing Document No.4750 of 2008, on the file of the Office of the Sub-Registrar, Purasawalkam, dated 22.12.2008.

(e) The defendants 3 to 6 - plaintiffs' paternal aunties, used to come to plaintiffs' house and often to mingle with them and later on, on coming to know that their father, who has executed a registered settlement deed dated 9.12.2002, acting as the Power of Attorney Agent of the first defendant, got enraged and started poisoning the minds of their grandparents. The grandparents of the

plaintiffs/defendants 1 and 2, due to constant nagging and instigation made, succumbed to the undue influence and pressure exerted by them, and therefore, took a decision to cancel the power of attorney executed in favour of the father of the plaintiffs, as well as the registered settlement deed dated 9.12.2002, and accordingly, vide registered Document No.147 of 2010, dated 25.2.2010, on the file of the Office of the Sub-Registrar, Purasawalkam, the first defendant has cancelled the Power of Attorney dated 30.10.1998, executed in favour of the father of the plaintiffs, and also cancelled the settlement deed dated 9.12.2002, vide registered Document No.720 of 2010, on the same day.

(f) Once the deed of settlement is executed and also acted upon, it cannot be cancelled and due to nagging made, and the pressure and undue influence exerted by the defendants 3 to 6 only, the first defendant has done the same. Therefore, the plaintiffs came forward to file the present suit praying for cancellation of the above said documents with a consequential prayer for permanent injunction, etc.

2.The defendants 1 and 2 had filed their written statements, virtually conceding to the case of the plaintiffs, and they would state that due to ill advice, pressure and undue influence exerted by their daughters viz.

defendants 3 to 6, only, the act of cancellation of the

power of attorney executed in favour of the plaintiffs' father, and cancellation of the settlement deed dated 9.12.2002, took place and they have no serious objection in decreeing the suit as prayed for.

3.The defendants 3 to 6 were called absent and set ex-parte on 15.4.2013, and they did not take any steps to set aside the ex-parte order.

4.This Court, on a consideration of pleadings, has framed the following issues for trial and adjudication:-

(1) Whether the Power of Attorney dated 30.10.1998, executed by the 1st defendant in favour of the plaintiffs, is valid or not?

(2) Whether the settlement deed dated 9.12.2002, executed by the first defendant in favour of the plaintiffs, is valid or not?

(3) Whether the rectification deed dated 22.12.2008, is valid or not?

(4) Whether the revocation of the settlement deed dated 25.02.2010, is valid or not?

(5) Whether the revocation of Power of Attorney dated 25.02.2010, is valid or

(6) Whether the second settlement deed dated 24.3.2010, by the first defendant in favour of her daughters, is valid?

(7) Whether the plaintiffs are the owners of the suit property or not?

(8) Whether the plaintiffs are entitled to protect their title and possession of the suit property?

5.The first plaintiff on his behalf, and on behalf of the plaintiffs 2 and 3, has filed his proof affidavit in lieu of chief-examination, and marked Exs.P1 to P55. The first defendant has examined herself as D.W.1, and did not mark any documents.

6.The learned Counsel appearing for the plaintiffs, has drawn the attention of this Court to the pleadings and oral and documentary evidences and would submit that once the power of attorney is executed and acted upon, it cannot be cancelled; but, the first defendant, acting under the pressure and undue influence exerted by her daughters viz. defendants 3 to 6, has cancelled the power of attorney executed in favour of the plaintiffs' father, under Ex.P52, and also cancelled the earlier settlement deed dated 9.12.2002, marked as Ex.P18, under Ex.P53, and having realised the mistake, she along with her husband viz. the second defendant, had filed the

written statement supporting the case of the plaintiffs, and D.W.1/first defendant had also gone into the box and fully supported the case of the plaintiffs and would further submit that subsequent to the filing of the suit, the first defendant has also directly executed a deed of settlement once again, in the name of the plaintiffs' father, and hence, there cannot be any impediment in decreeing the suit as prayed for.

7.This Court has also heard the submissions of the learned Counsel appearing for the defendants 1 and 2, who has no serious objection in decreeing the suit as prayed for.

8.This Court has carefully considered the submissions made by the learned Counsel appearing for the plaintiffs, and the learned Counsel appearing for the defendants 1 and 2, and also perused the pleadings and oral and documentary evidences.

9. ISSUE Nos. (1) to (3) :-

Originally, the paternal grandmother of the plaintiffs viz. the first defendant, has executed Ex.P14, General Power of Attorney, in favour of the father of the plaintiffs, based on which, he, in turn, executed a registered settlement deed under Ex.P18, in favour of the plaintiffs, and since certain errors crept in therein, Ex.P26 rectification deed, was executed in favour of the plaintiffs. In the light of the stand of the defendants 1 and 2 in the written statement,

coupled with the testimony of D.W.1 and also in the light of the proof affidavit of D.W.1/first defendant filed in lieu of chief-examination, there cannot be any difficulty in arriving at a decision that Exs.P14, P18 and P26 are valid. Therefore, issues Nos.(1) to (3) are answered in affirmative and in favour of the plaintiffs.

10. **ISSUE Nos. (4) and (6) :-** It is a well settled position of law that once the settlement is executed and acted upon, it cannot be cancelled except on the ground of fraud. But, as pointed out earlier, D.W.1/first defendant has executed the Deed of General Power of Attorney under Ex.P14, in favour of the father of the plaintiffs, who, in turn, executed the registered settlement deed dated 9.12.2002, in favour of the plaintiffs 1 to 3 under Ex.P18, and pursuant to the same, mutation of Revenue Records also took place as evidenced under Exs.P19 to P25 and P27 to P51. It is also the stand of the defendants 1 and 2, especially the first defendant, who examined herself as D.W.1, that due to ill advice and nagging made, and constant pressure and undue influence exerted by her daughters viz. defendants 3 to 6, she cancelled the deed of power of attorney - Ex.P14, under Ex.P52, and subsequently, cancelled Ex.P18 registered settlement deed, dated 9.12.2002, by a cancellation deed dated 25.2.2010, under Ex.P53. In the considered opinion of the Court, the

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cancellation of Ex.P18 under Ex.P53, is not stipulated in

law for the reason that the first defendant in her pleadings, as well as in her evidence, did not state anything about the fraud played by the father of the plaintiffs to get the power of attorney under Ex.P14, executed in his favour, and the settlement deed based on the power of attorney, under Ex.P18, executed in favour of his sons. Thereafter, the first defendant, in turn, has executed a settlement deed dated 24.3.2010, under Ex.P54, in favour of her three daughters viz. defendants 3 to 6. Since the Court has already given a finding that the cancellation of Ex.P18 under Ex.P53, is invalid in law, as Ex.P18 has already been acted upon, the second settlement deed dated 24.3.2010, under Ex.P54, is also invalid in law. Therefore, issue Nos.(5) and (6) are answered in negative and in favour of the plaintiffs.

11.**ISSUE No.(5):-** In the light of the pleadings of the defendants 1 and 2 coupled with the evidence of D.W.1, the revocation of the general power of attorney under Ex.P14, is also not valid and therefore, the said issue is also answered in favour of the plaintiffs.

12.**ISSUE Nos.(7) and (8):-** In the light of the findings given by this Court in respect of the above said issues, it is to be declared that the plaintiffs are the owners of the suit schedule property and are also entitled to get the relief of permanent injunction and to protect their title and possession of the said property.

13. In the result, the suit is decreed as prayed for, with costs. The cancellation deed dated 25.2.2010, executed by the first defendant and registered as Document No.720 of 2010, on the file of the Office of the Sub-Registrar, Purasawalkam, cancelling the settlement deed dated 9.12.2002, with regard to the suit schedule property, is declared as null and void and not binding on the plaintiffs. The settlement deed dated 24.3.2010, executed by the first defendant in favour of the defendants 3 to 6 and registered as Document No.1107 of 2010, on the file of the Office of the Office of the Sub-Registrar, Purasawalkam, with regard to the suit schedule property, is declared as null and void and not binding on the plaintiffs. The defendants 1 and 2 are restrained by way of permanent injunction, from interfering with the plaintiffs' joint possession and enjoyment of the suit schedule property. The defendants 3 to 6 are restrained by way of permanent injunction, from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property. The defendants are restrained by way of permanent injunction, from alienating or encumbering or otherwise dealing with the suit schedule property. Consequently, connected original applications are closed.

PLAINTIFFS' SIDE WITNESSES AND EXHIBITS:-

P.W.1 M.G.Senthil Kumar

Ex.P1 16.6.1980 Certified copy of the sale deed executed by Lalitha Shanmugasundaram in favour of first defendant

- Ex.P2 23.12.1988 Original No Objection Certificate issued by Assistant Commissioner, Egmore
- Ex.P3 23.8.1989 Original letter issued by the Commissioner, Egmore to plaintiffs' mother Mahalakshmi Gopinath
- Ex.P4 28.3.1991 Photocopy of LIC policy of the first plaintiff
- Ex.P5 28.6.1991 Photocopy of LIC policy of father of the plaintiffs M.A.Gopinath
- Ex.P6 Photocopy of the community certificate of the second plaintiff
- Ex.P7 28.1.1993 Photocopy of LIC policy of the plaintiffs' mother Mahalakshmi Gopinath
- Ex.P8 19.3.1993 Original advice issued by the Department of Telecommunications to plaintiffs' father
- Ex.P9 28.6.1993 Photocopy of LIC policy of first plaintiff
- Ex.P10 28.5.1994 Photocopy of LIC policy of the second defendant M.G.Vigneswar
- Ex.P11 28.11.1994 Photocopy of LIC policy of the plaintiffs' father M.A.Gopinath
- Ex.P12 28.5.1995 Photocopy of LIC policy of the third defendant MG.Harish Kumar
- Ex.P13 17.3.1998 Original subscription voucher issued by Indian Oil Corporation Ltd., to plaintiffs' father along with the bill
- Ex.P14 30.10.1998 Certified copy of general power of attorney executed by the first defendant in favour of plaintiffs' father
- Ex.P15 28.3.1999 Photocopy of LIC policy of plaintiffs' father M.A.Gopinath
- Ex.P16 28.3.1999 Photocopy of LIC policy of plaintiffs' mother Mahalakshmi Gopinath
- Ex.P17 28.3.1999 Photocopy of LIC policy of plaintiffs' mother Mahalakshmi Gopinath

- Ex.P18 9.12.2002 Certified copy of the settlement deed executed by the father of the plaintiffs as power of attorney agent of the first defendant, in favour of the plaintiffs
- Ex.P19 Photocopy of the voter's identity card of the plaintiffs' mother Mahalakshmi issued by Election Commission of India
- Ex.P20 Photocopy of first plaintiff's voter's identity card issued by Election Commission of India
- Ex.P21 31.3.2003 Original order for name transfer issued by Corporation of Chennai
- Ex.P22 12.11.2003 Original property tax collection receipt
- Ex.P23 31.3.2004 Original property tax collection receipt
- Ex.P24 1.12.2005 Original property tax collection receipt
- Ex.P25 19.3.2004 Photocopy of extract from the permanent land register issued by the Tahsildar
- Ex.P26 22.12.2008 Certified copy of the rectification deed executed by the first defendant in favour of the plaintiffs
- Ex.P27 31.3.2004 Original water charges payment receipt issued by Chennai Metropolitan Water Supply and Sewerage Board
- Ex.P28 9.8.2004 Water and sewerage tax payment (series) receipts issued by Chennai Metropolitan Water Supply and Sewerage Board
- Ex.P29 Photocopy of driving license of the first plaintiff
- Ex.P30 31.3.2005 Water and sewerage tax payment (series) receipts issued by Chennai Metropolitan Water Supply and Sewerage Board
- Ex.P31 31.3.2004 Water and sewerage tax payment (series) 30.9.2005 receipts issued by Chennai Metropolitan Water Supply and Sewerage Board
- Ex.P32 Original water and sewerage tax

charges card

Ex.P33		Photocopy of the family card
Ex.P34	17.3.2006	Original water charges payment receipt issued by Chennai Metropolitan Water Supply and Sewerage Board
Ex.P35		Original water charges payment receipt issued by Chennai Metropolitan Water Supply and Sewerage Board
Ex.P36		Photocopy of the driving license of the second plaintiff
Ex.P37	28.3.2006	Photocopy of LIC policy of plaintiffs' father M.A.Gopinath
Ex.P38	28.3.2006	Photocopy of LIC policy of plaintiffs' mother Mahalakshmi Gopinath
Ex.P39	28.3.2006	Photocopy of LIC policy of the second plaintiff
Ex.P40	29.3.2006	Photocopy of LIC policy of the first plaintiff
Ex.P41		Original hall ticket of the second plaintiff issued by Tamil Nadu Professional Courses Entrance Examinations, 2006
Ex.P42		Original property tax demand card
Ex.P43	25.9.2007	Original water charges payment receipt issued by Chennai Metropolitan Water Supply and Sewerage Board
Ex.P44	30.3.2007	Photocopy of LIC policy of plaintiffs' father M.A.Gopinath
Ex.P45	30.3.2007	Photocopy of LIC policy of plaintiffs' mother Mahalakshmi Gopinath
Ex.P46 (series)	15.3.2007	Water and sewerage tax payment receipts issued by Chennai Metropolitan Water Supply and Sewerage Board
Ex.P47 (series)	6.3.2008	Water and sewerage tax payment receipts issued by Chennai Metropolitan Water Supply and Sewerage Board

- Ex.P48 14.8.2008 Original property tax collection receipt
- Ex.P49 2.9.2008 Original water charges payment receipt issued by Chennai Metropolitan Water Supply and Sewerage Board
- Ex.P50 Photocopy of driving license of plaintiffs' father
- Ex.P51 Original property tax collection receipt
- Ex.P52 25.2.2010 Certified copy of deed of revocation of power of attorney executed by the first defendant
- Ex.P53 25.2.2010 Certified copy of cancellation of settlement deed executed by the first defendant
- Ex.P54 24.3.2010 Certified copy of settlement deed executed by the first defendant
- Ex.P55 13.8.2010 Copy of property tax receipt

DEFENDANTS' SIDE WITNESS:

D.W.1 M.A.Kamakshi Ammal

sd/.M.S.N.J

10.03.2016

//Certified to be a true copy//

Dated this the day of 2016

R.s/07.12.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.