

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.Nos.355 of 2017 & 890 of 2016

Mrs.Bhuvaneshwari

... Appellant / Plaintiff in both
the Second Appeals

Versus

1 Mr.Sivakumar
2 Mr.Ganesan
3 Mr.Srinivasan
4 Mrs.Shanthi
5 Mrs.Latha
6 Mrs.Vijayalakshmi
7 Miss M.Kavitha

...Defendants/ Respondents in
both the Second Appeals

Prayer in SA.No.355/2017: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Judgement and decree dated 04.02.2015 passed by the III Additional Judge City Civil Court, Chennai in A.S.No.367 of 2014 confirming the judgment and decree dated 24.03.2014 passed by the XIII Assistant Judge, City Civil Court, Chennai in O.S.No.897 of 2011.

Prayer in SA.No.890/2016: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Judgement and decree dated 04.02.2015 passed by the III Additional Judge City Civil Court, Chennai in A.S.No.366 of 2014 confirming the judgment and decree dated 24.03.2014 passed by the XIII Assistant Judge, City Civil Court, Chennai in O.S.No.5370 of 2010.

For Appellant in
both the Appeals : Mr.O.Padmaprakash
For Respondents in
both the Appeals : Mr.D.Nagesh Babu

COMMON JUDGMENT

SA.No.890 of 2016 is arising out of suit in O.S.No.5370 of 2010 filed by the appellant on the file XIII Assistant Judge, City Civil Court, Chennai. SA.No.355 of 2017 is arising out of suit in O.S.No.897 of 2011 filed by the appellant on the file of City Civil Court, Chennai.

2 Both suits filed by the appellant / plaintiff came to be dismissed vide judgment dated 24.03.2014; so also the Appeal Suits in A.S.Nos.366 and 367 of 2014 filed by the appellant / plaintiff on the file of the learned III Additional City Civil Judge, Chennai, by a common judgment dated 04.02.2015. Therefore, both the appeals are taken up together and disposed of by this Court by the following common Judgment.

3 SA.No.890 of 2016 :-

[a] The appellant / plaintiff filed a suit in O.S.No.5370 of 2010 on the file of the Court of XIII Assistant Judge, City Civil Court, Chennai, praying for partition and separate possession of 1/8th share in respect of the property bearing Old No.3, New.No.5, Srinivasa Perumal Sannathi, 2nd Cross Street, Royapettah, Chennai - 600 014, ad-measuring to an extent of 1162 Sq.ft. It is a case of the plaintiff that she and the defendants are the children of late Rajagopal and Mrs.Sarojini Rajagopal and her father had purchased the property during his lifetime in the name of his wife / mother of appellant/plaintiff namely Sarojini Rajagopal. The appellant/plaintiff would further aver that after the lifetime of her father Rajagopal, her mother was in possession and enjoyment of the property along with the plaintiff as well as the defendants and her mother died on 24.02.2010 and thereafter, the property continued to be in possession and enjoyment of the plaintiff and defendants. It is also stated by the appellant /plaintiff since, her mother died intestate, she as well as her brothers and sisters are entitled for equal share and she demanded a partition by metes and bounds in the form of Legal Notice dated 04.05.2010 and it was not responded by the defendants and however, defendants 1 to 3 proceeded further and demolished the entire superstructure of the property and hence, she has come forward to file the said suit.

[b] The defendants 1, 2, 3, 5 & 7 filed a common written statement denying the averments made in the plaint and would state that the plaintiff and the defendants 4 and 6 were got married and were given with enough jewels, cash and other sreedhanas and they are also settled well off and also took a stand that late Sarojini Rajagopal during her lifetime, had an intention to settle the property in their favour and accordingly, executed a registered Settlement Deed bearing document No.333/2009 dated 07.04.2009 in their favour and therefore, they are in possession and enjoyment of the suit property. In the light of the same, the plaintiff is not entitled to claim partition and separate possession of the property and prays for dismissal of the suit.

[c] The Trial Court on consideration of pleadings had framed the following issues:

- Whether the plaintiff is entitled to the relief of preliminary decree for partition of 1/8th share in the suit property?
- To what other relief the plaintiff is entitled to?

4 SA.No.355 of 2017:-

[a] The suit was filed by the plaintiff in O.S.No.897/2011 for partition and separate possession and the contesting defendant took a stand, as to the execution of the said Sale Deed and therefore, she filed the said suit on the file of the same Court to declare that the Settlement Deed dated 07.04.2009, as null and void. It is the case of the plaintiff that she was not aware of the Settlement Deed dated 07.04.2009 until the written statement filed by the contesting defendants in O.S.No.5370 of 2010 and would further aver that her mother Sarojini Rajagopal became ill by the year 2009 and died on 24.02.2010. During the year 2009, she was suffering from heart ailment and was hospitalized for treatment and she was neither in a fit condition nor in a proper conscious state of mind to understand as to whether, what she was doing and taking advantage of the situation, the contesting defendants managed to get Settlement Deed executed in their favour and since, she was not in a conscious state of mind and also not aware of the contents in the said Settlement Deed alleged to have been executed, it is to be declared as null and void.

[b] The defendants 1, 2,3, 5 & 7 filed the written statement refuting the allegations and the said document was executed by their mother in a fit and conscious state of mind and therefore, the suit filed by the plaintiff is frivolous and to be dismissed with cost.

[c] The 4th and 6th defendant had filed a separate written statement and they took a stand that they as well as the plaintiff were married with enough jewels and cash and other seethanas and are well settled and when the Settlement Deed was executed by their mother, she was in sound mind and good health and she has also appeared before the Sub-Regitrar Office, Triplicane and subscribe their signature and thereby, supported the case of the contesting defendants.

5 The Trial Court based upon the pleadings in the said suit, had framed the following issues:-

1. Whether the plaintiff is entitle for declaration as prayed for?
2. Whether it is true that the deceased Mrs.Sarojini ammal the absolute owner of the suit property?

3. Whether it is correct the Mrs.Sarojini ammal executed the Settlement Deed with hale and healthy and with full sound mind?
4. Whether the plaintiff is entitle for permanent injunction?
5. To what other relief?

6 Both the suits were taken up for joint trial and the oral and documentary evidence were recorded in O.S.No.5370 of 2010. The Plaintiff examined herself as PW1 and also examined three other witnesses as P.Ws.2 to 4 and also marked Exs.A1 to A8. On the side of the defendants, DW1 to DW4 were examined and Ex.B1 to B4 were marked.

7 The Trial Court on a consideration of pleadings and on appreciation of oral and documentary evidence, found that the Settlement Deed was executed by late Sarojini Rajagopal in a fit and conscious state of mind and she has also presented herself before the Sub Registrar Office to subscribe her signature and the testimonies of DW1 to DW4 would inspire confidence in respect of execution of Ex.A2- Settlement Deed and the executor has also given a reason in the Settlement Deed as to the non giving of any share in the suit property in favour of the plaintiff and other two sisters viz., R.Shanthi and R.Vijayalakshmi - defendants 4 and 6 and found that the case of the plaintiff in both suits is not appropriate and therefore, dismissed both the suits by common judgment dated 24.03.2014.

8 The plaintiff in both suits, aggrieved by the dismissal of the suits, filed AS.Nos.366 & 367 of 2014 on the file of learned III Additional City Civil Judge, Chennai.

9 The Lower Appellate Court taking into consideration the Memorandum of Grounds of appeals had formulated the following point for determination:-

- Whether both the appeals ought to be allowed or not?

10 The Lower Appellate Court, after going through the original testimonies of the witnesses and exhibits, found that the findings recorded by the Trial Court are sustainable and confirmed the findings recorded by the Trial Court that Ex.A2, Settlement Deed dated 07.04.2009 was executed by late Sarojini Rajagopal in a fit and conscious state of mind and as a consequence dismissed both suits and citing the said reasons, both suits, vide impugned common judgment dated 04.02.2015 and challenging the legality of the same, the plaintiff in both suits had filed these second appeals.

11 In the Memorandum of Grounds of Appeal in both appeals, the following substantial questions of law are raised for consideration:-

- Whether the fact that the executant of Ex.A2 was hospitalised with a heart block on 17.04.2009 and discharged on 25.04.2009 and the fact that she was again admitted on 09.05.2009 with the same complaint and the fact that Ex.A2 was registered on 07.05.2009 leads to a presumption of exercise of undue influence by the beneficiaries?
- Whether the fact that Ex.A2 was executed on 07.04.2009 whereas the stamp paper on which it is written is dated 05.05.2009 leads to the conclusion that Ex.A2 was deliberately pre-dated as 07.04.2009 to rebut the plea of undue influence?
- Whether the Courts below were right in presuming that the date 07.04.2009 in Ex.A2 is only a typographical error when there was neither a plea nor evidence to that effect by the defendants?
- Whether the Courts below were right in holding that the Sub-registrar who registered Ex.A2 ought to have been examined to establish the authenticity of Ex.A2?
- Whether the Courts below were right in holding that Section 14 of the Hindu Succession Act applies to the facts and circumstances of the case?

12 Mr.O.Padmaprakash, learned counsel appearing for the appellant/plaintiff in both suits would contend that Ex.A2 came into being on 07.04.2009 and admittedly, the Executant-Mother of the plaintiff as well as the defendants was not keeping good health and was suffering due to heart ailment and she was in and out of the hospital and she was admitted on 17.04.2009 at B.S.S Hospital for the purpose of implanting Pace Maker and after undergoing the procedure, she was discharged on 24.04.2009 and the Discharge Summary was also marked as Ex.A6 and the doctor attached to the said Hospital was also examined as P.W.4. In the light of the fact that she was aged about 75 years and was implanted with pace maker and on account of the said illness and mental strain, she was not in a fit and conscious and sound state of mind and she had not executed Ex.A2 Settlement Deed dated 07.04.2009 on her own volition and the further submission of learned counsel for appellant is that admittedly the contesting defendants were residing with the mother of appellant / plaintiff in the suit property and therefore, by exerting pressure and undue influence, they made her to execute the said Settlement Deed and therefore it cannot be to be presumed to a valid Deed. It is also the submission of the learned counsel appearing for appellant that though the

legal notice was sent under Ex.A1 to defendants 1 to 3, no reply has been received. The testimonies of the contesting witnesses who are defendants 3 and 4, would not also inspire confidence for the reason that one of them is subordinate to 2nd defendant / 2nd respondent and therefore, the testimonies would only lead to an inference that they have not seen the executor signing the Ex.A2 Settlement Deed. The Courts below, without appreciating the oral and documentary evidences in a proper perspective manner, had reached the erroneous conclusion to reject the case of the plaintiff. The appellant / plaintiff would further aver that as a daughter of deceased Sarojini Rajagopal, she also having a sentimental value in respect of the suit property and therefore prays for interference.

13 Per contra the learned counsel appearing for respondents / defendants would submit the Courts below had recorded well considered findings and on proper appreciation of oral and documentary evidences and whatever the questions of law urged by the learned counsel appearing for appellant, has been well considered and answered by the Courts below and since the findings are concurrent, this Court, in exercise its jurisdiction under section 100 of CPC may not interfere with the same and prays for dismissal of both the appeals.

14 This Court paid its best attention to the rival submissions and also perused the typed set of documents containing the impugned judgments as well as oral and documentary evidences.

15

It is a primordial submission of the learned counsel appearing for the appellant / plaintiff that the Executant namely Sarojini Rajagopal was suffering due to heart ailment and she was in and out of the hospital and was hospitalized on 17.04.2009 with the complaint of heart block and pacemaker was also implanted and was discharged on 25.04.2009 and again she was admitted on 07.05.2009 and in the interregnum period, Ex.A2 Settlement Deed dated 07.04.2009 which leads to the presumption of undue influence as well as pressure and that she was in a fit and conscious state of mind to execute the said document. It is further submission of the learned counsel appearing for the appellant that Ex.A2 was executed on 07.04.2009 ; but the stamp paper was purchased on 05.05.2009 and on that ground also, the execution of document creates a doubt. Though the Courts below have reached the conclusion that it was a typographical error of the stamp vendor to mention a wrong date, no contra evidence was let in on behalf of respondents / defendants has been let in to dispel the said doubt.

16 Lastly, it is submitted by the learned counsel appearing for the appellant / plaintiff since the executant did not possess any independent income to purchase the property and though it was purchased by her husband in her name and it cannot be construed as a ancestral property and as such, Section 14 of the Hindu Succession Act has no application to the case, the Courts below on an erroneous application of mind to oral and documentary evidence and incorrect application of law, had reached erroneous conclusion to decide the case of the appellants / plaintiffs and prays for interference.

17 A perusal of the A2-Settlement Deed dated 07.04.2009 would disclose that the reasons has been assigned as to the exclusion of the plaintiff and the defendants 4 and 6 for the reason that they were well settled and it is also supported by the defendants 4 and 6 in their written statement filed in O.S.No.897 of 2011, filed by the appellant/plaintiff, to declare that the Ex.A2 - Settlement Deed executed is null and void and the plaintiff was examined as PW1 and denied the fact that she was well off and also denied the suggestion that Ex.A2 Settlement Deed was executed by her mother in a fit and conscious state of mind. The appellant /plaintiff had also examined PW2 and PW3 and therefore, the testimonies would disclose that they are not authorized persons or competent person to speak about the fit state of mind of the executant and they worked in those hospitals on the administrative side and therefore, the Courts below had rightly rejected their evidence.

18 PW4 is a doctor of Dr. Kamakchi Memorial Hospital and he admitted in his cross examination that on 05.15.2009 at 5.10pm one Mrs.Sarojini Rajagopal was admitted in causality ward and at about 6.15 p.m., she was implanted with permanent pace maker and on 16.05.2009, she was advised to go to BSS hospital and the Discharge Summary was marked as Ex.A13. The attention of PW4 was also invited to Ex.A13- Discharge Summary and he would depose that as per Discharge Summary, the patient was in a conscious state of mind and even at the time of discharge, she was hale and healthy and even in the Discharge Summary, prior to admission, was discharging her duties and she continued in that capacity only.

19 PW4 would further depose that, on the basis of Ex.A13- Discharge Summary , the general condition of the patient cannot be given. A perusal of the Discharge Summary, marked as Ex.A10 and Ex.A11 would also disclose that Sarojini Rajagopal is not a known case of systemic hypertension /Tuberculosis / Bronchial Asthma/ Epilepsy and at the time of discharge, certification has been given that she is in good medical condition. In the considered opinion of this Court, the appellant / plaintiff has miserably failed to prove that on or

prior to execution of Ex.A2- Settlement Deed, her mother was not in a fit and conscious state of mind and was not keeping good health and undue influence or some pressure has been brought forth upon her to execute Ex.A2-Settlement Deed in favour of contesting defendants.

20 On behalf of the contesting defendants, to prove the execution of the Ex.A2-Settlement Deed, DW3 and DW4, the attestors, have been examined. DW3 in the cross examination would depose that he was signed as a second witness and at the time of preparing Ex.A2, the executant namely Sarojini Rajagopal was keeping good health and was in sound state of mind and at the time of registration of Ex.A2, her sons and daughters were present, which includes the plaintiff. In the cross examination, she would depose that she was not aware of the contents of the documents for the reason that it was disclosed by executant viz., Sarojini Rajagopal and denied the suggestion that execution was done by the executant without fit and proper state of mind. It is also noted at this juncture that it is her categorical admission during the chief examination that the plaintiff was also present at the time of registration of document and no suggestion has been put to cross examine with regard to the said fact and oral evidence would also disclose that the contents of the Ex.A2 has also been disclosed to her.

21 DW4, who is a Head Constable and also a subordinate of the 2nd defendant, in the cross examination would state that he knows the mother of the 2nd defendant as well as brothers and sisters and the executant viz., Sarojini Rajagopal, asked him to come informing that she is going to execute the Settlement Deed and asked him to put his signature as a attestor and accordingly, after execution, he has signed the same.

22 It is a well settled position of law that the appellant / plaintiff in order to succeed in her endeavour, has to stand on her own legs and cannot pick holes in the defence projected by the defendants. However, she has failed to prove by adducing any proper and sufficient evidence as to the suspicious circumstances with regard to the execution of Ex.A2 - Settlement Deed.

23 The executor has come to the Office of the Sub Registrar, Triplicane and executed A2-Settlement Deed and it was signed and attested by DW2 and DW3. Thus, the contesting defendants had proved the execution of Ex.A2 - Settlement Deed. As already pointed out, the content of Ex.A2 would also disclose the reason for excluding the plaintiff as well as the defendants 4 and 6 and that they have also filed a separate suit in O.S.No.897 of 2011, supporting the case of the contesting defendants.

24 The learned counsel appearing for appellant / plaintiff also made a valiant attempt and try to convince this Court by submitting that though the Ex.A2-Settlement Deed was executed on 07.04.2009 and however, the stamp paper contains the date as 05.05.2009 and therefore it also one of the suspicious circumstance as to the existence of Ex.A2- Settlement Deed.

25 In fact, the Trial Court has considered the said plea elaborately in paragraph No.67 of the impugned judgment and found it was wrongly typed as 07.04.2009 and whereas the documents was presented for registration at the Sub Registrar office, Triplicane on 07.05.2009 and it was also registered and though it was open to the appellant / plaintiff to summon the Sub-Registrar to sustain her case, she did not do so.

26 This court is also of the view that it cannot be cited as a ground as to the truth and validity of Ex.A2. A plea was also raised as to the applicability of Section 14 of the Hindu Succession Act. However, the evidence available on record would indicate that the suit property stood in the name of late Sarojini Rajagopal and on her own volition with a fit and conscious state of mind and sound medical condition, she had executed Ex.A2-Settlement Deed in favour of contesting defendants.

27 The Appellant / plaintiff has failed to probablise their case as to the suspicious circumstances under which Ex.A2-Settlement Deed came into being and the Courts below had rightly reached the conclusion that Ex.A2- Settlement Deed is true and valid and as a consequence, dismissed the case for partition and separate possession.

28 This Court, on an independent application of mind to the entire materials placed before it, is of the considered view that there is no error or perversity attached to the findings rendered by the Courts below and therefore, the impugned judgment warrants no interference. The Substantial Questions of Law raised in these Second Appeals have already been answered by the Courts below and as such, there are no Questions of Law leave alone the Substantial questions of law arise for consideration in these Second appeals.

29 In the result, both these Second appeals are dismissed, confirming the judgments and decree passed by the

Courts below. This Court taking into consideration the relationship between the parties, is not inclined to award cost.

Sd/-
Asst.Registrar (CCC)

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Sub Asst. Registrar

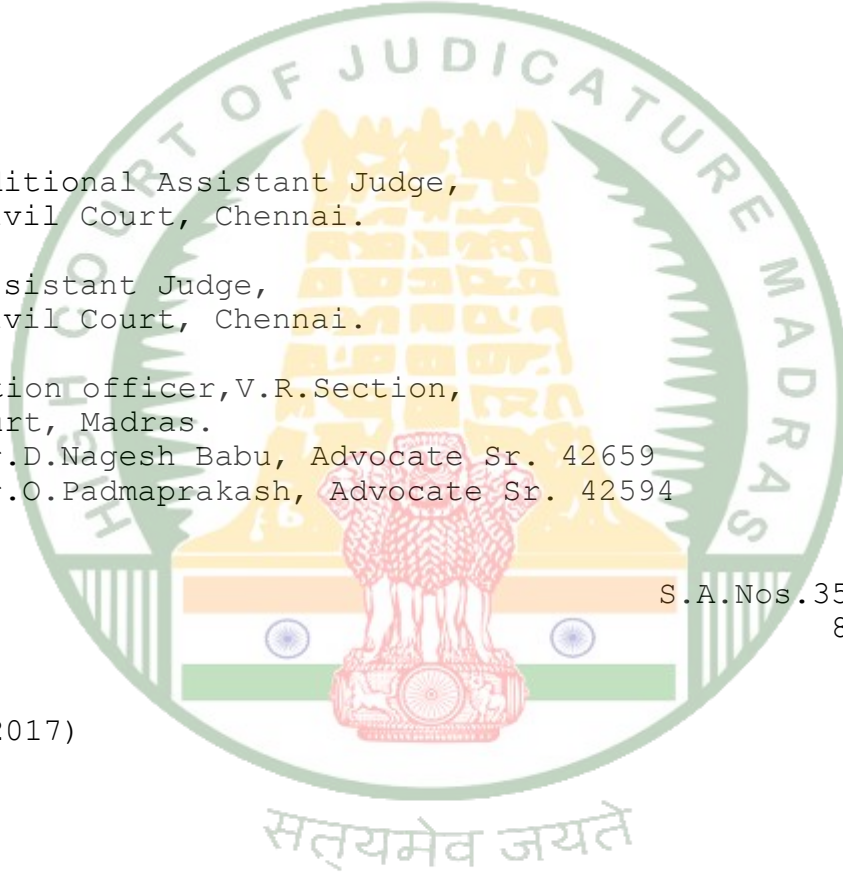
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To

1. III Additional Assistant Judge,
City Civil Court, Chennai.
 2. XIII Assistant Judge,
City Civil Court, Chennai.
 - 3.The Section officer,V.R.Section,
High Court, Madras.
- +lcc to Mr.D.Nagesh Babu, Advocate Sr. 42659
+lcc to Mr.O.Padmaprakash, Advocate Sr. 42594

S.A.Nos.355 of 2017 &
890 of 2016

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