

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On:25.01.2017

Pronounced On:13.02.2017

CORAM

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

SECOND APPEAL No.1251 of 1996

Jayaram Naidu

.. Appellant

/versus/

1.Vasanthi Kumari

2.Arumugam

3.Ramalingam

4.Anjalai Ammal

5.Jayaram Naidu

6.Sarangapani Naidu

7.Hemampujam

8.Latha

9.Ravi

10.Minor Murali

11.Minor Sampath

(Minor respondents 10 and 11
represented by guardian mother
the 7th respondent Hemampujam)

12.Lakshmi

..Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 11.10.1995 in A.S.No.5 of

1993, on the file of the District Judge, South Arcot affirming the judgment and decree dated 16.09.1992 in O.S.No.338 of 1989 on the file of the District Munsif, Cuddalore.

For Appellant :Mr.R.Gururaj
 For Respondents :Mrs.A.Nilaphar for
 Mr.R.Subramanian for R1
 R2,3,4,6,8,9 and 12-NDW
 R7,10,11- No appearance

J U D G M E N T

The appellant herein is the first defendant in the suit, who lost before both the Courts below. The suit was laid for declaration of title, recovery of possession and mesne profits on the premise that, the plaintiff's mother and the first defendant are daughter and son of Gopal Naidu. On the eve of the marriage of the plaintiff with the first defendant, the suit properties were settled in favour of the plaintiff on 24.06.1970 by Gopal Naidu as prenuptial settlement. Thereafter, the marriage was solemnised on 15.07.1970. After few years of marriage, misunderstanding surfaced between the plaintiff and the first defendant resulting in their separation. The first defendant continued to manage the suit properties and her status as wife of the first defendant never ceased though a document purported to be deed of revocation of settlement deed was obtained from her by fraudulent means and the same does not bind her.

Other defendants are persons claiming themselves as purchasers or intending purchasers of the suit properties from the first defendant. Therefore, they are arrayed as defendants.

2. The defendants contested the suit on the premise that the settlement deed executed by Gopal Naidu on 14.06.1970 is not a valid settlement. The properties are the ancestral properties of Gopal Naidu. Even if the settlement is valid, the bequest under the settlement was jointly for the plaintiff, first defendant and their children. The plaintiff never lived with the first defendant and the children born to the plaintiff was not through the first defendant. They were born for one Veeraiyan, with whom the plaintiff had illegal intimacy. The settlement deed was never accepted or acted upon. In the panchayat held at the village, the plaintiff released her rights under the settlement deed and also a deed of divorce was executed on 24.08.1976. Since then the first defendant enjoying the suit properties absolutely and had alienated several of the suit items to third parties and also had entered into agreements for sale with few others, who are arrayed as defendants. The alleged marriage with the plaintiff itself is not valid, since both of them fall within the prohibited relationship of consanguinity.

3. The trial Court held in favour of the plaintiff and allowed the suit and the same was confirmed by the first appellate Court in the appeal filed by the first defendant. Aggrieved by the concurrent finding, the second appeal is preferred by the first defendant.

4. At the time of admission this Court has formulated the following Substantial Question of Law for consideration:

“Whether the admitted possession of the defendant in respect of the suit property under a document releasing the plaintiff's right, though not registered, will prima facie show the adverse interest against her by the person in possession of the property?”

5. The learned counsel appearing for the appellant strenuously submitted that the settlement alleged to have been executed by Gopal Naidu has no binding force. It relates to ancestral property on which Gopal Naidu himself has no absolute right to settle it, as his own, detrimental to the other sharers. Also emphasised that Gopal Naidu executed the settlement deed with fond hope that the plaintiff will lead a peaceful marital life and procure progeny through the first defendant,

which was totally shattered by the conduct of the plaintiff and the marriage was broken within a week. The plaintiff started living with other person and begotten children through him. Therefore, she cannot be a beneficiary under the settlement deed, which clearly indicates that the properties are to be enjoyed absolutely only by the descendants born through the plaintiff and the first defendant. Evidently, there is no such descendants.

6. Further, it was also contended by the learned counsel for the appellant that admittedly the suit property is in continuous possession of the appellant/first defendant, therefore, he has perfected the title by adverse possession, even assuming the settlement deed is valid and enforceable. The other limb of the argument of the appellant was that, the settlement deed was subsequently revoked by Ex.B6 the release deed executed by the plaintiff. In addition, there is a divorce deed executed by the plaintiff in the presence of elders. Since there is no marital relationship between the plaintiff and the first defendant, she cannot seek for any recovery of possession. However, the Courts below without appreciating all these evidence and the judgments cited, held against the first defendant.

7. The judgments, which are relevant to emphasis the points canvassed by the learned counsel appearing for the appellant are cited below:

(i) On the point of possession, the Hon'ble Supreme Court held in the judgment reported in ***Kanakarathanammal v. Loganatha Mudaliar and another***[AIR 1965 Supreme Court 271] held as follows:

"8. It is true that the actual management of the property was done by the appellant's father; but that would inevitably be so having regard to the fact that in ordinary Hindu families, the property belonging exclusively to a female member would also be normally managed by the Manager of the family; so that the fact that appellant's mother did not take actual part in the management of the property would not materially affect the appellant's case that the property belonged to her mother. The rent was paid by the tenants and accepted by the appellant's father; but that, again, would be consistent with what ordinarily happens in such matters in an undivided Hindu family. If the property belongs to the wife and the husband manages the property on her behalf, it would be idle to contend that the management by the husband of the properties is inconsistent with the

title of his wife to the said properties. What we have said about the management of the properties would be equally true about the actual possession of the properties, because even if the wife was the owner of the properties, possession may continue with the husband as a matter of convenience."

(ii) On the point of joint family property settlement to stranger, the Hon'ble Supreme Court in the judgment reported in ***Guramma Bhratar Chanbasappa Deshmukh v. Mallappa Chanbasappa, [AIR 1964 SC 510]*** held in para 18, which reads as under:

"18. The legal position may be summarized thus: the Hindu law tests conferred a right upon a daughter or a sister, as the case may be, to have a share in the family property at the time of partition. That right was lost by efflux of time. But, it became, crystallized into a moral obligation. The father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter regard being had to the financial and other relevant circumstances of the family. By custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion. It is a normal obligation

and it continues to subsist till it is discharged. Marriage is only a customary occasion for such a gift. But the obligation can be discharged at any time, either during the lifetime of the father or thereafter. It is not possible to lay down a hard and fast rule, prescribing the quantitative limits of such a gift as that would depend on the facts of each case and it can only be decided by courts, regard being had to the overall picture of the extent of the family estate, the number of daughters to be provided for and other paramount charges and other similar circumstances. If the father is within his rights to make a gift of a reasonable extent of the family property for the maintenance of a daughter, it cannot be said that the said gift must be made only by one document or only at a single point of time. The validity or the reasonableness of a gift does not depend upon the plurality of documents but on the power of the father to make a gift and the reasonableness of the gift so made. If once the power is granted and the reasonableness of the gift is not disputed, the fact that two gift deeds were executed instead of one, cannot make the gift anytheless a valid one."

(iii) On the point of unregistered release deed, the Hon'ble Supreme Court in the judgment reported in ***Bondar Singh and others v. Nihal***

Singh and others [(2003)4 Supreme Court Cases 161] held as:

“Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case, the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land.”

(iv) On the point of alleged perverse finding, the Hon'ble Supreme Court in the judgment reported in ***Bondar Singh and others v. Nihal Singh and others [(2003)4 Supreme Court Cases 161]*** held as:

“An appeal under Section 100 CPC can be entertained by the High Court only on a substantial question of law. If the findings of the subordinate courts on facts are contrary to the evidence on record and are perverse, such findings can be set aside by the High Court in appeal under Section 100 CPC. A High Court cannot shut its eyes to perverse findings of the Courts below. In the present case the findings of fact arrived at by the lower appellate Court were contrary to the evidence on record and, therefore, perverse and the High court was fully justified in

setting aside the same resulting in the appeal being allowed and suit being decreed.”

(v) On the settlement of family property in favour of daughter-in-law, the Hon'ble Supreme Court in the judgment reported in ***Ammathayee alias Perumalakkal and another v. V.Kumaresan alias Balakrishnan and others [Air 1967 Supreme Court 569 (V 54 C 122)*** held in paras 8, which reads as under:

“8. Hindu law on the question of gifts of ancestral property is well-settled. So far as movable ancestral property is concerned, a gift out of affection may be made to a wife, to a daughter and even to a son, provided the gift is within reasonable limits. A gift for example of the whole or almost the whole of the ancestral movable property cannot be upheld as a gift through affection: (see *Mulla's Hindu Law*, 13th Edn.p. 252, para 225). But so far as immovable ancestral property is concerned, the power of gift is much more circumscribed than in the case of movable ancestral property. A Hindu father or any other managing member has power to make a gift of ancestral immovable property within reasonable limits for “pious purposes”: (see *Mulla's Hindu Law*, 13th Edn. para 226, p. 252). Now what is generally understood by “pious purposes” is gift for charitable and/ or religious purposes. But this Court has

extended the meaning of "pious purposes" to cases where a Hindu father makes a gift within reasonable limits of immovable ancestral property to his daughter in fulfilment of an antenuptial promise made on the occasion of the settlement of the terms of her marriage, and the same can also be done by the mother in case the father is dead: (see *Kamala Devi v. Bachu Lal Gupta* [(1957) SCR 452])."

(vi)On the point of continuous possession adverse to the title holder, the Hon'ble Supreme Court in the judgment reported in ***State of West Bengal v. The Dalhousie Institute Society***[AIR 1970 Supreme Court 1778](V57 C 379) held in para 16, which reads as under:

"16.In this respect the material documentary evidence referred to by the High Court clearly establishes that the respondent has been treated as owner of the site not only by the Corporation, but also by the Government. The possession of the respondent must have been on the basis of the grant made by the Government, which, no doubt, is invalid in law. As to what exactly is the legal effect of such possession has been Considered by this Court in *Collector of Bombay v. Municipal Corporation of the City of Bombay*, 1952 SCR 43: AIR 1951 SC 469 as follows:

".... the position of the respondent Corporation and its predecessor-in-title was that of a person having no legal title but nevertheless holding possession of the land under colour of an invalid grant of the land in perpetuity and free from rent for the purpose of a market. Such possession not being referable to any legal title it was prima facie adverse to the legal title of the Government as owner of the land from the very moment the predecessor-in-title of the respondent Corporation took possession of the land under the invalid grant. This possession has continued openly, as of right, and uninterruptedly for over 70 years and the respondent Corporation has acquired the limited title to it and its predecessor-in-title had been prescribing for during all this period, that is to say, the right to hold in perpetuity free from rent but only for the purposes of a market in terms of the Government Resolution of 1865...."

(vii) On the point of evidenciary value of unregistered document, this Court in the judgment reported in ***Seeni Chettiar v. Santhanathan Chettiar and others***[20 Mad.58 (F.B.)=6 MLJ 281] held as follows:

"It appears to me that there can be no doubt but that the yadast does convey an interest

in immovable property: the [64] contrary proposition is not arguable. It has long been settled that an agreement for the sale and purchase of growing grass, growing timber or underwood, or growing fruit, not made with a view to their immediate severance and removal from the soil and delivery as chattels to the purchaser, is a contract for the sale of an interest in land. I, therefore, hold that the yadast does convey an interest in immovable property and is not receivable in evidence being unregistered."

8. Per contra, the learned counsel for the first respondent/plaintiff submitted that the plaintiff is none other than the grand-daughter of the settlor Gopal Naidu. Gopal Naidu settled the property in favour of the plaintiff vested life interest upon her and the first defendant and remainder on the children to be born to them. It was the bad character of the first defendant, which forced the plaintiff to leave the marital home and not otherwise, as contended by the learned counsel for the first respondent. The first defendant has gone to the extent of dis-owning his own son but, that was disproved through documentary evidence. By branding the plaintiff as a women of loose character and questioning the paternity of his own son, the appellant attempts to grab the property which was voluntarily settled in her favour. The Courts below have rightly rejected his falsehood and allowed the suit.

9. The entire dispute between the parties centres upon the settlement deed marked as Ex.A1. The reading of this document shows that one Gopal Naidu has settled the property in favour of the plaintiff in which he refers her as his only daughter but she is his daughter's daughter and he has intended to get her married to his younger son Jayaraman, who is none other than the appellant herein. The first part of the settlement deed clearly records that the intention of the settlor to settle the property in favour of the plaintiff, since she being the daughter's daughter and future daughter-in-law. The second part of the settlement deed indicates that she and her husband should enjoy the property without alienating and after their life time, should devolve on their descendants for generations.

10. The submission of the learned counsel appearing for the appellant that the intention of the settlor is not to settle the property absolutely in favour of the plaintiff but, it has to be enjoyed by her along with her husband and their children for life and thereafter, their descendants for generation is not legally permissible in the light of rule against perpetuity. This phrase has been employed by the settlor only to ensure that the property should be enjoyed absolutely by the plaintiff. If the interpretation suggested by the appellant is accepted, then it amounts to

restricting the alienation forever. Section 14 of the Transfer of Property Act, 1882 says that "**14. Rule against perpetuity:-** *"No transfer of property can operate to create an interest which is to take effect after the life time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong".*

11. So, the later portion of the settlement becomes void and only the first part of settlement has to be given effect. Either way, by virtue of settlement dated 02.06.1970, the property has been settled in favour of the plaintiff, the first defendant is given only the right of enjoyment in his life. The possession of the property on the strength of his life interest on the property cannot be adverse to the interest of the remainder. Unregistered release deed and the divorce deed are not valid in law, those documents will no way confer title to the appellant.

12. Yet another factor to be taken note is that, the first defendant tried to nullify both the registered settlement as well as the solemnised marriage through Ex.B6 and Ex.B1. The release deed marked as Ex.B6 indicates that the plaintiff has relased her right in the suit schedule

property. In the eye of law, the alleged release deed is inadmissible, since it is an instrument regarding conveyance of property but not duly registered. The divorce deed marked as Ex.B1 is also non est in law, since the marriage cannot be nullified by such deeds. It should be annulled only through a decree passed by the court competent to pass such decree. The learned counsel for the appellant says that it is a recognised custom in the plaintiff and the defendant's family to annul marriage orally. This submission is not fortified by any tangible evidence.

13. Regarding the substantial question of law, right in a immovable property worth above Rs.100/- can be transferred only by a registered document as per Section 17 of the Registration Act, 1908. Admittedly, since Ex.B6 is not a registered document, it has no probative value for consideration.

14. A life interest holder cannot claim adverse possession as against the co-life interest holder or against the vested remainder, however, long his possession. Since he is permitted to possess and enjoy the property only till his life time, his possession is akin to a permissive occupant. It is pertinent to note that as pointed out earlier, the entire suit centers upon the settlement deed Ex.A1 executed by Gopal Naidu as early as

04.06.1970. If the allegation of the first defendant against the plaintiff that, she is a women of loose character is true and marriage broke within a week and the property was settled not for the benefit of the first defendant, then the settlor himself would have taken necessary steps immediately to nullify the settlement deed, which he has not done till his life, though he lived for years, after executing the settlement deed. This Court under Section 100 of the Civil Procedure Code, while testing the judgment of the Courts below, could not find any perversity in the concurrent judgment of the Courts below.

15. In the result, ***the Second Appeal is dismissed.*** No order as to costs.

13.02.2017

Index:Yes/No

Internet:Yes/No

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To

The District Judge, South Arcot.

The District Munsif, Cuddalore.

Dr.G.Jayachandran, J.

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