

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2017

PRONOUNCED ON : 15.03.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.76 of 2012 & M.P.No.1 of 2012

1. Sampoornam
2. A.Natarajan .. Appellants

Vs.

1. Sathya
2. Minor Mahadeesh
represented by his next friend/
mother Sathya .. Respondents

Appeal filed under Order XXXXVI Rule 1 r/w. Section 96 CPC
against the judgment and decree dated 28.12.2011 made in O.S.No.5 of
2011 on the file of the Principal District Judge, Namakkal.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.T.Dhanyakumar

J U D G M E N T

Aggrieved over the judgment and decree passed by the learned Principal District Judge, Namakkal in granting preliminary decree for 2/3 share in the suit property, the present appeal came to be filed by the defendants in the suit.

2. The parties are arrayed as per their ranking before the trial Court for the sake of convenience.

3. The first plaintiff is the wife of one Arulanandam, the second plaintiff is the minor child of the first plaintiff and the said Arulanandam. The defendants are the parents of the said Arulanandam. The suit properties were settled in favour of Arulanandam by the first defendant as per the Settlement Deed dated 09.06.2003. The first plaintiff was married to the said Arulanandam on 10.07.2003 and lived with her husband and also with the defendants. When the matter stood thus, on 22.12.2007, the said Arulanandam, husband of the first plaintiff met with an accident and died intestate. At that time, the second plaintiff was in the womb of the first plaintiff. After the death of the said Arulanandam, the defendants ignored the plaintiffs. Hence, the plaintiffs have set up a separate residence at Edapadi and residing there. Then, the first plaintiff demanded to get back the jewels worth about Rs.one lakh given to her at the

time of marriage and the same was refused and the plaintiffs were forced to leave the house. Hence, the suit for partition of their respective share.

4. Denying the allegation that the plaintiff was living with the respondents and demanded a partition, it is the contention of the first defendant that originally the suit properties were owned by her and for the purpose of marriage of her son, the property was settled in favour of their son Arulanandam on 09.06.2003. However, the settlement has not been acted upon and not come into force. Therefore, the first defendant is in possession of the property and the taxes have been paid by her. Hence, there is no cause of action for the suit.

5. On the basis of the above pleadings, the following issues have been framed by the trial Court :

1. Whether the plaintiffs are entitled to 2/3rd share in the property?
2. Whether the first defendant is the absolute owner of the property?
3. To what relief, if any, the plaintiff is entitled to?

6. On the side of the plaintiff P.W.1 and 2 were examined and Ex.A.1 marked. On the side of the defendants D.W.1 was examined and Ex.B.1 to Ex.B.10 marked.

7. The learned trial Judge appreciating the pleadings and the evidence adduced by the respective parties has decreed the suit for a preliminary decree in favour of the plaintiffs and held that the plaintiffs are together entitled to 2/3rd share in the property.

8. The learned counsel appearing for the appellant submitted that the settlement deed dated 09.06.2003 was executed by the first defendant and the same has been done only for the purpose of marriage of her son. Further the learned counsel contended that the possession has not been handed over and the settlement was not acted upon and all along the property was under the control of the first defendant. Hence, submitted that the plaintiffs are not entitled to any share in the property. The revenue records also clearly show that the property was under the control of the first defendant. Hence, prayed for allowing this appeal.

9. As per the learned counsel for the respondents, the first defendant, namely the mother has executed a settlement in favour of her son and the same clearly show that the settlement has been effected only for the well being of the son and the son and mother are always residing together. Therefore, it cannot be stated that no possession was handed over. Merely because some records, which were prior to the settlement, standing in the name of the mother, that itself

cannot be a ground that the settlement has not been acted upon. Hence, submitted that the judgment of the learned trial Court is well balanced and does not require any interference by this Court.

10. In the light of the above submissions, now the point that arises for consideration is

1. whether the settlement dated 09.06.2003 has not been acted upon and not valid in law?
2. Whether the plaintiffs/respondents are entitled for a preliminary decree by declaring their rights in the suit properties?

11. Point No.1 :

It is not in dispute that the first plaintiff/first respondent is the wife of the said Arulanandam, who is the son of the defendants. Similarly, it is not in dispute that the said Arulanandam died on 22.12.2007 in an accident. It is also not in dispute that originally the properties were owned by the first defendant and the same can be seen under Ex.B.9 and Ex.B.10 sale deeds. It is also not in dispute that under Ex.B.1, the suit properties were settled in favour of the defendants' only son Arulanandam. The said settlement was executed on 09.06.2003. The recitals of the settlement deed clearly indicate that the property has been settled only for making some provisions to her son. The further recitals

also clearly show that the possession was also handed over to the settlee on the same day. Similarly, she has agreed to make necessary applications to change the revenue records.

12. Admittedly, at the time of settlement, the settlee was unmarried and was living with the appellants. Therefore, there cannot be any other further evidence to prove the handing over of possession to the settlee. When the persons are living together in a joint family and one of them executing a settlement in respect of their children, it can be easily presumed that the settlement has been acted upon and in fact the possession was also taken by the settlee. Therefore, the contention of the learned counsel for the appellants that the settlement has not been acted upon cannot be sustained. Even the document itself prove the handing over of the possession and no further evidence, whatsoever, is required for handing over the possession. In this regard, it is useful to refer to the judgment of the Honourable Supreme Court in **2014 (9) Supreme Court Cases 445 (Renikuntla Rajamma (dead) legal representatives Vs K.Swarnamma)**, wherein the Honourable Supreme Court has held as follows :

“Property Law – Transfer of Property act, 1882 –

Ss.123, 122 and 129 (after its amendment in 1929) – Gift

of immovable property reserving life interest in property for donor, valid – Delivery of possession to donee not essential condition – Rule of Hindu law making transfer of possession a condition for completion of a valid gift stood superseded by S.123 after the 1929 amendment to S.129 – Property gifted by retaining possession and right to receive rents of property by donor during donor's lifetime – Held, gift valid – Family and Personal Laws – Hindu Law – Gift.”

Further, in paragraph 11 of the same judgment, it has been stated that

Sections 124 to 129 which are the remaining provisions that comprise Chapter VII deal with matters like gift of existing and future property, gift made to several persons of whom one does not accept, suspension and revocation of a gift, and onerous gifts including effect of non-acceptance by the donee of any obligation arising thereunder. These provisions do not concern us for the present. All that is important for the disposal of the case at hand is a careful reading of Section 123 (supra) which

leaves no manner of doubt that a gift of immovable property can be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. When read with section 122 of the Act, a gift made by a registered instrument duly signed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. That such acceptance must be given during the lifetime of the donor and which he is still capable of giving is evidence from a plain reading of Section 122 of the Act. A conjoint reading of sections 122 and 123 of the Act makes it abundantly clear that “transfer of possession” of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of the Transfer of Property Act, 1882.

13. From the judgment of the Honourable Supreme Court, it can be seen that when there is a valid settlement of an immovable property, delivery of possession is not an essential condition to test its validity. Even if the delivery of possession is not handed over, settlement cannot be invalid, merely on that

ground alone. Whereas, in this case, the document Ex.B.1 itself clearly show that the possession was handed over to the settlee on the same day itself. The settlement is of the year 2003 and the settlee only died in the year 2007 in an accident. Till such time, they were all living together. Therefore, the settlement is validly executed and the title of the property is passed on to the settlee and the appellants now cannot contend that the settlement has not been acted upon and the settlement is not valid in law. Hence, the contention of the learned counsel for the appellants in this aspect cannot be countenanced.

14. Merely because the revenue records stood in the name of the first defendant, namely, the first appellant, that ground itself cannot a ground to invalidate the case of the plaintiffs. It is not the case of the appellants that the settlement has not been accepted by the settlee. Therefore, merely, the revenue records have not been changed during the life time of the settlee, that ground itself cannot be a ground that the settlement has not been acted upon. The revenue records will not create or extinguish title, at the most it would show only possession of the property. Admittedly, till the death of the settlee, he, along with his wife were living with the defendants. Therefore, this Court is of the view that merely only the basis of the revenue records, it cannot be held that the settlement itself is not valid.

15. The evidence of P.W.1 and the suggestion put to P.W.1 clearly indicate that she was also residing in the suit property along with the appellants. During here pregnancy, only for the child birth, she left to her parents house. All these facts clearly indicate that the plaintiffs, namely, the respondents were residing with the appellants. They were in fact even after the death of the husband of the first plaintiff, living with the appellants. P.W.2 is the brother of the second defendant. He also in his evidence has clearly stated about the execution of the settlement deed in favour of late Arulanandam. D.W.1 in her cross examination has clearly given explanation for executing such settlement in favour of her son. The above fact itself clearly show that the said settlement deed was executed only for the purpose of well being of her son. Therefore, now it cannot be contended that the settlement is not valid and not acted upon. Accordingly, the point is answered.

16. Point No.2 :

Arulanandam, husband of the first plaintiff/first respondent died in an accident in the year 2007. At that time, the second respondent was in the womb of the first plaintiff womb. Subsequently, second respondent was born. Now he is a minor. The property stands in the name of the deceased Arulanandam and he died intestate. Hence, as class-I legal heirs, the plaintiffs being wife and child

and the 1st defendant being mother of the said Arulanandam, are all each entitled to 1/3rd share in the property. Accordingly, this Court does not find any infirmity in the judgment passed by the learned trial Court in granting a preliminary decree for 2/3rd share in the suit property for the plaintiffs/respondents. Accordingly, the point is answered.

17. In the result, this appeal is dismissed. Considering the relationship between the parties, they shall bear their own cost. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No

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N.SATHISH KUMAR, J

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