

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

C.S.No.556 of 2013

1.T.Sivaji
S/o.Thilagaraj Nadar

2.T.Ramamurthy,
S/o.Thilagaraj Nadar

3.T.Raghavan,
S/o.Thilagaraj Nadar

... Plaintiffs

..Vs..

1.Pethanachiammal,
W/o.Thilagaraj Nadar,
Door No.179, G.A.Road, Old Vannarapettai,
Chennai-21.

2.T.Vijayakumar,
S/o.Thilagaraj Nadar,
Door No.179, G.A.Road, Old Vannarapettai,
Chennai-21.

.. Defendants

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Plaint filed Under Order VII Rule 1 of C.P.C r/w Order IV,
Rule 1 of Original Side Rule High Court Rules prayed to pass a judgement
and decree:-

a)To pass a preliminary decree for partition of the suit
schedule property into four equal parts by metes and bounds and allot
three such shares to the plaintiffs.

b)To appoint an advocate commissioner to divide the suit property, more fully described in the schedule of the property by metes and bounds and deliver the separate possession of the $\frac{3}{4}$ share to the plaintiff in respect of the Schedule mentioned property.

c)To declare the settlement deed dated 22nd April 2013 executed in favour of 2nd defendant by the 1st defendant as null and void.

d)Pass such further order as this court deem fit and necessary to the consequential circumstances, and

e)For costs and thereby render justice.

For Plaintiffs : Sri.K.P.Gopalakrishnan for
Mr.R.Lokeshwaran

For Defendants : M/s.P.Arularasi

JUDGEMENT

The plaintiffs have come forward with the suit for partition to divide the suit schedule property into four equal shares and for a declaration, that the settlement deed dated 22.4.2013, executed by the first defendant in favour of the second defendant as null and void and for other reliefs.

2. According to the plaintiffs, the suit property belonged to

<http://www.judis.nic.in> Tmt.Balammal, the mother of the first defendant and the grandmother of

the plaintiffs and the second defendant, who had executed a registered settlement deed dated 17.01.1974, providing life estate in favour of her two daughters viz., Pethanachiammal (1st defendant) and Patchaiammal. The said settlement deed provides that the settlor viz., Tmt.Balammal will have life estate and she will be entitled to collect rental income and enjoy the same till her life time. After her death, her two daughters viz., Pethanachiammal and Patchaiammal shall divide the property amongst themselves, and the Eastern portion shall be allotted to Pethanachiammal-the first defendant, and the Western portion shall be allotted to Patchaiammal, the other daughter. The said Settlement Deed further provides that the 2 daughters shall enjoy the property till their life time without any power of alienation and after her life time, the property was taken by the male heirs of the settlees.

3. The plaintiffs, and second defendant are the sons of Pethanachiammal. According to the plaintiffs, the said Pethanachiammal who is only a life estate holder had executed a settlement deed on 22.04.2013, settling the property in favour of the second defendant alone. Contending that the first defendant herself being a life estate holder has no right to execute such a Settlement Deed, the plaintiffs have come forward with the suit seeking the above reliefs.

4. The defendants 1 and 2 have filed their written statement contending that even during the life time of the husband of the first defendant, the Provision Store at Thirumazhisai was handed over to the first plaintiff and he was also paid several amounts by sale of gold jewellery as well as ancestral lands. It is also contended by the defendants that the second plaintiff was provided funds for starting a Provision Store and 50 sovereigns of gold jewellery was provided for the marriage of his daughter Rajeswari, apart from incurring expenses of Rs.5,00,000/- (Rupees Five Lakhs Only) for the said marriage. The third plaintiff had forcibly taken possession of the house property at Peraiyur Village, Ramnad District. By mortgaging the same, he had borrowed money from the local people. In view of the default committed, the property has been taken over by the creditors. It is also submitted by the defendants that they alone had improved the property, by spending a sum of Rs.9,00,000/- (Rupees Nine Lakhs Only).

5. It is also contended by the defendants that the plaintiffs have no right to claim any share on the property, till the life time of the first defendant and therefore, the suit itself is pre-mature. The execution of the settlement deed dated 22.04.2013 was admitted by the defendants, and the first defendant would claim that she had executed the settlement,

since the second defendant alone has been looking after her, in her old age.

6. On the above pleadings, this Court had framed the following issues:

1. Whether the registered settlement deed dated 17.01.1974 executed by the first defendant in favour of the second defendant, is genuine, true and valid?
2. Whether the plaintiff is entitled to the relief of partition and separate possession of the suit property?
3. To what other relief, the parties are entitled to?

7. From the above pleadings, it could be seen that the execution of the settlement deed by Tmt. Balammal on 17.01.1974, was not in dispute. The relief of declaration, which is sought for is with reference to the settlement deed executed by the first defendant on 22.04.2013, in favour of the second defendant. Therefore, issue no.1 is recast as follows:

"1. Whether the registered settlement deed dated 22.04.2013 executed by the first defendant in favour of the second defendant is genuine, true and valid?"

8. During trial, the first plaintiff was examined as P.W-1 and

Exs.P-1 to 5 were marked, and the first defendant was examined as D.W.1

and Exs.D-1 to D.4 were marked.

Issue No.1:-

9. The execution of the settlement deed dated 22.04.2013 is not in dispute. The first defendant has admitted execution of the said document as D.W-1. The question that is to be decided is as to whether the first defendant was competent to execute such a settlement deed, settling the entire property in favour of the second defendant. A reading of Ex.P-1 viz., the settlement deed, dated 17.01.1974 executed by Tmt.Balammal in favour of the first defendant would show that the first defendant was only a life estate holder and she has no power of alienation. Despite such prescription, the first defendant gone ahead and executed the settlement deed. It is a settled proposition of law that the alienation by a life estate holder is valid so long as the life estate holder is alive. The vested remainder men cannot challenge the alienation till the life estate holder is alive. Therefore, the plaintiffs cannot seek a declaration that the settlement deed dated 22.04.2013 is invalid solely on the basis that the first defendant is only a life estate holder, and that, she had no power of alienation as per the settlement deed executed by her mother in her favour on 17.01.1974. The plaintiffs who are entitled to vested remainder alone cannot, even during the life time of the first defendant, challenge the

settlement deed executed by the first defendant. It is true that the settlement deed executed by Tmt.Balammal in favour of the first defendant provides only life estate in her favour and so the first defendant cannot alienate or encumber the property even during her life time, and the settlement deed executed by the first defendant on 22.04.2013 is derogation of such interdict imposed on her in the parent document viz., the settlement deed dated 17.01.1974. However, in view of the settled possession of law that the alienation made by the life estate holder is valid till her life time, the plaintiffs cannot be favoured with a declaration that the settlement deed executed by the first defendant on 22.04.2013 is null and void, even during the life time of the first defendant. The first issue is answered against the plaintiffs.

Issue No.2:-

10. The plaintiffs have sought for partition and separate possession of 3/4th share in the suit property. The plaintiffs are the persons having only a vested remainder and their right over the property will ensure only after the death of the first defendant. Therefore, the prayer of partition in my considered opinion is pre-mature. In view of the above conclusions, the suit is liable to be dismissed as pre-mature, leaving it open to the plaintiffs to seek appropriate relief after the life time of the

first defendant if they are so advised. In the result, the suit is dismissed. Considering the circumstances and the relationship between the parties, there will be no order as to costs in this suit.

20.10.2017

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

KP

List of the witnesses marked on the side of the plaintiffs:

PW-1 T.Sivaji 1st Plaintiff.

List of Exhibits marked on the side of the Plaintiffs:

- Ex.P-1 The certified copy of the settlement deed dated 17.01.1974 executed by Balammal.
- Ex.P-2 The photocopy of the legal notice dated 25.03.2013 from the plaintiffs counsel to the 2nd defendant.
- Ex.P-3 The photocopy of the reply notice from the second defendant dated 03.14.2013 to the plaintiff.
- Ex.P-4 The photocopy of the rejoinder notice from the plaintiffs counsel dated 12.04.2013 to the 2nd defendant.
- Ex.P-5 The certified copy of the settlement deed dated 22.04.2013 executed by the 1st defendant in favour of the 2nd defendant.

List of witnesses marked on the side of the defendants:

D.W-1 Pethanachiammal 1st defendant.

List of Exhibits marked on the side of the Defendants:

- Ex.D-1 The xerox copy of the no objection letter dated 20.05.1997 given by 1st defendant to the commercial tax department.
- Ex.D-2 The notice dated 26.05.1997 sent by 2nd defendant to CTO.
- Ex.D-3 The xerox copies of three kisan vikas pathras dated (Series) 29.05.1996 each for Rs.1,060/- transferred to CTO, Washermanpet.
- Ex.D-4 The xerox copy of the certificate of registration issued to Vijay Traders by CTO.

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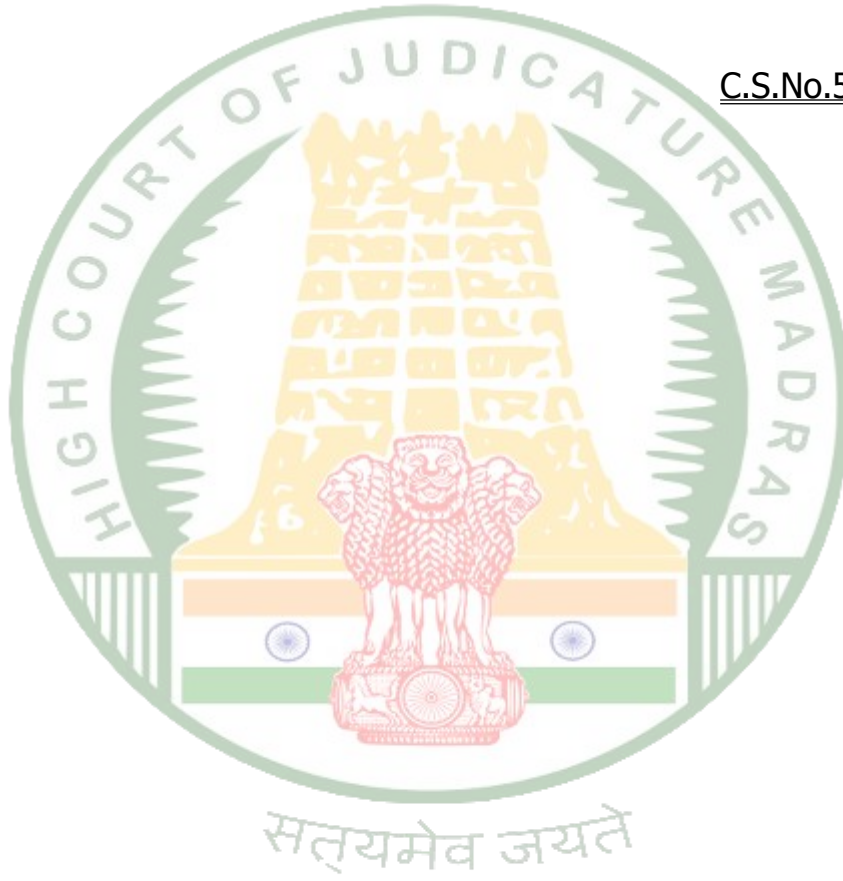
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R.SUBRAMANIAM.J,

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