

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.963 of 2016
and CMP.Nos.15747, 19659 and 19660 of 2016

Mr.A.Johnson

..Appellant/Appellant/Plaintiff

Versus

Mr.G.Archibald Devasahayam

..Respondent /Respondent/
Defendant

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Common Judgment and Decree passed in A.S.No.14 of 2013 dated 24.07.2014 on the file of the Sub-Ordinate Judge, Tambaram confirming the judgment and decree passed in O.S.No.34 of 2009 dated 31.08.2012 on the file of the District Munsif, Tambaram.

For Appellant : Mr.S.F.Mohamed Yousuf

For Repondent : Mr.G.Devadoss

JUDGMENT

The defendant, who is the son of the respondent / plaintiff and lost before the Courts below, is the appellant in this Second Appeal.

2 The appellant/plaintiff filed the suit in O.S.No.34/2009 on the file of the Court of District Munsif, Tambaram, against the respondent herein praying for judgment and decree to declare that the revocation of the Settlement Deed, dated 10.01.1996 (Ex.A2) as void and illegal. It is the case of the appellant/plaintiff that the respondent who is his father, is the owner of the suit property, residing at Door No.23/1, Mahalakshmi street, East Tambaram Chennai-59, comprised in S.No.86/1-B-4 measuring about an extent of 1718 square feet with a superstructure in an area of 494 sq.ft. The parents of the plaintiff arranged the plaintiff's marriage with one Sweetline Anitha and it was solemnized on 22.11.2001 and till the date of filing of the suit, she is not conceived. The appellant / plaintiff would further aver that respondent - his father and his mother without knowing the true and correct facts started

accusing his wife of infertility and insisted him to divorce his wife and it was not agreed by him. It is also stated by the appellant / plaintiff that the defendant had already settled the suit property in his favour on 24.03.1995 (Ex.A1) and subsequently, revoked the same on 10.01.1996 (Ex.A2) and again settled the property in his favour on 25.04.2005 (Ex.A3) and again revoked on 18.02.2006 (Ex.A4) and the Settlement Deed dated 24.03.1995 executed in his favour (Ex.A1) cannot be revoked and therefore, came forward to file this suit.

3 The respondent/defendant who is the father of the appellant/plaintiff, filed the written statement denying the averments made in the plaint and would contend that under registered Settlement Deed, dated 24.03.1995, executed in favour of his son, no absolute dispossession of right has been given and it was a conditional one for the reason that he had retained the life interest and the possession of the property was also not given to him and said Settlement Deed was never acted upon and all the revenue records are continue to stand in his name. It is further averred by the defendant, his daughter namely Percis Niranjana, married one Sathyaraj on 17.03.1995 against his wishes and even then, he and his wife visited the home of his daughter and however, objected by the appellant/plaintiff, as well as his wife. It is also contended by the defendant that he has got every right to execute the Settlement Deed and later on revoke the same and the suit is valued properly for the purpose of Court fee and prays for dismissal of the suit.

4 The Trial Court, on consideration of pleadings, had framed the following issues:-

- Whether the plaintiff is entitled for declaration to declare the Settlement Deed executed by the defendant in favour of the plaintiff is valid and binding on him?
- Whether the plaintiff is entitled for a declaration to declare the revocation deed dated 10.01.1996 is void and illegal?
- What are the other reliefs the parties are entitled to?

During the course of trial, the appellant/plaintiff examined himself as P.W.1 and Exs.A1-A4 were marked and respondent/defendant were examined himself as D.W.1 and marked Ex.B1 to B7.

5 Subsequently, the issues were re-casted as follows:-

- Whether the plaintiff is entitled to declare the revocation deed dated 10.01.1996 is void and illegal?

- Whether the suit is barred by limitation?
- To What other reliefs?

6 The Trial Court, on consideration of oral and documentary evidences, has found that from the recitals contained in Ex.A1 Settlement Deed, dated 24.03.1995, the settlor can enjoy a life estate and empowered to collect and enjoy the rental income from the said property and to take care of the property during life time, looking after the repairs, paying taxes and the settlor to hold the said property with all rights to alienate the property either by mortgage or sale or by any other means and the settlors reserves his right to deal with the property as he likes in alienating the same if the settlee fails to fulfil the conditions and aspirations of the settlor and after the lifetime of the settlor, his wife will have life interest and after the demise of the settlor and his wife, the property shall be vested with the plaintiff. The Trial Court found from the recital of Ex.A1, extracted above, that the settlor/defendant had retained his right to deal with the property and he has also got a power to deal with the property including by way of alienation or encumbrance in favour of mortgage and therefore, found that the Ex.A1 has never been given effect to. Insofar as the Ex.B3, registered Settlement Deed in favour of the plaintiff is concerned, the Trial Court found that there is no absolute disposition and both Exs.A1 and B3 have not been acted upon and the defendant and his wife continue to reside in the suit property and the appellant/plaintiff herein has not produced any documents to show as to his possession and enjoyment of the same and it was also admitted by P.W.1 in his cross examination that he is residing at 159E, Velachery Main Road, East Tambaram, Chennai.

7 The Trial Court further found that though the documents concerned, have been titled as Settlement Deeds, the recital of the same would disclose that it is nothing but a Will and the right to alienate or to create an encumbrance has been reserved in favour of the respondent/defendant and found that the nomenclature is not determinative of the real nature of document, but it has to be determined from the terms and clauses of the document and also placed reliance upon the judgments rendered by the Hon'ble Supreme Court of India reported in [a] AIR 1978 SC 54 [Ramasamy Naidu and Another Vs. Gopalakrishna Naidu and others] ; [b] 2001 [1] CTC 520 [P.S.Devaprasad @ P.S.Veeraadan Vs. Dr.P.D.Balaji] ; and 2001 (2) CTC 277 [Jamuna bai vs. M.A.Anusuya] and yet another decision of this Court reported in 2012 (3) TNLJ (Civil) 187 [Saravamangala Satsangam Trust represented by its Managing Trustee Swami A.V.Rajagopal Vs. Mani and another].

8 This Trial Court held that the intention of the said law is to retain the life interest and there is no absolute and

instantaneous transfer of property in favour of the Settlee namely the appellant herein and the document in Ex.A1 is having a nature of Will and citing the said reason has dismissed the suit vide judgment and decree dated 31.08.2002. The plaintiff aggrieved by the dismissal of the suit passed by the Trial Court, filed an appeal in A.S.No.14/2013 on the file of the Subordinate Judge at Tambaram.

9 The Lower Appellate Court on perusal of the grounds, had formulated the following point for determination:-

- Whether the decree passed by the Trial Court is liable to be set aside or not?

The Lower Appellate Court found that the said document is only in the nature of Will and there is no prohibition and it is always lawful on the part of defendant/settlor to revoke the Will by executing the Revocation Deed, dated 10.01.1996(Ex.A3). The Lower Appellate Court has also considered the handing over of the possession by the settlor/defendant in favour of the settlee/plaintiff and found that the plaintiff is not in possession of the property and on perusal of Exs.B4, B7 and B9 would clearly establish that the physical possession of the suit property is continue to be with the defendant only.

10 The Lower Appellate Court also found that after the amendment, the plaintiff sought for the relief to declare the Revocation Deed, dated 10.01.1996 as void and illegal. The suit was filed on 05.12.2008, after expiry of 3 years from the date of cause of action and thereafter, it is barred by the limitation and citing the said reason, has dismissed the appeal suit vide impugned judgment dated 24.07.2014 and thereby confirmed the decree passed by the Trial Court.

11 The Plaintiff, who had lost before the Courts below, aggrieved by the concurrent findings rendered by the Trial Court as well as Lower Appellate Court had filed the Second Appeal.

12 The Second Appeal was listed for admission on 18.01.2017 and this Court had taken note of the fact that the dispute is between son and father, referred a matter to the Mediation Centre.

13 The Tamil Nadu Mediation and Conciliation Centre attached to this Court, vide Mediation report dated 17.03.2017, has recorded that the parties are unable to arrive at an amicable settlement and therefore, submitted the matter back to this Court. The Second Appeal was listed on 24.04.2017 and this Court, after considering the rival submissions, has indicated that it is of the prima facie view that it cannot be a fit case for admission and taken into consideration the submission made by the learned counsel for appellant that there will not be a

positive response on the part of appellant with regard to the settlement proposal, directed to list the matter under the caption of "adjourned admission" finally on 08.06.2016 and accordingly, the Second Appeal is listed today.

14 Mr.S.F.Mohamed Yousuf, learned counsel appearing for the appellant / plaintiff would contend that the above agreement came into being in respect of the said property and though, the appellant / plaintiff has made a fair proposal to this father / respondent, it was not at all accepted for obvious reasons. The learned counsel appearing for the appellant on merits of the Second Appeal would contend that the respondent / defendant was always in the habit of taking contradictory stand as evidenced under Exs.A2, A3 and A4. It is the submission of the learned counsel appearing for the appellant that under Ex.A1 - Registered Settlement Deed, dated 24.03.1995, the suit property were settled in his favour and under Ex.A2 dated 10.01.1996, it was revoked and once again it was settled in his favour under Ex.A3 dated 25.04.2005 and it was revoked under Ex.A4 dated 08.12.2006 and would further urge that though the Courts below had recorded the findings that the documents is in the nature of Will and in fact, the plaintiff has been given absolute right to deal with the property as he likes. It is further stated that the only reason for which the Settlement Deed, executed in favour of the appellant / plaintiff, has been revoked is that the wife of the plaintiff is not in a position to get conceived and the defendant / respondent wanted the appellant / plaintiff to divorce her. Since, it was refused by him, he developed enmity. Therefore, the revocation of the Settlement Deed is a consequence and corollary of the same and it was further urged that under Exs.B4 to B7, mutation of revenue records took place in his name and in the light of the fact that the suit property was transferred in his favour, prays for interference.

15 Per contra, learned counsel appearing for the respondent/caveator would submit that the Courts below had recorded the findings that the recitals in the Settlement Deed would clearly disclose that it is not in the nature of Will and that the recitals under Ex.A1 and A3 would also disclose that no absolute disposition and right has been given to the appellant / plaintiff to deal with the property and it was a conditional one and the Trial Court as well as the Lower Appellate Court has taken into consideration very many decisions and rightly reached the conclusion that the documents is not in the nature of Will and therefore, the respondent, who is the absolute owner of the property is entitled to deal with the property as he likes and prays for dismissal of the suit.

16 The respondent/defendant, who is the father of the plaintiff / appellant is present before the Court and he would submit that behind his back, the appellant / plaintiff has managed to mutate the revenue records in the form of Ex.B4 to B7 and moved the concerned authority and once again all the revenue records in respect of suit property, stand in his favour and would further contend that the appellant / son had made his life as well as his wife's life miserable and unable to bear with the torture, his wife has also died and he is in care and custody of the daughter.

17 In the memorandum of grounds of appeal the following substantial questions of law are raised by the appellant / defendant:-

- The Settlement in the beginning reads "Whereas the settler is setting the schedule mentioned property in favour of the settlee who is his only son out of love and affection that he bears for him. The respondent as DW1 has admitted in his cross examination that he along with the appellant prepared Ex.A1. The appellant was given possession in pursuant to Ex.A1. In the circumstances, whether the courts below are right in holding that the appellant cannot claim any right under Ex.A1 when oral and documentary evidence available in the case evidences transfer of interest in presenti in favour of the appellant?
- Whether the Courts below are right in holding that, Ex.A1 is in the nature of a will, when there is transfer of interest in presenti in favour of the appellant as gathered from the oral and documentary evidence available in the case?
- When Ex.A1 is unambiguous that there is transfer of interest in presenti, whether the later provisions contained in Ex.A1 is not hit by section 11 of the transfer of property Act as repugnant and void one?
- Whether the courts below had erred in not adopting the rule of harmonious construction considering Ex.A1 as a whole when it finds conflict between the parts contained in Ex.A1?

18 It is not in dispute that the respondent / father of the appellant/plaintiff is the owner of the suit property by virtue of the registered Sale Deed dated 24.06.1971 (Ex.B1). The respondent vide Ex.A1/B2, settlement Deed, dated 24.03.1995, had settled the suit property in favour of his son, namely, the appellant / plaintiff, subject to certain conditions. On perusal of the conditions in the said Settlement Deed, the settlor can

enjoy a life estate and he shall be empowered to enjoy by collecting income from the said property by letting out of a portion and take care of the property during his lifetime and he also got the right to alienate the property either by mortgage or by any other means and he has also reserved his right to deal with the property as he likes in alienating the same, if the settlee fails to fulfill the aspiration of the settlor. It has been further stated in the said document that the wife of the settlor, J.Ebenezer Rajeshwari would have life interest after his life time and after the demise of the settlor and his wife only, the settlee shall be vested with the property with all rights and enjoyment.

19 The Settlement Deed executed by the respondent/defendant in favour of the appellant herein under Ex.A1 was revoked under Ex.A2/B3, dated 10.01.1996 and subsequently, the respondent once again has executed the registered Settlement Deed under Ex.A3 / B8 dated 25.04.2005. A perusal of the recitals would disclose that the settlor and his wife will have the life interest in the said property and the settlor / respondent will have full control and enjoyment of the property with all powers of alienation and the settlee will have any manner of interest in the property only after the life time of settlor and his wife J.Ebenezer Rajeshwari. It has been further indicated that if the settlee gets any issue during the lifetime of the settlor and his wife, such an issue whether son or daughter, will have full right to deal with the said property as the legal heirs of the settlor and if the settlee decides to adopt any child from any parents or from anywhere else, such adopted child will have no interest nor any right over the said property of the settlor at all and when the settlee has no issue during his life time, then the property will devolve upon the settlor's daughter and their grand daughter. The said settlement was once again revoked under Ex.A4/B10 dated 08.12.2006 stating that the earlier settlement is also in the nature of Will and the condition laid down in the said settlement have not been fulfilled by the settlee, as he has lost the natural love and affection.

20 The Courts below, after taking into consideration the above cited decisions rendered by the Honourable Supreme Court of India as well as this court, held that the nomenclature is not determinative of the real nature of the documents or of the transaction thereunder, but have to be determined from the terms and clauses of the said document and also placed reliance upon the judgment rendered by the Honourable Supreme Court of India reported in AIR 1978 SC 54 [cited supra] and in the said decision it has been held that the main test to find out whether the document constitutes Will or Gift is to see whether the disposition of the interest in the property is in prescient in favour of the settlees or whether the disposition is to take

effect on the death of the executants. If the disposition is to take effect on the death of the executant, it would be a Will, but if the executant divests his interest in the property and vests his interest in the settlee, the document will be Settlement.

21 Same view has also been taken by this Court in the decision reported in 2001 (1) CTC 520 and 2001 (2) CTC 277 [cited supra].

22. This Court keeping in mind the ratio laid down in the above cited decisions rendered by the Hon'ble Supreme Court of India followed by this Court, is of the considered view that the Courts below have rightly reached the conclusion that the Settlement Deeds executed in favour of the appellant/plaintiff were only in the nature of Will for the reason that the settlor/respondent has reserved his right to deal with the property as he likes and also indicated that the wife of the settlor has the right to deal with the property only after the lifetime of the settlor. Since, the disposition has been postponed and that property has also not been vest with their possession and also not been given to the appellant / plaintiff immediately after the execution of the documents, the said document can be revoked. It was also argued that since mutation of revenue records had taken place, which is evidenced under Ex.B4 to B7- Property Tax receipts, in the name of the defendant have been filed, it can be construed that the possession of the property has been handed over to the plaintiff immediately after the execution of the Settlement Deed. In the considered opinion of this Court, the said submission lacks merit for the reason that the recitals in the Ex.A1 / Settlement Deed as well as Ex.A3 / Settlement Deed would clearly disclose that the settlor has kept his life interest and also reserved his right to deal with the property which include sale and encumbrance and also further reserved his right to lease out the property and appropriate the income.

23 In the considered opinion of this Court, the findings reached by the Courts below are concurrent in nature, based upon proper appreciation of factual aspects and correct application of well settled legal position. Though, an opportunity has been afforded to the appellant / plaintiff to settle the matter amicably between the father and son, it did not fructify and ended in failure. The father of the appellant/plaintiff herein has personally appeared before this Court and also said that he and his wife were tortured by his son / appellant and hence, there is no possibility of settlement.

24 This Court, on an independent application of mind to the entire materials placed, is of the considered opinion that there is no error, infirmity or perversity attached to the

findings rendered by the Courts below in negating the prayer sought for by the appellant / plaintiff and finds no merit in the Second Appeal.

25 In the result, the Second Appeal is dismissed confirming the judgment and decree dated 24.07.2014 made in A.S.No.14 of 2013 on the file of the Court of Subordinate Judge, Tambaram in confirming the judgment and decree dated 31.08.2012 made in O.S.No.34 of 2009 on the file of the District Munsif Court, Tambaram. This Court, considering the relationship between the parties, is not inclined to award costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

SK/RKA

To

1.The Subordinate Judge
Tambaram.

2.The District Munsif
Tambaram.

Copy to:-

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Madras.

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+2 ccs to Mr.G.Devadoss Advocate sr 41328

+1 cc to Mr.S.F.Mohammed Yousuf Advocate sr 40876

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