

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:12.07.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.(MD) No. 92 of 2014

Paulthurai

... Appellant/Appellant/1st Defendant

-Vs-

1.Bala ... 1st Respondent/1st Respondent /Plaintiff2.Yogapaathu ... 2nd Respondent/2nd Respondent/2nd Defendant

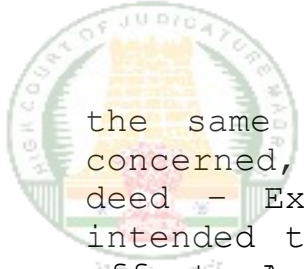
PRAYER : This Second Appeal been filed under Section 100 of Civil Procedure Code, against the Judgment and Decree, dated 01.11.2012 passed in A.S.No.23 of 2010, on the file of the IVth Additional District Court, Tirunelveli, confirming the Judgment and Decree, dated 22.03.2010, passed in O.S.No.48 of 2007 on the file of the Subordinate Court, Ambasamudhiram.

For Appellant	: Mr.S.Kadarkarai
For R1	: Mr.H.Arumugam
For R2	: No Appearance

JUDGMENT

The first defendant in the suit for declaration that the settlement deed, dated 14.11.2006 is valid and for partition, is the appellant. The plaintiff is the daughter of the defendants 1 and 2. Before the marriage of the plaintiff, the first defendant had executed a settlement deed dated 14.11.2006, jointly in favour of the plaintiff and the second defendant. Pursuant to the settlement deed also, the parties were living under the same roof. While so, the plaintiff decided to marry one Franklin Joseph Swamidas against the wishes of the defendants. The defendants did not agree for the marriage of the plaintiff with the said Franklin Joseph Swamidas. Ultimately, the first defendant executed Yathasthu, dated 17.08.2007, in favour of the parents-in-law of the plaintiff. As per the said Yathasthu, executed under Ex.A1, dated 17.08.2007, the defendants would not interfere with the married life of the plaintiff. After the execution of Yathasthu, the marriage of the plaintiff was performed on 31.08.2007 and the same was registered on the same date.

2.While so, the first defendant on 09.10.2007 cancelled the settlement deed, dated 14.11.2006, executed in favour of the plaintiff. The said cancellation has been challenged by the plaintiff contenting that once the settlement deed is executed,



the same comes into force. So far as the case on hand is concerned, the execution of Yathasthu read with the settlement deed - Ex.A8, would go to show that the settlement deed was intended to be acted upon and the settlement deed has taken its effect. As the settlement deed was written in favour of both the plaintiff and the second defendant, the plaintiff has also sought for partition of the same into two and for separate possession of half share.

3. The first defendant has contended in the suit stating that the settlement deed was executed only to save the property from his son, who has deserted the parents. Therefore, the first defendant contented that he never intended that it should benefit the plaintiff by writing the settlement deed which was not acted upon.

4. The Courts below have concurrently held that Ex.A8 is a valid document and the same cannot be held to be sham and nominal and decreed the suit.

5. At the time of admission, the following questions of law are formulated for consideration:

"(a) Whether the Courts below are correct in decreeing the suit when the Gift Deed Ex.A8 was not acted upon and the plaintiff is not entitled to the relief as prayed in the suit?

(b) Whether the Courts below are correct in decreeing the suit when the Gift Deed executed by the appellant was cancelled by him on 09.10.2007 under Ex.B3?"

6. Though it is the contention of the first defendant/appellant that Ex.A8 - Settlement Deed was not acted upon, as it was intended to defeat the rights of the son of the first defendant, there is no evidence to substantiate the same. A perusal of Ex.A1 - Yathasthu, entered into between the plaintiff's parents-in-law and the first defendant, would clearly go to show that excepting the suit property, the first defendant did not intend to give any other properties to the plaintiff. The combined reading of Exs.A1 and A8, would go to show that Ex.A8 was executed only to be acted upon and to benefit the plaintiff. Therefore, the unilateral cancellation of the same, after the marriage of the plaintiff, is not sustainable and the same is not valid.

7. From the collective reading of the facts, it can be seen that the first defendant /appellant has cancelled Ex.A8 unilaterally as he was not happy with the plaintiff, marrying a boy who is the son of the first defendant. That may not be the reason for cancelling the settlement deed. Under such circumstances, the settlement deed - Ex.A8 is held to be valid and the subsequent



cancellation under Ex.A6 is non est in law. Thus, the decree granted by the Courts below in favour of the plaintiff, declaring Ex.A.8 - Settlement Deed as valid and the relief of partition of the property, are confirmed. The questions of law are answered against the appellant/first defendant.

8. In fine, this second appeal fails and accordingly, the same is dismissed confirming the judgment and decree passed by the Courts below. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The IVth Additional District Judge,
Tirunelveli.

2.The Subordinate Judge,
Ambasamudhram.

+1cc to M/S.H.Arumugam, Advocate SR.No. 65120

+1cc to M/S.S.Kadarkarai, Advocate SR.No. 65048

S.A (MD) No.92 of 2014
12.07.2017

GCG

MAS/SKN RSK/SAR 1/02.08.2017/3P/5C