



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

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SECOND APPEAL (MD) No.161 of 2014

and

M.P. (MD) No.1 of 2014

R.Manikandan

...Appellant /Appellant /Defendant

..Vs..

Arulmighu Koodamudayar Ayyanar Koil

Through its Executive Officer,

Kalayarkurichi Village,

Sivakasi Taluk,

Virudhunagar District.

... Respondent /Respondent/ Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 10.12.2009 made in A.S.No.16 of 2009 on the Subordinate Court, Virudhunagar, confirming the Judgment and Decree dated 31.03.2009 made in O.S.No.18 of 2008 on the file of District Munsif Court, Virudhunagar.

For appellant

... Mr.T.Antony Arul Raj
for Mr.I.Velpradeep

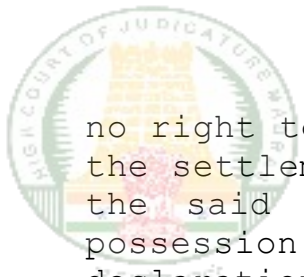
For respondent

.... Mr.S.Manohar

J U D G M E N T

The unsuccessful defendant has preferred the above Second Appeal challenging the decree granted in favour of the Plaintiff for the reliefs of declaration of title and for permanent injunction.

2. The suit properties originally belonged to one Ramasamy Chettiyar. He had executed a settlement deed in favour of the Plaintiff temple on 20.08.1974 and on the same day registered the documents and handed over the possession to the temple. The properties being the landed properties, the plaintiff temple leased the same to one Soundrapandian and he had been in possession of the same by paying the lease. It is stated that on 08.03.1993, the said Ramasamy Chettiar had unilaterally cancelled the settlement deed contrary to the provisions set out in the deed of settlement. Thereafter, on 24.01.1994, the said Ramasamy Chettiyar had sold the property to various third parties which are not binding on the Plaintiff. The said Ramasamy Chettiyar having settled the property in favour of the temple in the year 1974 has



no right to cancel the same unilaterally, contrary to the terms of the settlement. After 19 years, as the subsequent purchasers from the said Ramasamy were trying to interfere with the peaceful possession of the Plaintiff. The suit has been filed for declaration and injunction.

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2. Resisting the suit, the defendant had filed the written statement denying the fact that settlement deed was acted upon. The case of the defendant is that the property was in possession of the said Ramasamy Chettiar. He had been in continuous enjoyment and sold the same to one S.T.Ganesan and from his Power Agent Mr.Jothilingam, the defendant had purchased the same for a valid consideration. Therefore, it was claimed that the Plaintiff cannot have any right.

3. Before the trial Court, on the side of the Plaintiff, P.W.'s 1 to 4 were examined and Exs.1 to 15 were marked. On the side of the defendant, the defendant himself was examined as D.W.1 and Exs.1 to 9 were marked. The trial Court, has decreed the suit in favour of the Plaintiff. Challenging the same, an appeal was filed by the defendant and the same was also dismissed. The Courts below concurrently held that the Plaintiff is entitled for declaration and for injunction. Aggrieved by the same, the above appeal has been filed.

4. Heard the learned counsel for the appellant as well as the learned counsel for the respondent.

5. At the time of admission, the following substantial questions of law have been framed for consideration:

"a) Whether the Government was the owner of the property on 20.08.74 i.e. the date of execution of the Settlement deed?

b) Whether the Settlement deed executed by the defendant is valid under the law?

c) Whether the defendant was the absolute owner of the property on the date of execution of the settlement deed?

d) Whether the Plaintiff has accepted the settlement?

e) Whether the deed of settlement was acted upon?

f) Whether the suit is barred by time?

g) Whether not the judgment to be purely based upon secondary evidence?

h) Whether the Plaintiff is the title holder on the date of the institution of the

i) Whether the Government is a necessary party to the suit?"



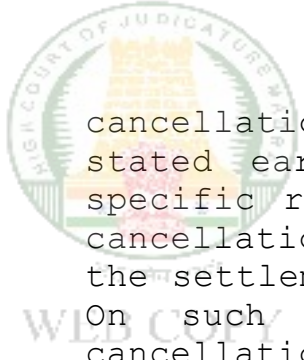
6. The question that has to be considered is that whether the cancellation deed alleged to have been executed by the original owner Ramasamy dated 08.03.1993, is legal and valid. It is the case of the appellant that he had purchased the property on 24.09.2007 from one Jyothilingam, who is the Power of Attorney of one S.T.Ganesan. The said S.T.Ganesan had purchased the property from Ramasamy Chettiar on 24.01.1994. It is the definite case of the Plaintiff which is a temple governed by Hindu Religious & Charitable Endowments Department, that the suit property is settled in favour of the temple as per Ex.A1 which is an irrevocable settlement deed executed by one Ramasamy Chettiyar. The execution of Settlement Deed cannot be disputed, as the said Ramasamy Chettiyar himself had attempted to cancel the same, after 19 years i.e. on 08.03.1993 as per Ex.A13. The Said Ramasamy Chettiyar, after cancelling the settlement deed in favour of the plaintiff had sold the properties to one S.T.Ganesan who inturn sold the same to the defendant through Power of Attorney. Even as per the Settlement Deed, the Plaintiff temple was handed over possession and it had been in possession through one Soundarapandian as lessee. The recital under Ex.A1- settlement deed show that it is irrevocable settlement deed and the said Ramasamy Chettiyar has no right to cancel or challenge the same. However, after 19 years it is stated that the said Ramasamy Chettiyar who had lost the right or title over the suit property had executed the cancellation deed on 09.03.1983. Unless, Ex.A1 is executed earlier, the cancellation deed would not have come into existence. Besides, it is found by the Lower Appellate Court that Since the Plaintiff temple being one governed by the HR & CE, there is no necessity for creating the documents for the purpose of the case. So far as the defendant is concerned, he is not a party to the document -Ex.A1. He has purchased the property from a person who has got no title, from the date of Ex.A1. The Settlor had handed over the possession of the property to settlee and the settlee has been in continuous possession by leasing out the same to one Soundarapandian. Therefore, it is very clear that the Settlement Deed had been accepted and acted upon. The Lower Appellate Court also had found that the Vendor of the defendant's vendor and the Settlor in Ex.A1 are the same person. The said fact also had been admitted in cross examination by D.W.1. Thus, a conspectus of the above facts go to prove that Ex.A1 is the valid document and it had been acted upon by the Plaintiff by taking possession of the property on the same date. The defendant who claims to be the owner of the property has the onus to prove the same. In his cross examination, D.W.1 has categorically admitted that except the purchase of the suit property, he did not know anything about the previous proceedings. The defendant/appellant being the third party to Ex.A1 he is precluded from contesting the validity of Ex.A1. Though it is contended by the learned counsel for the appellant that Ex.A1 was not executed by said Ramasamy Chettiar, he has not produced any evidence or taken any



efforts to prove the same. The cancellation of settlement deed alleged to have been executed by the original settlor is after an interval of 19 years, from the date of settlement. Ex.A1 was settled in favour of the trustee of the Plaintiff temple at the relevant point of time. The Plaintiff also had proved its possession, from the date of Ex.A1 by filing sufficient documents including Ex.A5, which is the lease receipt from Soundarapandian. Thus, it is categorically proved that Ex.A1 was executed by said Ramasamy Chettiar and the same was acted upon by the parties by leasing out the same.

7. The next question is whether the unilateral cancellation of Ex.A1, after 19 years by the settlor is correct and valid in the eye of law. As stated earlier, the settlor in Ex.A1 has specifically stated that the settlement deed had been executed by him without any coercion or undue influence and voluntarily. It is also specifically recited that settlor has no right to alter or cancel the settlement deed and the same is irrevocable. Hence, having settled the property in favour of the temple as per Ex.A1, it is not open to the settlor to cancel the same under Ex.A9, who has got no right or title over the same. Besides, unless it is established that settlement deed was executed by mistake, fraud, undue influence etc., the same cannot be set aside. The defendant who is the third party claimed title to the property, having purchased the same for valid consideration, the same has to be decided only by the Civil Court and only on the ground of fraud, mistake and undue influence etc.,. In the given case, it is not the case of the defendant that the settlement deed was obtained by the Plaintiff by influencing the settlor by coercive measures. Even presuming for the moment that the said allegation would be true the cancellation can be done only through Civil Court and within the stipulated time. But the cancellation in the instant case is done after 19 years unilaterally.

8. The unilateral cancellation of settlement deed and the subsequent registration of the same does not create any right, title or interest in the property. The execution of unilateral cancellation does not create any encumbrance in the property which was already transferred by virtue of settlement deed. The Plaintiff who is a settlee, therefore rightly approached the civil Court challenging the execution of cancellation of settlement deed. Similar issue has been already dealt with by the Full Bench of this Court in **Latif Estate Line India Ltd., Vs. Hadeeja Ammal** reported in **2011 2 CTC page 1**, which is followed in **Nambikkai Mary Versus The Sub-Registrar-II, Sub-Registrar Office, Pattukkottai and others** reported in **2015 6 CTC 824**. Thus, it can be seen that once the settlement deed is executed in favour of the Plaintiff the original settlee Ramasamy Chettiar, cannot have any title and interest in the suit schedule property. The registered settlement deed therefore cannot be cancelled by executing the



cancellation deed. If at all, the documents had to be cancelled as stated earlier, it can be done only under the provisions of specific relief Act by approaching the competent civil Court for cancellation of documents. Even such action can be done only when the settlement deed is executed by fraud, mistake, undue influence. On such proof of allegations, the Court may order for cancellation. Except the above said mode, no person can resort to any other mode of cancellation. Otherwise, the parties by consent can avoid the settlement deed by executing the document of reconveyance thereby, the settlee would give up his or her right in favour of the settler. As unilaterally, the settlement deed cannot be cancelled, the Courts below are right in decreeing the suit, in favour of the Plaintiff.

9. In the light of the above discussions, this Court is of the view that the

- a) Settlement Deed executed in Ex.A1 dated 20.08.1974 is valid in law.
- b) The Plaintiff had become the absolute owner of the property as the same had been acted upon by taking possession on the same day.
- c) The unilateral cancellation of Ex.A1 under Ex.A13 is invalid.

In view of the above, the above substantial questions of law are answered accordingly and the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The Subordinate Court, Virudhunagar.
- 2.The District Munsif Court, Virudhunagar.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.Mr.S.Manohar, Advocate Sr.No.83883
+1cc to Mr.D.Raj Kumar, Advocate Sr.No.83558

ARR

VB/MR/KKR/SAR2/21/12/2017/5P/6C

<https://hcservices.ecourts.gov.in/hcservices/>

Judgment made in
S.A.(MD) No.161 of 2014
25.10.2017