

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON: 05.10.2018
DELIVERED ON: 23.10.2018
CORAM:
THE HON'BLE MRS.JUSTICE R. HEMALATHA
S.A.No.1655 of 2001

Ramayee ... Appellant

Vs.

1. Karnan(deceased)
2. Chinnaponnu
3. Tamilarasi
4. Periammal
5. Manimegalai
6. K.Murugaperumal ... Respondents

(Respondents 2 to 6 brought on record as legal heirs of the deceased of the sole respondent vide order dated 20.07.2018 made in CMP No. 10309 to 10311 of 2018 in S.A.No.1655 of 2001)

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 30.07.2001 passed by the Principal District Judge, Perambalur in A.S.No.47 of 2001 reversing the decree and judgment dated 23.09.1993 passed by the District Munsif, Perambalur in O.S.No.470 of 1990.

For Appellant : Mr.R.Selvakumar

Respondents : Mr.L.P.Balaji Ram

JUDGMENT

The plaintiff in O.S.No.470 of 1990 on the file of the District Munsif, Perambalur who is the respondent in A.S.47 of 2001 on the file of the Principal District Judge, Perambalur has filed the present second appeal.

2. For the sake of convenience, the parties are called as per their ranking in the original suit in O.S.No.470 of 1990 before the District Munisif, Perambalur.

3. The plaintiff Ramayee (Pw1) is daughter of one Nagammal. Nagammal executed a settlement deed dated 10.08.1989 (Ex.A1) in favour of the plaintiff. According to the plaintiff, the settlement deed was acted upon and that she has been in possession and enjoyment of the said property. It is further contended by the plaintiff that the defendant Karnan (Dw1) is attempting to interfere with her peaceful possession and enjoyment over the suit property. She has therefore, prayed for declaration of her title to the suit property situate in S.No.619/1 of Parambalur, measuring Acres 1.74 out of Acres.5.20 within the boundaries stated in the plaint schedule and also for a permanent injunction restraining the defendant and his men and agents from interfering with the peaceful possession and enjoyment over the suit property.

4. The defendant filed a written statement contending that though late Tmt. Nagammal executed a settlement deed (Ex.A1) in favour of the plaintiff, the same was cancelled by her through a cancellation deed dated 29.01.1990 (Ex.B2). According to him, a sale deed dated 07.02.1990 (Ex.B1) was executed by Tmt. Nagammal in his favour in respect of the suit property and that ever since the

date of sale, he has been in possession and enjoyment of the suit property. It is further contended by him that the settlement deed was not acted upon.

5. The trial court after full contest decreed the suit vide its decree and judgment dated 23.09.1993 in favour of the plaintiff. Aggrieved over the same, the defendant filed A.S.No.47 of 2001 before the Principal District Judge, Perambalur. The said appeal was allowed vide decree and judgment dated 30.07.2001 and the decree and judgment dated 23.09.1993 of the trial court was set aside.

6. Now, the present second appeal is filed on the following substantial questions of law.

Whether the lower appellate court is right in rejecting Ex.A1 accepting the oral evidence, particularly, in the absence of any finding as to Ex.B1 and Ex.B2?

However, the only point for consideration is,

whether there was acceptance of gift by the donee and whether the settlement deed was acted upon?

7. At the outset, it may be observed that the original settlement deed is produced by the appellant/plaintiff and the same is marked as Ex.A1. A perusal of Ex.A1 also shows that it is irrevocable. It is trite law that when a property is settled under a registered settlement deed and the settlee accepting the transfer by the settlement deed, it is presumed to be acted upon. Once the settlee accepts transfer, the delivery of possession is not necessary. Moreover, the settlement deed cannot be cancelled, once deed of settlement is acted upon. In S.Ganesan Vs. Barathirajan reported in 2009(5) CTC 558, this court has held that unilateral cancellation of settlement deed is void.

8. The main contention of the defendant is that since the plaintiff failed to maintain her mother, the settlor, the settlement deed was cancelled on 29.01.1990 (Ex.B2) by the settlor. A perusal of Ex.A1 shows that there is no condition to maintain the settlor and the gift is not also an onerous gift. It is also seen that late Nagammal had cancelled the settlement deed through a cancellation deed dated 29.01.1990 (Ex.B2) unilaterally. No notice was issued to the plaintiff before cancellation. It is not the case of the defendant that the settlement deed (Ex.A1) is a sham and nominal document. In fact, he was in know of the execution of settlement deed (Ex.A1), prior to the sale (Ex.B1) made in his favour by the said Nagammal. In view of the fact that the settlement deed was cancelled unilaterally, the same is bad in the eye of law. That apart, as already observed, there is no clause for revocation in the settlement deed Ex.A1 registered in favour of the appellant/plaintiff. Therefore, the cancellation deed would not create any right, title in the property subsequent to the registered settlement deed (Ex.A1) to the settlor to execute a sale deed (Ex.B1) in favour of the defendant, since the property is already transferred in favour of the plaintiff. Further more, late Nagammal did not file a suit seeking for a declaration for cancellation of the settlement deed. However, even as per Section 127 of the Transfer of Property Act, a gift deed can be revoked by way of a cancellation deed, if it falls within the exception under Section 126 of the Transfer of Property Act. It is relevant to extract Section 126 and 127 of the Transfer of Property Act, which reads thus.

126. When gift may be suspended or revoked

The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

127. Onerous gifts

Where a gift in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person: A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

9. Mr.L.P.Balaji Ram, learned counsel for the respondent would contend that since the plaintiff herself admitted in her evidence that late Nagammal was in possession of the settlement deed (Ex.A1), it is clear that the settlement deed was not acted upon. As already observed, there is no clause in the settlement deed (Ex.A1) for revocation. In fact, the trial court has observed that if the settlement deed has not been acted upon, there was no need for late Nagammal to execute a cancellation deed (Ex.B2). Further more, the evidence adduced on the side of the defendant also would go to show that the plaintiff is in possession of the house mentioned in the settlement deed (Ex.A1). If really the settlement deed has not been acted upon, the plaintiff would not have been in possession of the house settled through Ex.A1. The contention of the defendant that the settlement deed Ex.A1 did not come into effect only with regard to the landed property, which was sold to him through Ex.B2 cannot be accepted. The trial court in fact has analysed both the oral and documentary evidence adduced on both sides and had come to a conclusion that the settlement deed (Ex.A1) cannot be revoked.

10. The first appellate court has committed a gross error in holding that the settlement deed Ex.A1 was not acted upon. The findings recorded by the first appellate court are also perverse. In view of all the reasons stated by me, I hold that the second appeal is liable to be allowed.

12. In the result,

(i) The second appeal is allowed. No costs.

(ii) The decree and judgment dated 30.07.2001 passed by the Principal District Judge, Perambalur in A.S.No.47 of 2001 is set aside.

(iii) The decree and judgment dated 23.09.1993 passed by the District Munsif, Perambalur in O.S.No.470 of 1990 is restored.

(iv) The suit in O.S.No.470 of 1990 on the file of the District Munsif, Perambalur is decreed as prayed for by the plaintiff with costs.

23.10.2018

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

mst

To

1. The Principal District Judge, Perambalur.

2. The District Munsif, Perambalur.

R. HEMALATHA, J.
mst

S.A.No.1655 of 2001

23.10.2018