

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2018

PRONOUNCED ON : 08.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1184 of 2003

H.A.Noor Mohammed Sait ... Appellant/plaintiff

Vs.

1. The State of Tamil Nadu,
Rep.by Collector of Nilgiris,
Collectorate, Collector's office Road,
Udhagamandalam - 643 001.
2. The District Registrar,
Near S.M.Hospital,
Conoor road,
Udhagamandalam - 643 001.
3. The Sub - registrar
Mission Compound road,
Kotagiri - 643 217 ... Respondents/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 29.11.2002 passed in A.S.No.30 of 2002 on the file of the District Court, Nilgiris at Udhagamandalam, confirming the Judgment and Decree dated 22.03.2002 passed in O.S.No.17 of 1996 on the file of the District Munsif Court, Kotagiri.

For Appellant : M.Rekha for
Mr.R.Parthasarathy

For Respondent : Ms.A.Madhumathi
Nos.1 to 3 Additional Govt.Pleader (CS)

JUDGMENT

This second appeal is directed against the Judgment and decree dated 29.11.2002 passed in A.S.No.30 of 2002 on the file of the District Court, Nilgiris at Udhagamandalam, confirming the Judgment and Decree dated 22.03.2002 passed in O.S.No.17 of 1996 on the file of the District Munsif Court, Kotagiri.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and Mandatory injunction.

4. The case of the plaintiff, in brief, is that he was the owner and possessed of an extent of 6.84 acres of tea estate in R.S.No.301 and further extent of 35.50 acres of tea estate in R.S.No.370/1 in all holding 42.34 acres and the plaintiff has two unmarried dependent daughters and out of natural love and affection, on 01.07.1994, the plaintiff by way of an oral gift, gifted an undivided extent of 12.11 acres to each in the above said survey in favour of his daughters retaining for himself an extent of 18.12 acres in R.S.No.370/1 and even after the above said oral gifts, the gifts being of an undivided share, the property continued to be held jointly and in common by the donor and donees and on legal advice, the plaintiff and his daughters not wishing to retain the property in common. accordingly, separated their shares by effecting a partition deed by metes and bounds on 29.05.1995 in order to validate the oral gifts already made on 01.07.1994 and the above said partition was effected by means of a deed of partition and accordingly, valued and presented for registration at the office of the third defendant and despite the payment of necessary registration fees, the document had been kept pending by the third defendant and the document was neither registered nor returned and it was informed that the document was referred to the second defendant for clarifications and as no proper response had emanated from the defendants 2 & 3 as to the status of the document presented for registration by the plaintiff, accordingly, the plaintiff moved the District Consumers Disputes Redressal Forum at Udhagamandalam against the defendants in O.P.No.76 of 1995 for an order directing them to pass orders and to release the partition deed presented for registration and the counter was filed by the defendants 2 & 3 in the above proceedings informing that the second defendant had already passed an order dated 20.11.1995 determining that the document presented for registration is one of settlement and not one of partition and however, the said order was not communicated to the plaintiff and only after the above said counter, the plaintiff came to know of the stage of the document presented by him for registration as aforestated and accordingly, the Consumer O.P was not pressed on 19.01.1996 and inasmuch as the defendants 2 & 3 had erroneously determined the document as a settlement deed and not a deed of partition and in such view of the matter, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts and that the matter has reached a finality before the District Registrar, Udhagamandalam and he had passed an order against the plaintiff and therefore, the only remedy available for the plaintiff is to prefer an appeal before the Chief Controlling Authority of I.G of Registration, Madras and hence, the Civil Court has no jurisdiction to try the suit and the said document presented by the plaintiff for registration had been impounded by the third defendant and provisional order has been passed and the copy of the order had been issued to the party as early as on 20.11.1995 itself within the stipulated time. However, the plaintiff has not chosen to send any reply and after being silent over the matter, the plaintiff has preferred the complaint before the District Consumer Redressal Forum and subsequently not pressed the said application and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 was examined and Exs.A1 to 6 were marked. On the side of the defendants, DW1 was examined and no document was marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the suit. Aggrieved over the same, the present second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (1) Whether the trial court was correct in holding against the principle of Mohammedan law that stipulates the gifting of an undivided share in the property, which is capable of division, as irregular.

(2) Whether the lower appellate was correct in declining jurisdiction when provisions under the Indian Registration Act conferred jurisdiction on the civil courts.

(3) Whether the courts below were correct in their view that the Hiba of undivided share in the property was legal under the Mohammedan law.

(4) Whether the lower appellate court was right in non-suiting the plaintiff, even without an express bar under Section 9 of the Civil procedure Code, on the ground that civil suits are barred under Indian Stamp Act and Indian Registration Act.

(5) Whether the Appellate Court has not committed an error in failing to note that Registrar has no power to adjudicate on issues, which involve both the personal law as well as statutory law.

(6) Whether the courts below failed to see that the decision of the Registrar is against the principles of natural justice."

9. It is found that, on the materials placed, the plaintiff had presented a document styling as a partition deed for registration before the third defendant. According to the plaintiff, out of the properties owned by him, he had settled certain properties in favour of his daughters by way of oral gifts and the properties settled in favour of his daughters being undivided share, according to him, the suit properties and other properties owned by him were held jointly by the parties concerned and thereafter, as the parties felt that common ownership is not necessary, accordingly, it is the case of the plaintiff that they had divided the properties amongst themselves by a deed of partition on 29.05.1995, the copy of which is marked as Ex.A1 and according to the plaintiff, the same had been presented for registration and inasmuch as according to the defendants, the said document is only a settlement deed and not a deed of partition and as the defendants had impounded the document calling upon the plaintiff to pay the requisite stamp duty and on the other hand, inasmuch as the said document is only a deed of partition and not a settlement deed and therefore, according to the plaintiff, he has been necessitated to lay the suit for a declaration that the above said document is only a deed of partition and for the relief of mandatory injunction directing the defendants to register the document as a deed of partition.

10. Per contra, the factum of the plaintiff presenting the document marked as Ex.A1 for registration is not disputed by the defendants, however, according to them, the document presented by the plaintiff for registration and on a perusal of the same finding that the same is only a settlement deed, according to the defendants, they had informed the plaintiff way back on

20.11.1995 itself about the said position and therefore, according to the defendants, the plaintiff is not entitled to maintain the suit for the said reliefs sought for and the remedy only by way of appeal to the I.G. of registration and therefore, the suit laid by the plaintiff is liable to be dismissed.

11. Now, according to the plaintiff, he has also moved proceedings before the Consumer Forum against the defendants for their inaction in the registration of the document presented by him as aforestated. However, it is seen that the defendants in the proceedings laid by the plaintiff before the Consumer Forum had informed that the document concerned had been impounded directing the plaintiff to pay the necessary stamp duty as the same had been determined to be a settlement deed and not a partition deed. It is found that the said order has come to be passed by the second defendant way back on 20.11.1995 and it is the further case of the defendants that the same had been duly communicated to the plaintiff, though the plaintiff would aver that no such communication had been received by him. However, materials placed disclosed that following the counter filed by the defendants in the consumer forum as aforestated, it is seen that the plaintiff has not pressed the proceedings initiated by him in the Consumer Forum and accordingly, the same got dismissed as not pressed.

12. Reiterating their stand, the defendants on their behalf, examined the Sub Registrar of Kotagiri as DW1 in this lis and DW1 in his evidence has clearly stated that inasmuch as the document presented by the plaintiff for registration was found to be a settlement deed and accordingly, the District Registrar had also confirm the same and further, according to DW1, the appeal presented by the plaintiff before the I.G. of registration was also turned down and it is specifically stated by DW1 that though the plaintiff would claim that he had settled the properties in favour of his daughters on 01.07.1994, however, according to him, inasmuch as even as per the case of the plaintiff, the properties settled already and the other properties are stated to be in joint possession of the parties concerned and further, according to DW1, if the parties had endeavoured to divide the properties by way of a partition deed, they should have pre-existing right in the properties concerned and in such view of the matter, according to DW1, though the plaintiff had claimed that the properties had already been settled in faovur of his daughters, it is thus the evidence of DW1 that the document presented for registration on 29.05.1995 cannot be termed as a deed of partition and only be determined as a settlement deed and accordingly, the document has come to be impounded as per law with the direction to the plaintiff to pay the necessary stamp duty for the same. It is the specific

statement of DW1 in his evidence that the determination of the nature of the document by the District Registrar as aforesaid had been duly communicated to the plaintiff, as already seen, according to the defendants, the said order was passed on 20.11.1995 and immediately, communicated within the stipulated time. The said order has come to be marked as Ex.A5 and on a perusal of the same, it is found that the same had been duly addressed to the plaintiff and his two daughters.

13. Despite the above said specific testimony of DW1, repudiating the case of the plaintiff, it is found that the plaintiff had not endeavoured to cross examine DW1 on any of the aspects spoken to by him in the course of his evidence. Accordingly, it is found that inasmuch as the determination of the authorities concerned that the document marked as Ex.A1 as only a settlement deed and not a partition deed is perfectly valid, it is seen that the plaintiff had also not endeavoured to cross examine DW1 with reference to the above aspects of the matter. Similarly, as the plaintiff had been duly communicated about the determination of the authorities concerned dated 20.11.1995 as above discussed and also as spoken to by DW1, it is found that the plaintiff did not endeavour to repudiate the same by cross examining DW1 and further, as above seen, following the disclosure of the said information by the defendants to the plaintiff, it was noted that the plaintiff has also not pressed the action initiated by him in the Consumer Forum. Accordingly, it is seen that the plaintiff had knowledge about the determination of the second defendant declining his request to register the document as a deed of partition and calling upon the plaintiff to pay the necessary stamp duty for the document to be registered as a settlement deed.

14. It is the specific case of the defendants that the suit laid by the plaintiff is not maintainable and also barred by limitation. The suit has come to be laid by the plaintiff, aggrieved over the refusal of the defendants to register the document presented for registration as a deed of partition and the materials placed disclosed that the defendants 2 & 3 had turned down the request of the plaintiff to register the document as per the provisions contained in the Registration Act, 1908 and accordingly, it is found that in particular, the District Registrar i.e. the second defendant as determined that the document presented for registration is only a settlement deed and accordingly, impounded the same and called upon the plaintiff to pay the necessary stamp duty for registering the document as a settlement deed. Accordingly, when it is found that the plaintiff has knowledge of the above said determination of the second defendant as above discussed, if really, the plaintiff had been aggrieved over the same, he has to resort to the necessary redressal only as provided under the Registration

Act, 1908 and so viewed, it is found that the aggrieved parties should institute the suit as against the order of refusal by the District Registrar within 30 days, after the making of the order of refusal, within the local limits of whose original jurisdiction is situate the office, in which, the document is sought to be registered. Accordingly, it is found that the present suit has come to be laid by the plaintiff only as provided under Section 77 of the Registration Act, 1908 and when it is noted that the plaintiff should have instituted the suit within 30 days from the date of the refusal of the second defendant and when it is found that the plaintiff has been duly communicated the order of the second defendant way back in 1995 itself, the suit laid by the plaintiff in the year 1996 on 12.02.1996 is found to be barred by limitation. Therefore, as rightly put forth by the Additional Government Pleader, it is found that the plaintiff having not preferred the suit within the time allowed by law, on that ground, the suit laid by the plaintiff cannot be entertained.

15. In the light of the above discussions, though it is found that the civil suit could be entertained challenging the order of the District Registrar as per Section 77 of the Registration Act, 1908, in the light of the above discussions, the suit having been so instituted is found to be barred by time, accordingly, the suit laid by the plaintiff is rejected and considering the fact that the order passed by the second defendant declining the registration of the aforesaid document having been duly communicated to the plaintiff, it cannot be said that the decision of the defendants 2 & 3 is against the principles of natural justice. The substantial questions of law 2, 4 & 6 formulated in the second appeal are accordingly answered against the plaintiff.

16. Furthermore, on a reading of the plaint averments and in particular, the averments contained in Ex.A1 and the case of the plaintiff examined as PW1, it is found that according to the plaintiff, he had already orally gifted certain portions of his properties in favour of his daughters. If that be so, it does not stand to reason as to how the plaintiff, even thereafter, claims that the properties settled in favour of his daughters remain joint as one unit along with the properties retained by him. Further, according to the case of the plaintiff, it is noted that only to give effect to the above said oral gifts, the deed of partition has come to be made on 29.05.1995. Accordingly, on a perusal of the recitals found in Ex.A1 coupled with the above said case of the plaintiff himself, it is found that only with a view to ensure that the properties are settled in favour of his daughters in the manner known to law and in order to effectuate the oral gifts said to have been made by him in favour of his daughters earlier, the document dated

29.05.1995 seems to have been executed amongst the parties. Accordingly, it is seen that the recitals contained in the said document indicate that only by virtue of the said document, the parties, in particular, the plaintiff had intended to confer absolute right in the properties belonging to him in favour of his daughters as described therein and when it is the specific case of the plaintiff that even pursuant to the alleged oral gifts, the properties remain joint and accordingly, it is noted that by way of the document dated 29.05.1995 only the plaintiff intends to settle the properties belonging to him in favour of his daughters and accordingly, the defendants tracing the source of title to the properties concerned as recited in Ex.A1 and as seen from the case projected by the plaintiff, rightly determined that the document dated 29.05.1995 is only a settlement deed intended to confer absolute title to the plaintiff's daughters in respect of the portions settled upon them as described therein and further when there is no material to hold that the plaintiff has already orally gifted the said properties in favour of his daughters, which gifts are termed as only oral and in the absence of any proof pointing to the same and when according to the plaintiff's case himself even after the alleged oral gift, the properties continued to remain joint and when it is admitted by the plaintiff himself that the properties involved in the subject matter are his self acquired properties and accordingly, as determined by the defendants, when it is noted that the plaintiff's intention is to confer absolute right in favour of his daughters in respect of his properties given to them by way of the above said document, no exception could be taken to the determination of the defendants that the said document is only a settlement deed and not a deed of partition. Nomenclature of a document may not be crucial in determining the character of the document. Accordingly, in the light of the aforesaid discussions, when it is seen that absolute right is intended to be conferred on the daughters in respect of the properties concerned only by virtue of the document deed dated 29.05.1995 and the document read as a whole go to show that it is nothing but a settlement deed, cannot, by any stretch of imagination, be termed as a partition deed as projected by the plaintiff, when it is seen that the plaintiff's daughters had no right over the same prior to the said partition deed particularly, when it is noted that the plaintiff has failed to establish the oral gifts said to have been effected on 01.07.1994, the plaintiff cannot be allowed to avoid the stamp duty payable under the said document as determined by the defendants. In view of the above said reasons, the determination of the controversy as regards the registration of the document dated 29.05.1995 by the defendants 2 & 3 against the plaintiff is found to be perfect in order and accordingly, the 5th substantial question of law formulated in the second appeal is answered against the plaintiff.

17. The counsel for the defendants, in support of her contentions placed reliance upon the decision reported in AIR 2005 MADRAS 354 (Jt.Sub Registrar - I Vs. Prasanth Chandran). The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

18. In the light of the above discussions, it is found that the substantial questions of law 1 and 3 as formulated in this second appeal are not germane and necessary to be adjudicated for the disposal of the second appeal, when it is noted that the plaintiff is not entitled to obtain the reliefs of declaration and mandatory injunction sought for, for the reasons discussed above.

At the end, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-ii)

//True Copy//

Sub Assistant Registrar

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To

1. The District Judge, Nilgiris at Udhagamandalam.
2. The District Munsif, Kotagiri.
3. The Record Keeper,
V.R. Section, High Court, Madras.

Pre-Delivery Judgment made
in S.A.No.1184 of 2003

NRI (CO)
TR(09/03/2018)

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