

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :14.08.2018  
PRONOUNCED ON:03.09.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.323 of 2015  
and  
M.P.No.1 of 2015

1.Meenambal

2.Rajendran (Mentally ill person)  
Represented by guardian  
Rathinakumar .... Appellants/Defendants 1 & 2

Vs.

Karthik .... Respondent/Plaintiffs

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 24.11.2014 in A.S.No.8 of 2013 on the file of the District and Sessions Judge, Tiruvarur confirming the decree and judgment dated 30.11.2012 in O.S.No.55 of 2007 passed by the Subordinate Judge at Mannargudi.

For Appellant : Mr.V.Vaithiyalingam

For Respondent : Mr.Srinath Sridevan

J U D G M E N T

In this Second Appeal challenge is made to the judgment and decree dated 24.11.2014 passed in A.S.No.8 of 2013 on the file of District and Sessions Court, Thiruvarur confirming the judgment and decree dated 30.11.2002 passed in O.S.No.55 of 2007 on the file of the Subordinate Court, Mannargudi.

2. The Second Appeal has been admitted on the following substantial questions of law:

(a) Whether the non-framing of an issue on the null and void nature of the cancellation of settlement dated 30.11.1999 and the settlement dated 07.12.1999 resulted in miscarriage of justice?

(b) Whether the fact that there is no finding of any sort about the validity or otherwise of the settlement deed dated 07.12.1999 viz., Ex.B3, by the trial Court as well as the First Appellate Court are fatal to the case of the plaintiff and whether the plaint as framed is maintainable?

(c) Whether handing over possession and proof of acceptance are sine qua non to declare a gift as a valid in law?

(d) Whether or not a settlor is entitled to revoke a gift in the absence of any clause in the deed itself as to its irrevocability?

3. Considering the scope of the issues involved between the parties lying in a narrow compass, it is not necessary to dwell into the facts of the case in detail.

4. Materials placed on record go to show that both the plaintiff and the defendants claim title to the suit property from Chellammal. That Chellammal is the original owner of the suit property is not in dispute. Chellammal is the grandmother of the plaintiff and the mother of the defendants. The plaintiff claims title to the suit property on the strength of the settlement deed dated 03.11.1999 executed by Chellammal in his favour and the abovesaid settlement deed has been marked as Ex.A2.

5. According to the defendants, the plaintiff's father had obtained the abovesaid settlement deed from Chellammal fraudulently and accordingly, Chellammal had cancelled the same by a deed of cancellation dated 30.11.1999 which document has come to be marked as Ex.B2. It is the further case of the defendants that, thereafter Chellammal had settled the suit property in their favour by a deed of settlement on 07.12.1999 and the same had come to be marked as Ex.B3.

6. Thus, it is found that both the parties claim title to the suit property on the basis of the settlement deeds executed by Chellammal in their favour. However, admittedly it is found that the settlement deed dated 03.11.1999 executed by Chellammal in favour of the plaintiff marked as Ex.A2 is earlier in point of time, accordingly, when it is found that Chellammal had executed the abovesaid settlement deed in favour of the plaintiff, her minor grandson and thereby transferred the interest in respect of the suit property in favour of the

plaintiff by empowering him to mutate the records in respect of the suit property and also entrusted the possession of the suit property to the plaintiff's guardian Subramaniyan, as the plaintiff was a minor at that point of time and accordingly, it is found that Chellammal, after executing Ex.A2 settlement deed in favour of the plaintiff, ceases to have any interest in the suit property. The only contention put forth by the defendants' counsel for resisting the plaintiff's case is that Ex.A2 settlement deed had not been acted upon in the sense that the suit property had not been entrusted to the possession of the plaintiff and thereafter it is contended that Chellammal thereafter settled the suit property in favour of the defendants by way of Ex.B3 deed. However, as per the recitals contained in Ex.A2, it is found that Chellammal had not reserved any right of revocation under the said document. Accordingly, it is seen that, considering the close relationship between the parties of Ex.A2 i.e., the settlor being the grandmother, settlee being the grandson, in such view of the matter, it is seen that the continuation of Chellammal's occupation in the suit property by itself could not be considered that she had not delivered the possession of the suit property to the plaintiff by way of Ex.A2. As rightly found by the first appellate court, Chellammal having conferred absolute right to the plaintiff by way of Ex.A2 settlement deed and is found to have entrusted the title deed of the suit property to the plaintiff which document has come to be marked as Ex.A1 and as rightly determined by the Courts below, when the recitals contained in the settlement deed Ex.A2 clearly disclose that absolute right in praesenti had been conferred on the plaintiff empowering him to enjoy the suit property with full right by effecting mutation of revenue records and possession delivered to the plaintiff, as rightly determined, there is no need for any overtact on the part of the plaintiff, to establish the factum of the acceptance of the abovesaid settlement deed. In such view of the matter, merely because, Chellammal had continued to reside in the suit property, that by itself would not in any manner invalidate the settlement deed, on the footing that the same had not been accepted by the plaintiff. If really the settlement deed Ex.A2 had come to be brought about by exercising any fraud as sought to be projected by the defendants, Chellammal herself would have instituted necessary legal action against the plaintiff or his father by way of a civil action to declare that the settlement deed Ex.A2 is null and void. However it is seen that, according to the defendants, Chellammal is found to have executed the deed of cancellation marked as Ex.A2. By way of Ex.B2, impliedly, it is seen that Chellammal had admitted the execution of Ex.A2 settlement deed and in Ex.B2 Chellammal had clearly averred about the settlement deed Ex.A2 having been executed by her in favour of the plaintiff and the registration of the said document in the manner known to law. In such view

of the matter, when all the requirements of a valid gift are found to be satisfied in the execution of Ex.A2 settlement deed and following the same, it is seen that the plaintiff has also been enjoying the suit property, no doubt the settlor Chellammal also continued to remain in the suit property, it is found that as rightly determined by the Courts below, the settlement deed Ex.A2 has attained completion and thereafter it is seen that Chellammal ceases to have any right over the suit property, particularly would not have any entitlement to cancel the settlement deed.

7. Apropos of the principles of law governing thereof, this Court in the decision reported in 2018 (2) Law weekly 374 [Jeyalakshmi Vs. Selvaraju ] has discussed the principles of law with reference to the same, in the light of the decisions of the Apex Court and the other decisions of our High Court as follows:

Transfer of property act, Section 123, settlement deed, possession, handing over, exception, when,

Settlement deed - possession handing over - when not necessary

whether physical possession of properties is necessary for completing validity of settlement transactions

settlement deeds executed by father - whether settlement deed accepted by appellants and acted upon - whether deceased 'S' entitled to revoke deeds unilaterally by way of revocation deeds

held: settlees are daughters of S - settlees aware of the litigation pending between deceased S and respondent (his son) - S would not have been in a position to entrust the physical possession of the suit properties to the settlees at the time of the execution of settlement deeds - settlees became entitled to recover the possession of suit properties from the respondent by stepping into the shoes of the settlor

Transfer of physical possession of the suit properties is not necessary - Mere factum of non delivery of settled properties would not render settlement deeds invalid

After the first appellate court had upheld the title of Sahadeva Gounder in respect of the suit properties and also his entitlement to recover the possession of the same from the respondent, it is found that Sahadeva Gounder had executed three settlement deeds in favour of the appellants i.e., his daughters in respect of the suit properties as described in the settlement deeds on 01.10.1996, and based on the above said settlement deeds, it is found that the appellants claim title to the suit properties involved in the matter. Now, according to the appellants, the above said settlement deeds executed by their father i.e., Sahadeva Gounder had been accepted by them and acted upon and hence, by way of the same, it is only the appellants, who have title to the suit properties involved in

the subject matter. On that footing, it is found that the appellants have preferred the civil action against their father Sahadeva Gounder as well as the respondent, for declaration and also for recovery of possession and damages as above stated.

Thus, it is found that the main points for consideration involved in all the second appeals is whether the appellants had derived title to the suit properties by way of the settlement deeds executed in their favour by their father dated 01.10.1996 and whether the above said settlement deeds had been accepted by the appellants and acted upon and whether the deceased Sahadeva Gounder is entitled to revoke the above said settlement deeds by way of the execution of revocation deeds unilaterally and convey the suit properties to the respondent's sons by way of a Will.

In so far as the present cases are concerned, it is found that on a perusal of the terms contained in the settlement deeds executed by Sahadeva Gounder in favour of the appellants, there are clear recitals that by way of the same, Sahadeva Gounder had entrusted the possession of the suit properties to the appellants and accordingly, there are recitals that the appellants would be entitled to acquire the suit properties by way of the same and enjoy the same by paying necessary charges to the Government and also by mutating their names in the Revenue records with reference to the suit properties and it is also found that Sahadeva Gounder had not reserved any right of revocation of the settlement deeds and also averred that even if, any such revocation deed is executed by him, the same would not be valid. It is found that by way of the above said settlement deeds, Sahadeva Gounder had entrusted the constructive possession of the suit properties to the appellants conferring on them the absolute title to the same which he had in the suit properties at the time of the execution of the settlement deeds.

In this connection, the counsel for the appellants, vehemently contended that the transfer of the physical possession of the properties settled is not the sine quanon for the completion of the settlement deed and the factum of the acceptance of the settlement deed could be inferred by the Courts based on the recitals contained therein and therefore, according to her, the mere failure on the part of the appellants to establish the transfer of the physical possession of the suit properties in their favour by Sahadeva Gounder at the time of the execution of the settlement deeds would not be, in any manner, fatal to their case.

Admittedly, the settlles are the daughters of the deceased Sahadeva Gounder. It is found that the settlees are aware of the litigation pending between the deceased Sahadeva Gounder

and the respondent at the time of the execution of the settlement deeds. It is therefore seen that Sahadeva Gounder would not have been in a position to entrust the physical possession of the suit properties to the settlees at the time of the execution of the settlement deeds. Considering the relationship between the parties, when there are clear recitals in the settlement deeds about the handing over the possession of the properties settled in favour of the settlees and also empowering the settlees to effect the mutation of their names in respect of the properties settled in the Government records and further the settlor had not also reserved any right of revocation of the settlement deeds and declared that even if any such revocation deed is effected by him, the same would be invalid and further, when on the date of the execution of the settlement deeds, the settlor had already laid a claim against the respondent for recovery of possession of the suit properties from the respondent and at the time of the execution of settlement deeds involved in these matters, the title of the suit properties in favour of the settlor had been declared by the first appellate court and the first appellate court had also declared that the settlor is entitled to recover the possession of the suit properties from the respondent and the said determination of the first appellate court both as regards the title as well as the recovery of the possession had been confirmed by the High Court as well as the Apex Court as above discussed, by way of the execution of the settlement deeds in favour of the appellants, the settlor namely, Sahadeva Gounder had also conferred on them the right to obtain the possession of the suit properties settled on them by way of the settlement deeds and it is thus found that the settlees namely the appellants by accepting the recitals contained in the settlement deeds in toto became entitled to recover the possession of the suit properties from the respondent by way of the above said settlement deed as the full owners of the properties settled in their favour by stepping into the shoes of the settlor and in the light of the above position, it is seen that on the facts and circumstances of the case at hand, the transfer of physical possession of the suit properties is not necessary as such, for the acceptance of the settlement deeds and on the other hand, it is found that considering the above said facts, particularly, the relationship between the parties and the lis pending between the settlor and the respondent at the relevant point of time would go to show that settlees namely the appellants had accepted the settlement deeds executed in their favour and in such view of the matter, the mere factum of the non delivery of the settled properties by itself would not render the settlement deeds as invalid documents.

In such view of the matter, it is found that, the contention put forth by the respondent's counsel that on the failure of the

appellants establishing the factum of the transfer or the handing over the physical possession of the suit properties to them at the time of the execution of the settlement deeds as such by itself would lead to the conclusion that the settlement deeds had not been accepted and acted upon by the appellants, as such, cannot be countenanced.

1997 ( 2) SCC 255 [ Naramadaben Maganlal Thakker Vs Pranjivandas Maganlal Thakkaer];

1996 (11) SCC 681 [Gomtibai (smt) (Dead) Through Lrs and Others Vs. Mattulal (Dead) Through Lrs];

1997-2-L.W. 543 = 1997 (2) SCC 636 [Baby Ammal Vs. Rajan Asari];

1997 (3) Law weekly 761 [Devsironmani and another Vs. Rajathangam.T and another ];

AIR 1922 Calcutta 422 [Tara Prosanna Sen Vs. Shandi Bibi and others];

2008-2-L.W. 548=2007 (13) SCC 210 [Asokan Vs. Lakshmikutty and Others ];

2012 (5) MLJ 169 [ D.Mohan Vs. The Sub Registrar];

2008 (1) MLJ 227 [N.Subramanian Vs. Thanjiammal and others ];

1997 (2) Law Weekly 197 [Selvaraju Kounder Vs. Sahadeva Kounder];

2004 - 3 -L.W. 346 =2004 (1) CTC 146 [SC] [K.K.Balakrishnan Vs. K.Kamalam and others];

2009 (5) CTC 558 [S.Ganesan Vs. Bharathi Rajan];

2011 (5) Law Weekly 553 [ 1.K.A.Shanmugam, 2. K.Sengodan Vs. Tamilalrasi and two others];

Order dated 19.01.2018 in S.A.No.1804 of 2001 [Minor Shankar Represented by his mother Nallammal Vs. Muruganandam and Manicka Servai (-Reported in 2018-1-L.W.918)];

AIR 1975 Supreme Court 1409: and

2000(3) SCC 250 [Sajjadanashin Sayed Md.B.E.EDR.(D) By Lrs Vs. Musa Dadabhai Ummer and others]: - Referred to

8. Though the defendants would claim that following Ex.B3 settlement deed, they had been in the possession and enjoyment of the suit property, the defendants had failed to establish the same by placing acceptable and reliable materials. The documents of possession projected by the defendants marked as Exs.B4 to B7 are found to have come into existence after the institution of the suit. Therefore the above said documents would not in any manner be helpful to sustain the defence version. In particular, the defendants are found to have not derived a valid title to the suit property based on Ex.B3 and when Chellammal herself ceases to have any right in respect of the suit property after Ex.A2 settlement deed, it is seen that

Exs.B2 and B3 would not in any manner confer any title in favour of the defendants in respect of the suit property.

9. The principles of law outlined in the decision of the Apex Court dated 21.04.2005 passed in Appeal (Civil ) No.6994 of 1999[ Kokilambal and others Vs. N.Raman ], relied upon by the appellants' counsel are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

10. In the light of the above discussions, the Courts below are justified in upholding the settlement deed dated 03.11.1999 marked as Ex.A2 and rejecting the deed of cancellation of dated 30.11.1999 and the settlement deed dated 07.12.1999 and the Courts below are also justified in holding that Ex.A2 settlement deed is complete in all aspects and satisfied all the requirements of law and accordingly also right in holding that thereafter Chellammal would not have any right to revoke the same. The substantial questions of law formulated in the second appeal are accordingly answered against the defendants and in favour of the plaintiff.

11. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The District and Sessions Judge, Tiruvarur.

2.The Subordinate Judge at Mannargudi.

+1cc to Mr.V.Vaithiyalingam, Advocate, S.R.No. 60770

S.A.No.323 of 2015  
and  
M.P.No.1 of 2015

VD (CO)  
GN (04/10/2018)