

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :18.04.2018

PRONOUNCED ON:27.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1572 of 2004

and

C.M.P.No.12309 of 2004

Mohanasundaram

... Appellant/Ist Defendant in
Trial Court

Vs.

1.Kantha

...Respondent/Plaintiff and in
Trial Court

2.Velmurugan

...2nd Respondent/2nd Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.19 of 2003 dated 30.01.2004 on the file of the Subordinate Judge at Cheyyar, Thiruvannamalai District confirming the judgment and decree passed in O.S.No.63 of 1999 dated 27.08.2003 on the file of the Additional District Munsif, Cheyyar, Thiruvannamalai District.

For Appellant : Mr.B.Gopala Krishnan

For RR1 : Mr.Venkatesulu
for M/s.Usha Raman

For RR2 : No appearance
Set exparte
Vide Order dated 18.04.2018

J U D G M E N T

This second appeal is directed against the judgment and decree dated 30.01.2004 passed in A.S.No.19 of 2003 on the file of the Subordinate Court, Cheyyar, Thiruvannamalai District confirming the judgment and decree dated 27.08.2003 passed in O.S.No.63 of 1999 on the file of the Additional District Munsif Court, Cheyyar.

2. The second appeal has been admitted on the following substantial questions of law.

i. Whether the plaintiff is having cause of
action for the suit?

ii. Whether the suit is maintainable without the prayer for declaration to set aside the release deed executed by the plaintiff dated 30.03.1981?

iii. Whether the Courts below gave a valid reason for not accepting the release deed dated 30.03.1981?

iv. Whether the lower Court has rightly accepted the evidence of P.Ws.1 to 4 and D.W.4?

v. Whether the lower Court has rightly held that the property mentioned in Exs.A1 to A5 is not a joint family property?

3. Considering the issues involved in this second appeal lying in a narrow compass, it is unnecessary to dwell into the facts of the case as put forth by the respective parties in detail.

4. Suffice to state that the suit has come to be laid by the plaintiff seeking partition in respect of the suit properties against the defendants. The plaintiff is the sister of the defendants. There is no dispute as regards the abovesaid relationship. Accordingly, claiming that the suit properties described in the A schedule and B schedule belonged to the mother and the father of the parties concerned and accordingly, putting forth the case that she is also entitled to a share in the suit properties as claimed and as the defendants refused to accede to her demand for the allotment of her due shares in the suit properties, according to the plaintiff, she has been necessitated to lay the suit for partition. In particular, the plaintiff has pleaded in the plaint that to her demand for effecting partition, the defendants have refused the same on the footing that she had already released her title/interest in respect of the suit properties in favour of the defendants, way back in 1981 and therefore she cannot seek any share in the suit properties and further the plaintiff has pleaded that inasmuch as the defendants had represented that they had incurred expenses in respect of the suit properties and had informed the plaintiff that they intend to mortgage the suit properties and thereby secure money for the improvement of the suit properties, believing their representation, according to the plaintiff, she had signed in the documents at the Registrar's office and only thereafter, the plaintiff had come to know that the defendants had by way of misrepresentation and deceiving her, fraudulently obtained the release deed from her, as if, she has been paid a sum of Rs.1000/- in consideration of her relinquishment of her interest in the suit properties. Thus, according to the plaintiff, the plea of the defendants that the plaintiff had

relinquished her interest in the suit properties way back in 1981 is false as aforestated.

5. Inter alia, the first defendant in particular, has contested the plaintiff's case holding that the plaintiff had relinquished her interest in the suit properties in their favour and therefore the plaintiff cannot seek any share in the suit properties and further he has also pleaded that the plaintiff's suit for partition without set aside the release deed is not maintainable and on the above score, the plaintiff's suit should fail.

6. However, the Courts below did not accept the abovesaid defence projected by the first defendant in particular for negating the plaintiff's action.

7. In this second appeal, the only point that has been focused by the first defendant, who has come forward by way of the second appeal is that the plaintiff's suit, without set asiding the release deed executed by her, for partition is not maintainable and hence the plaintiff's suit should be dismissed. The release deed in question has come to be marked as Ex.B1 dated 30.03.1981. Thus, it is found that way back in 1981 itself, the plaintiff has relinquished her interest in respect of the suit properties mentioned therein in favour of the defendants and on a perusal of the said document, it is found that, at that point of time, the father of the parties concerned namely Govindasamy was alive and it is found that Ex.B1 release deed has come to be attested by Govindasamy, who is no more. Accordingly, to establish that the plaintiff has executed the release deed knowing fully well about the nature of the document for a valid consideration, the defendants have examined the attesor of the release deed as D.W.2 and the scribe of the release deed as D.W.3. D.W.2 Velumurugan in his evidence, has deposed that the plaintiff had executed the release deed in favour of her brothers in the Registrar's office on 30.03.1981 and Ex.B1 is the release deed and that he had attested the said document and the said release deed has been executed by the plaintiff voluntarily without any compulsion or without any fraud committed on her. Further, according to him, he has witnessed the execution of the said document by the plaintiff and also the plaintiff has also witnessed his attestation and also the attestation of Govindasamy, the plaintiff's father in the said document and he has also stated that Sarangabani is the scribe of the document and thereafter, it is only the defendants, who are in possession and enjoyment of the suit properties. Despite cross examination, nothing has been culled out from the mouth of D.W.2 as regards his testimony adduced with reference to the release deed executed by the plaintiff marked as Ex.A1. Thus, it is found that from the evidence of D.W.2, Ex.A1 release deed has been executed by the plaintiff

voluntarily without any force, compulsion or fraud and thus it is found that, both D.W.2 as well as Govindasamy, the father had attested the document and accordingly, it is found that the plaintiff has relinquished her interest in the properties comprised in the release deed in favour of the defendants.

8.To buttress their case as regards the truth of release deed Ex.B1, the defendants have also examined the scribe of document, and the scribe D.W.3 also in his evidence has clearly testified that approximately 28 years ago, the plaintiff has executed the release deed in favour of the defendants and he had scribed the said document and also signed the same and the plaintiff voluntarily came forward to execute the release deed and accordingly, she had also signed in the Registrar's office and Velmurugan had attested the said document and he had scribed the release deed as requested by the parties concerned and he has also put his signature in the document and it is found that D.W.3 has validly stood the test of cross examination made on him by the plaintiff and despite cross examination, nothing has been elucidated from him to disbelieve his version with reference to the execution of the release deed marked as Ex.B1 by the plaintiff. Thus, from the evidence of D.W.3 also, it is found that Ex.B1 release deed has been executed by the plaintiff suo motu without any compulsion or force and it is thus found that Ex.B1 release deed is true, valid and binding upon the plaintiff. The Courts below have not considered the evidence of D.Ws.2 and 3 as regards the genuineness of Ex.B1 release deed and on the other hand, on the premise that the plaintiff being a family member and entitled to a share in the suit properties, accordingly on that basis, accepted the claim of share in the suit properties as put forth by the plaintiff. That apart, as seen from the evidence of the plaintiff, examined as P.W.1, it is found that during the course of cross examination she has testified that the defendants had requested her to put her signature for obtaining agricultural loan and accordingly she had put her signatures and the defendants had obtained her signatures by deceiving her and further also, testified that she had put her signatures in the Registrar's office and she knew to read and write and at the Registrar's Office, the contents of the documents were read over to her by the Registrar, but the signatures have been obtained from her fraudulently and further she has also admitted that her father was also present at the Registrar's office and accordingly, it is found that the plaintiff has admitted the execution of the document at the Registrar's office and the registration of the document and also the contents of the document executed by her at the Registrar's office. Such being the evidence of the plaintiff coupled with the evidence of D.Ws.2 and 3 and furthermore, when it is found that the father Govindasamy was also present at the time of the execution of the registration of the release deed Ex.B1 and he had also attested the document, in such view of the matter, the

case of the plaintiff that the defendants have deceived her and fraudulently obtained her signatures in the release deed by misrepresenting that the same is only a document intended to secure agricultural loan as such cannot be accepted in any manner. On the other hand, on a reading of the abovesaid evidence put forth in the matter, it is found that the plaintiff has voluntarily on her own motion executed the release deed in favour of the defendants in the presence of the father Govindasamy and accordingly, it is seen that Ex.B1 release deed is a true and valid document binding upon the plaintiff.

9. There is no material placed on the part of the plaintiff's that she had been in joint possession and enjoyment of the suit properties, after the execution of Ex.B1 release deed in any manner. With reference to her alleged joint possession and enjoyment of the suit properties, as nil material is placed, thus it is found that the plaintiff has failed to establish that Ex.B1 release deed has been brought about by the defendants by way of misrepresentation, force and compulsion and on the other hand, as seen from the above discussions, it is noted that Ex.B1 release deed has been voluntarily executed by the plaintiff knowing the contents of the same after receiving the consideration as recited therein and in such view of the matter, it is found that Ex.B1 release deed is true, valid and binding upon the plaintiff.

10. In the light of the above position, as rightly put forth, the suit laid by the plaintiff seeking partition of her share in the suit properties without seeking to set aside the release deed executed by her in favour of the defendants as per law is found to be not maintainable. Only after setasiding the release deed executed by her, the plaintiff, if at all, is found eligible, would be entitled to claim her share in the properties concerned.

11. In the light of the above position, the partition suit laid by the plaintiff is not maintainable without the plaintiff setasiding the release deed executed by her in favour of the defendants dated 30.03.1981 marked as Ex.B1. The Courts below without assigning any valid reason and without considering the evidence of the plaintiff examined as P.W.1 as well as the evidence of D.Ws.1 to 3 in the right perspective, has erred in not accepting the release deed marked as Ex.B1 and accordingly, it is found that the judgments and decrees of the Courts below upholding the plaintiff's suit for partition are based on perverse and illogical findings and conclusions cannot be allowed to sustain any further. It is found that the plaintiff has no cause of action to lay the suit for partition straightaway without setasiding the release deed marked as Ex.B1. The substantial questions of law 1 to 4 formulated in the second appeal are accordingly answered against the plaintiff and

in favour of the defendants. In view of the abovesaid reasons, in my considered opinion, the substantial question of law No.5 formulated in the matter, does not require to be answered.

12.The plaintiff's counsel in support of his contentions, placed reliance upon the decisions reported in AIR 1977 SC 1823 Sri Chand and another Vs. Om Prakash and others] and 1997 (3) Law weekly 333 [P.R.Munuswamy Naidu Vs. V.Venkatesan and others]. The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

13.For the reasons afore stated, judgment and decree dated 30.01.2004 passed in A.S.No.19 of 2003 on the file of the Subordinate Court Cheyyar, Thiruvannamalai District confirming the judgment and decree dated 27.08.2003 passed in O.S.No.63 of 1999 on the file of the Additional District Munsif Court, Cheyyar are set aside and the suit laid by the plaintiff in O.S.No.63 of 1999 is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Subordinate Court,
Cheyyar,
Thiruvannamalai District.

2.The Additional District Munsif,
Additional District Munsif Court,
Cheyyar,
Thiruvannamalai District

3.The Section Officer,
VR Section,
High Court.

+1 cc to Mr.B.Gopalakrishnan Advocate sr 31553

S.A.No.1572 of 2004

kgk(co)
aa20/06/2018