

In the High Court of Judicature at Madras

Dated: 20.11.2018

Coram

The Honourable Dr.JUSTICE ANITA SUMANTH

C.S. No.1015 of 2008

1.Mrs.Karuna Sekar

2.Mrs.Lakshmi @ Bagyalakshmi (Deceased)

3.Mrs.R.M.Saradha

4.Mrs.E.Vanarani

5.Mrs.V.Bhanumathy

6.Mrs.H.Bhuvaneswari

7.Mr.C.Manohar

8.Mrs.C.Hemavathi

9.Mr.Srinivasan

10.Mrs.Sindhuja

11.Mr.Pardeepkumar

..... Plaintiffs

Vs.

Mrs.Vasantha Ramakrishnan

.... Defendant

P R A Y E R: PLAINT filed under Order VII Rule 1 of the C.P.C. read with Order XXIV Rule I of the O.S.Rules praying as follows:-

- i) The property of the said family may be divided among the parties hereto with share specified in para 7 thereof;
- ii) A Commissioner may be appointed to divide the immovable property of the family of Late Gopal by metes and bounds;
- (iii) A Permanent Injunction may be granted restraining the defendant from alienating the entire property of Schedule I;

(iv) That the costs of all the parties to the suit may be paid out of the property of the family or that the defendant may be ordered to pay the costs of the suit.

For Plaintiffs : Mr.A.Mohamed Mushtak

For Defendant : Mr.Suresh for
Mr.Shivakumar

J U D G M E N T

The present suit has been filed seeking a partition of the property bearing No.97, (Plot No.29, Iyappa Nagar Layout) Kaliamman Koil Street, Virugambakkam, Chennai – 600 092(in short 'suit property') amongst the 8 plaintiffs (in the original plaint) and the sole defendant into 1/9th shares of an amount of Rs.14,44,444/- per head, for the appointment of a Commissioner to divide the suit property belonging to the plaintiffs & defendant family by metes and bounds, for a permanent injunction restraining the defendant from alienating the suit property and for costs.

2. The averments of Mr.A.Mohamed Mushtak, learned counsel appearing for the plaintiffs is that the suit property belonged absolutely to their father, one C.Gopal, who had purchased the same under sale deed dated 11.10.1971 registered as Document No.3286 of 1971. C.Gopal had passed away on 13.5.1980 leaving behind Class-I legal heirs being his widow and nine (9) children. Eight of the children are plaintiffs while one is arrayed as the defendant in suit.

3. According to the plaintiffs, their mother had passed away on 19.01.2007 upon which the suit property stood inherited equally by all ten of them. The plaintiffs and defendant are thus equal co-owners of the suit property. The property is presently in the ownership of the 2nd plaintiff and is valued at a sum of Rs.1,30,00,000/- The plaintiffs allege that the defendant had sought to alienate the property with the intention of defeating the interest and title of the plaintiffs. The plaintiffs had thus sought partition of the suit property in August 2008 itself. The defendant, however, categorically rejected the proposal for partition, and the plaintiffs are thus before this Court seeking the prayers as aforesaid.

4. Sale deed dated 11.10.1971, under which the property stood transferred to C.Gopal, Death Certificate of C.Gopal dated 19.01.2007 and encumbrance certificate for a period from 01.01.1969 to 31.05.1982 dated 08.08.2008 have been filed as plaint documents.

5. A written statement has been filed by the defendant wherein all the averments in the suit have been absolutely denied.

6. Mr.Shivakumar, learned counsel appearing for the defendant would submit that the land in question had been purchased by the defendant's father under a sale deed dated 11.10.1971 for a total sale consideration of Rs.2,500/- from one M/s.R.M.C.Traders. An initial payment of Rs.500/- had been made to the vendor on 22.12.1970. Since her father had been hard-pressed for the balance consideration, it was the

defendant who had pledged her jewels to a financier and given him the funds to make payment of the balance sale consideration of Rs.2,000/-.

7. According to the defendant, her father had promised to give her jewels for her wedding, which he was unable to purchase. Hence he offered her the land in question instead of the jewels. A gift settlement deed dated 08.08.1973 had been executed registered as document No.2884 of 1973 in the office of the Sub Registrar, Kodambakkam as per which land in question stood settled absolutely in favour of the defendant. There was no question of partition of the same, since it did not belong to the family.

8. Pursuant to the said settlement the defendant and her husband had also put up construction on the land as per planning permit dated 25.03.1978 issued by the MMDA. The defendant would point out that in fact it was the 7th plaintiff, one C.Manohar, the defendants' brother, who had signed the Gift Settlement Deed as a witness as well as identified her signature before the Sub-Registrar at the time of registration of the deed. Her siblings were thus fully aware of the fact that the property had been settled upon her and the claim for partition is thus, according to her, an after thought, wholly bereft of any merit whatsoever.

9. Apart from the construction effected in 1978, in 1994, she had borrowed a sum of Rs.50,000/- from Chennai Muthialpet Benefit Fund Limited by mortgaging the suit property under a deed of mortgage dated 25.04.1994 for putting up additional construction.

10. Patta for the suit property bearing No.644 has been issued in the name of the defendant by the Tahsildar, Egmore, Nungambakkam Taluk in the year 1982. The suit property has also been assessed to Property as well as Water and Sewerage Tax, which she has been remitting regularly. The defendant has settled ½ each undivided share in the suit property in favour of her son and daughter under two settlement deeds both dated 08.10.2003 registered in the office of the Sub Registrar, Virugambakkam.

11. As far as possession is concerned, the defendant would state that she was in absolute possession of the suit property from 1973 till the demise of her husband on 09.07.2003. Thereafter, she had shifted to Hyderabad to be with her son. In October 2005, the 2nd plaintiff had taken the property on lease from her. A lease advance of a sum of Rs.25,000/- had been paid with a rental of Rs.2,500/- per month. Since the second plaintiff had incurred some expenditures for repair and maintenance of the property, certain deductions were made from the rent with the permission of the defendant and the balance remitted in the defendants' bank account in Chennai till October 2006. From November 2006 the entire sum of Rs.2,500/- was being deposited towards rent in her son's bank account in Chennai.

12. Thus, according to the defendant, the fact that she is the absolute owner of the suit property, had not been disputed by the plaintiffs at any juncture, since they are fully aware of her title to the

same. Since the 2nd plaintiff had subsequently, under pressure from other plaintiffs, refused to vacate the suit premises, also not paying rent from June 2008, RCOP.No.604 of 2009 has been instituted by the defendant before the XV Small Causes Court, Chennai. In the light of the aforesaid averments, the plaintiffs would submit that she and her two children are the absolute owners of the suit property and the claim made in the suit is baseless and liable to be rejected in full.

13. The defendant has relied upon the judgments of the Supreme Court in *Prem Singh and Others Vs. Birbal and others* (2006 (5) SCC 353) and *Shub Karan Bubna Vs.Sitha Saran Bubna and others* (2009 (9) SCC 689).

14. The proposition relied upon in the above cases is that once an instrument is registered, it is presumed in law to have been validly executed and the onus of rebutting such a presumption would be on the person who questions such a document. Such challenge would have to be based on evidence led to establish that the document was not validly executed. In the present case the settlement deed had been registered as early as in 1973 and has never been questioned.

15. In response, the sole argument advanced by the plaintiffs is that the settlement was itself for consideration and not borne out of natural love and affection which vitiates the factum of settlement itself. According to the plaintiffs, the purchase of the property had been made possible only upon the receipt of the sum of Rs.2000/- from the

defendant. It was only towards repayment of the amount that the suit property was transferred to the defendant. The property was thus neither gifted nor settled upon the defendant as she would claim and continues to be the absolute property of the father to which all his children are equally entitled.

16. The following issues and additional issue have been framed in the course of trial:

1. *Whether each one of the plaintiffs is entitled to one-ninth share in the suit property?*
2. *Whether the defendant became the absolute owner of the suit property by virtue of a gift settlement deed dated 08.08.1973 registered as Document No.2884 /1973 in the office of the Sub-Registrar, Kodambakkam?*
3. *Whether the suit is barred by limitation?*
4. *Whether the second plaintiff became a tenant under the defendant in respect of the suit property and was playing rent to the defendant as claimed by the defendant?*
5. *Whether the plaintiffs are entitled to the relief of partition?*
6. *To what relief the plaintiffs are entitled?*

Additional Issues:

- (i) *Whether the newly added plaintiffs 9 to 11 in the above suit are entitled for the prayers in that suit*
2. *Whether the suit is liable to be dismissed for non-joinder of necessary parties.*

17. The plaintiffs examined P.W.1, the 8th plaintiff who took the

box on behalf of the plaintiffs. No exhibits have been marked.

18. The defendant deposed as D.W.1. The following documents have been marked as exhibits.

ExD1- Certified copy of the sale deed dated 11.10.1971 registered as document No.3286/1971.

Ex.D2- Certified copy of the gift settlement deed dated 08.08.1973.

Ex.D3-Planning permission dated 25.03.1978.

Ex.D4.- Patta dated 30.12.1982.

Ex.D5.-Original Patta of the suit schedule property standing in the name of the defendant along with the photocopy issued on 30.12.1982.

Ex.D6(Series 2Nos).-Original Property Tax demand card for the suit schedule property standing in the name of the defendant for the period between 1991 to 2001 alongwith the certified copy issued by the Small Causes Court, Madras.

Ex.D7. Original Water Tax receipt for the suit schedule property along with the certified copy issued by the Small Causes Court.

Ex.D8- Original E.B. Card of suit schedule property standing in the name of the defendant along with the certified copy issued by the Small Causes Courts, Madras.

Ex.D9. Original Settlement deed dated. 08.10.2003 executed by the defendant in favour of her daughter S.SasiRekha and registered as Document 5371 of 2003 before the Sub-Registrar Virugambakkam, along with certified copy issued by the Small Causes Courts, Madras.

Ex.D10- Original Settlement deed dated 08.10.2003 executed by the defendant in favour of her son Y.Ravishankar and registered as document No.5370 of 2003 before the Sub-registrar Virukambakkam, along with certified copy issued by the Small Causes Court, Madras.

Ex.D11- Original encumbrance certificate for the suit property for the period 01.01.1969 to 31.05.1982.

Ex.D12(1) Certified copy of the Bank Pass Book standing in the name of the defendant in SBI and Ex.D12 is the certified copy of the MCC Bank issued by the small Causes Court, Madras.

Ex.D13- Certified copy of order dated 02.07.2009 in OA NO.1196 of 2008 and A.No.667 of 2009 in C.S.No.1015 of 2008 of this Court, issued by the Small Causes Court, Madras.

Ex.D14.-The certified copy of the order dated 05.11.2014 in CRP(NPD)No.2878 of 2012 and M.P.01 of 2012.

19. Heard learned counsel. The issues raised for consideration are answered below; Issue No.2 being answered first.

20. The suit property has admittedly been purchased by C.Gopal, the father of the plaintiffs and defendant before me as early as on 11.09.1971 (Ex.D1). Thereafter, a gift settlement deed, dated 08.08.1973 (Ex.D2) duly registered in the Office of the Sub-Registrar was executed gifting and settling the property upon the defendant. The narration in the settlement deed dated 08.08.1973 (unnumbered paragraph at Page No.2) makes it clear that the Donor C.Gopal, has settled the property out of natural love and affection upon the Donee, the defendant herein, freely and voluntarily.

21. The judgment of the Supreme Courts in the cases of *Prem Singh and Shub Karan Bubna* (supra) settles the proposition that a registered document is to be presumed to be a valid document unless proven otherwise. In the present case, nothing has been brought on record by the plaintiffs to disprove the registered gift settlement deed.

22. The only argument raised is to the effect that the defendant had

supported the purchase of the property by her father and the gift

settlement deed had been executed solely as a measure of returning the payment and not only out of love and affection. This is clearly unacceptable as the settlement deed itself makes it clear that the gift and settlement was out of love and affection. Moreover, the settlement was effected in the year 1973 and the elapse of time between then and now when the plaintiffs were fully aware of the ownership of the suit property by the defendant indicates total acquiescence of the position by them. The document of gift settlement is thus beyond question. In these circumstances, this argument is rejected. Issue No.2 is answered in favour of the defendant to state that she is the owner of the suit property as conveyed to her under the gift settlement deed dated 08.08.1973.

23. As a consequence of my answer to Issue No.2 above, Issue No.1 is answered against the plaintiffs. Since the defendant has been held to be the absolute owner of the suit property, the plaintiffs are not entitled to any share in the suit property. The judgment of the Supreme Court in the case of *Shub Karan Bubna* (supra) is relevant. The Bench, discussing the question of partition, notices that a Partition is a re-distribution or adjustment of pre-existing rights among co-owners/coparceners resulting in a division of lands or other properties jointly held by them into different portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership of the property would stand terminated and the respective shares would vest in the individuals severally. Thus, a partition of a property could only

be effected among those who have a pre existing share or interest in a property. If a person does not have any right in the property at all, such a person cannot be a party to a partition. The rationale of this judgment applies on all fours in the present case, particularly in the light of my conclusion on Issue No.2 above. In conclusion, Issue No.1 is held against the plaintiff.

24. Coming to issue No.3, it is seen that the gift settlement deed has been executed as early as in 1973 and, in fact, as rightly pointed out by the defendant, the 7th plaintiff has witnessed the settlement deed and participated in the process of registration of the document. It therefore, does not stand to reason for the plaintiffs to state that they were wholly unaware of the execution of the deed. There is thus, no justification for the plaintiffs to have approached this Court only in the year 2008. The fact that one of the plaintiffs was a lessee of the property and was remitting rent to the defendant and her son reveals, to my eyes, not only knowledge of the ownership of the suit property by the defendant but also acceptance of the same. If at all, a suit for partition ought to have been filed within three years from the time when the plaintiffs had come to know about the execution of the settlement deed and the registration thereof, which is 1973, being 1976. Not only has this not been done in the present case, but no prayer has been sought as against the settlement deed itself. The suit prayers seek only a partition of the property without

challenging the gift settlement deed itself which is impermissible in the light of the deed itself. Issue No.3 is answered against the plaintiffs.

25. Coming to Issue No.4, the pleadings and Exhibits establish the position that the 2nd plaintiff was a tenant in the suit property under the defendant and was remitting rents to her initially, and later on to her son. This position has been established beyond doubt vide Ex.D12, the Defendants' Pass Book in the Mercantile Credit Co-operative Bank, that evidences the receipt of lease rentals from the 2nd plaintiff for the period 2004 to 2006. Issue No.4 is decided to the effect that the 2nd plaintiff was a tenant under the defendant and was paying rent to the defendant in respect of the suit property.

26. Plaintiffs 9 to 11 are legal heirs of the deceased 2nd plaintiff and have been impleaded as plaintiffs on 31.10.2012. As such, the conclusions as above bind plaintiffs 9-11 as well.

27. No submissions have advanced with regard to additional issue No.2 and it has not been brought to my notice that there are any other parties who would be necessary parties in suit. Additional issue No.2 is also rejected.

28. In fine, I find that there is no merit in this suit and the same is dismissed. The plaintiffs are not entitled to any of the reliefs sought.

29. The suit is dismissed though without costs.

20.11.2018

Rkp

Dr.ANITA SUMANTH,J.

rkp



C.S. No.1015 of 2008

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