



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
S.A.(MD)No.39 of 2018

WEB COPY

Rukmaniammal

... Appellant/2nd Respondent/
2nd Defendant

Vs.

1. T.V.Viswanathan
2. T.V.Sivanath
3. T.V.Saradha

... Respondents 1 to 3/Appellants 1 to 3
Plaintiffs 1 to 3

4. M.K.Nagasamy

... 4th Respondent/1st Respondent/
1st Defendant

Prayer: Second Appeal is filed under Section 100 of C.P.C., against the Judgment and Decree passed in A.S.No.129 of 2009, dated 12.02.2013 on the file of the learned Subordinate Judge, Melur(Camp Court), against the Judgment and Decree passed in O.S.No.403 of 2004, dated 30.04.2009 on the file of the learned District Munsif, Melur.

For Appellant : Mr.S.Pon Senthil Kumaran
For Respondents : Mr.M.S.Sureshkumar

JUDGMENT

This Second Appeal is filed against the Judgment and Decree passed in A.S.No.129 of 2009, dated 12.02.2013 on the file of the learned Subordinate Judge, Melur(Camp Court), against the Judgment and Decree passed in O.S.No.403 of 2004, dated 30.04.2009 on the file of the learned District Munsif, Melur.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

3. The second defendant in the Suit in O.S.No.403 of 2004 on the file of the District Munsif Court, Melur, is the appellant in the Second Appeal.

4. Originally, the Suit in O.S.No.403 of 2004 on the file of the District Munsif Court, Melur, was filed by the respondents 1 to 3 herein, for declaration that the suit property belongs to plaintiffs 1 and 2 and for recovery of possession from the second defendant/appellant herein and for other consequential reliefs.

5. The case of the plaintiffs in the Suit is that the suit property originally belonged to one M.A.N.Kuppusamy Iyer, father of the third plaintiff and first defendant and maternal grandfather of plaintiffs 1 and 2. It is stated that the said Kuppusamy Iyer during his lifetime executed a registered Will, dated 23.04.1975 and that



as per the said Will, the suit property was given to the wife of the said Kuppusamy Iyer, namely, Rajammal, for life and absolute right in favour of the third plaintiff.

6. It is further stated in the plaint that the said Kuppusamy Iyer died on 30.06.1989 and the Will, dated 23.04.1975 came into force and it was given effect to. Hence, as per the Will, it is stated that the third plaintiff got the suit property. It is also the case of the plaintiffs that the third plaintiff later executed a registered Settlement Deed, dated 27.03.1998 in favour of plaintiffs 1 and 2 in respect of the suit property and other properties.

7. It is stated further in the plaint that the first defendant who has no right over the suit property, has sold the same to the second defendant by a registered Sale Deed on 04.11.1990. It is stated that the Suit was filed immediately after knowing that the first defendant has sold the property in favour of the second defendant. It is further stated that the second defendant on the strength of the registered Settlement Deed in his favour, took physical possession of the suit property illegally. Even though it is admitted by the plaintiffs that the second defendant is in possession of the suit property as a trespasser, it is stated that defendants 1 and 2 have no right over the suit property.

8. In the written statement filed by the first defendant, it is stated that the suit property was the ancestral property of the first defendant. It is the case of the first defendant that in a partition that took place among the co-parceners, namely, the first defendant, first defendant's brother and their father M.A.N.Kuppusamy Iyer, the suit property was allotted in favour of the first defendant's father Kuppusamy Iyer. The execution of the Will by the said Kuppusamy Iyer, dated 23.04.1975 is admitted in the written statement of the first defendant. It is also admitted in the written statement that the third plaintiff is the absolute owner of the suit property. However, the first defendant came forward with a different version. It is stated in the written statement that the first defendant was employed in Glaxco factory, at Bombay and that the third plaintiff along with her mother Rajammal negotiated for the sale of the suit property to the second defendant along with 24 cents of land belonged to the first defendant. It was stated further that only at the request of the third plaintiff and her mother Rajammal, the first defendant was compelled to execute the Sale Deed in favour of the second defendant, as he was the only male member of the family. It is also stated that the entire sale proceeds, not only for the suit property but also for the 24 cents of land belonged to the first defendant was received by the third plaintiff alone. It is further contended by the first defendant that the Sale Deed executed by him in favour of the second defendant was attested by plaintiffs 2 and 3 and the younger son of the third plaintiff and that therefore, the plaintiffs have full knowledge of the Sale Deed executed by the first defendant.



9. Before the trial Court, the first defendant further contended that the Suit is barred by limitation and the prayer for declaration of title is not maintainable without seeking for cancellation of the Sale Deed, dated 04.11.1990 executed by the first defendant in favour of the second defendant. It is also contended that the Suit ought to have been filed within three years from the date of the Sale Deed under Ex.A.3. Since the main relief of declaration is barred by limitation, it is also contended by the first defendant that consequential relief of recovery of possession is also barred.

10. The trial Court, after framing necessary issues, held that the Suit is barred by limitation and that the Suit for declaration without praying for cancellation or for setting aside the Sale Deed, dated 04.11.1990 is not maintainable. Further, the trial Court held that the third plaintiff had full knowledge of the Sale Deed, dated 04.11.1990 (Ex.A.3) by signing the said document as a witness and dismissed the Suit holding that the plaintiffs are not entitled to the relief of declaration and recovery of possession as prayed for. Aggrieved by the same, the plaintiffs preferred an Appeal in A.S.No.129 of 2009 on the file of the learned Subordinate Judge, Melur (Camp Court).

11. The lower Appellate Court, on appreciation of evidence and pleadings, allowed the Appeal and set aside the Judgment and Decree of the trial Court in O.S.No.403 of 2004, dated 30.04.2009. Aggrieved by the Judgment and Decree of the lower Appellate Court, reversing the Judgment and Decree of the trial Court, the above Second Appeal has been filed by the second defendant. The lower Appellate Court considered the pleadings and evidence and reversed the Judgment of the trial Court accepting the evidence on behalf of the plaintiffs. The lower Appellate Court specifically held that the Will executed by one M.A.N.Kuppusamy Iyer, marked as Ex.A.1 is the true and last Will of the testator. The lower Appellate Court also found that the plaintiffs have proved the due execution of the Will. The lower Appellate Court during the course of discussion found that the document under Ex.B.1 was executed by the first defendant in favour of the second defendant by stating that the property conferred in the document is an ancestral property. On the question of limitation, the lower Appellate Court rightly held that the plaintiffs are not parties to the document under Ex.B.1 and that therefore they need not file the Suit within three years.

12. In the memorandum of the Second Appeal, the learned counsel for the appellant has raised the following substantial questions of law:-

"(1) Whether the first Appellate Court has erred by allowing the Suit, when the same is barred by limitation?"

(2) Whether the Suit filed by the plaintiff without praying to set aside Ex.B.1



is maintainable especially when plaintiffs 2 and 3 were privy to Ex.B.1?

(3) Whether the First Appellate Court is right in granting the relief on the basis of Ex.A.2 when the third plaintiff has no right to execute the same?

(4) Whether the Suit decreed by the First Appellate Court is correct when the second plaintiff having attested Ex.B.1 is entitled to file the Suit?

(5) Whether the second Appellate Court is right by holding that Article 58 alone applicable to decide the question of limitation?

(6) Whether the First Appellate Court is erred by not appreciating the evidence of P.W.3 and D.W.4 in proper perspective?"

13. Learned counsel for the appellant has not argued as to how the Suit is barred by limitation, but conceded to the position that the Suit for recovery of possession is not barred by limitation. The lower Appellate Court also found that the Suit is maintainable even without a prayer to set aside the document of sale. It is not in dispute that the second plaintiff had attested Ex.B.1. Therefore, it is submitted by the learned counsel for the appellant that the person who sign the document as a witness is estopped from denying its contents as he is bound by the recitals as he is a consenting party. The main point on which this Appeal is argued is that the plaintiffs are bound by the recitals of the documents under Ex.B.1, as they have signed the document as attestors.

14. Thus, the main issue that arise for consideration in this Appeal is whether the plaintiffs are estopped from denying the contents of the document Ex.B.1, wherein the property has been shown as the property of the first defendant and they have attested the document. Time and again, this Court has considered the effect of attestation and has held that the person who attested the document is bound by the recitals therein only if he signs the document as an attestor after knowing the contents thereof. In this case, there is no direct evidence to show that the plaintiffs had knowledge about the contents of the document under Ex.B.1, where they have signed as attestors.

15. The learned counsel for the appellant relied upon the Judgment of this Court in the case of *Ramasamy Gounder V. Anantapadmanabha Iyer*, reported in (1971) 1 M.L.J 392, wherein this Court has held that where a person, having a tangible interest in the property affected by the deed, attests that deed, his attestation should be taken as proof of his consent to and the knowledge of the correctness of the recitals in the deed. The Judgment cited by the learned counsel for the appellant is not



accepted as the correct proposition of law later. Even in the Judgment relied upon by the learned counsel for the appellant, the Judgment of this Court and other High Courts are referred to, where the Courts have accepted the view that unless a person against whom the plea of estoppel is raised, had knowledge of the contents of the document, the document cannot be put against the attesor as if he was the consenting party to the transaction. After considering the Judgment reported in (1971) 1 M.L.J. 392, the Hon'ble Division Bench of this Court in the case of K.A.Selvanachi V. Dr.S.R.Sekar, reported in 2003 (1) C.T.C. 745, has held as follows:-

" 9. The learned single Judge placed reliance on the decision of a single Judge of this Court, Ismail, J., as he then was, in the case of Ramasamy Gounder V. Anantapadmanabha Iyer, 1971 (1) M.L.J. 392, wherein the learned Judge referred to decisions rendered by learned single Judges in two old cases viz., Sathasiva Iyer, J. in Kandasamy V. Nagalinga, 1912 I.L.R. 36 Mad.564 and Narayana V. Rama, 1915 I.L.R. 38 Mad., 396 and that of Kumaraswami Sastri, J., in the case of Nayakammal V. Munnaswamy Mudaliar, 1924 (20) L.W.222. Sathasiva Iyer, J. In the case of Kandasamy referred to the 'ordinary course of conduct of Indians in this presidency' and held that attestation must be treated prima facie as a representation by the attesor that the title and other facts relating to title recited in the document are true and that they will not be disputed. The learned Judge also observed that in his long experience as judicial officer, if the attesor has an existing interest in the property dealt with in the document attestation was always made in order to bind him as to the correctness of the recitals. Kumaraswami Sastri, J., in the case of Nayakammal, observed that 'it is the commonest thing in this country for attestations to be obtained from persons having a possible interest in the property with the object of binding them later on' and that 'I have rarely come across a case where a person having an interest present or contingent has attested the deed without enquiring into its contents'.

10. Those observations made by the learned Judges cannot be treated as having laid down a proposition of law that all attestors of all documents must be imputed with knowledge of the contents thereof and even when such contents are adverse to the interest of the attestors so that the attestors are estopped from



WEB COPY

questioning the same solely by reason of the fact of their having attested the document. Observations based on personal perceptions and experience of individual Judges cannot be elevated to the status of Rules of law. Custom and usage are always a matter of evidence and strict proof.

11. Those observations are also clearly inconsistent with the law that had been laid down by the Privy Council in the case of Pandurang Krishnaji and cannot be regarded as having laid down such inconsistent law. Moreover, whatever may have been the practice in the years 1912 or 1924, the same cannot be regarded as the practice even eighty years later, when the awareness of the requirements of law is far greater than what it was eighty years ago. Further, on principle it is not possible to hold that attestation of a signature is to be deemed as acceptance of the contents of the document which has been executed by the signatory whose signature is attested by the attestor. There should be something more than mere attestation to impute such knowledge of the contents so as to bind the attestors.

12. We have already noticed that in this case there is no material at all to show that the mother who attested the partition deed was aware of the contents thereof or had accepted the same. When she was examined as D.W.1 in this case, she specifically stated that she had no knowledge of the contents of the partition deed and that she came to know of it only when the suit was filed in the year 1984."

16. Having regard to Section 3 of Transfer of Properties Act, the attestation of the document does not entitle any of the parties to the document or any one claiming under them to record attestation as acceptance on the part of the attestor that the contents of the documents are true and that such attestors have knowledge of the same unless there is evidence before the Court that the attestors had knowledge of the contents and accepted the same as correct. In this case, though it was argued by the learned counsel for the appellant that such knowledge of consent can be implied, no material circumstances or documentary evidence is produced before the lower Court or before this Court to imply the plaintiffs' knowledge or consent about the contents of the documents.

17. This Court has already held that in a Suit for declaration and recovery of possession, the limitation is 12 years. It has been



repeatedly held by this Court that in the Suit for declaration and recovery of possession, the longer period of 12 years for consequential relief should be taken as the period of limitation. Hence, the Suit is not barred by limitation in this case.

18. As pointed out earlier, the document under Ex.B.1 is only a Sale Deed executed by the first defendant in favour of the second defendant. Though some of the plaintiffs have signed the document as attestors, it is already held that the recitals in the said document are not proved to be known to the plaintiffs. In such circumstances, it cannot be taken that the plaintiffs are parties to the transaction or they have given consent to the transaction. Hence, the document under Ex.B.1 is not binding on the plaintiffs.

19. It is admitted even in the written statement that the third plaintiff is the owner of the property by virtue of the Will and settlement Deed. The ownership of the property cannot be decided merely by accepting the plea of estoppel. The conduct of the person may give raise to a situation to rely upon the same as an evidence. Mere conduct alone will not create or extinguish the right of the party. Since the attestation in this case is without the knowledge of the contents of the document, this Court is unable to accept the submission of the learned counsel for the appellant in the present case. It is seen that the lower Appellate Court has considered the pleadings in the light of the evidence both oral and documentary. This Court does not find any infirmity or irregularity in the Judgment and Decree of the lower Appellate Court. The Judgment and Decree of the lower Appellate Court is well founded and hence, there can be no interference. Reiterating the settled position and the scope of Section 100, C.P.C., this Court has no other option, but to dismiss this Appeal.

20. As a result, this Second Appeal is dismissed and the Judgment and Decree passed in A.S.No.129 of 2009, dated 12.02.2013 on the file of the learned Subordinate Judge, Melur(Camp Court), reversing the Judgment and Decree passed in O.S.No.403 of 2004, dated 30.04.2009 on the file of the learned District Munsif, Melur, is affirmed. The Suit in O.S.No.403 of 2004 on the file of the District Munsif Court, Melur, stands decreed as prayed for. However, no order as to costs.

Sd/
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

ENCL:Xerox copy of Schedule of Property

To

1. The Subordinate Judge,
Melur(Camp Court), Madurai.



2. The District Munsif,
Melur.

3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1cc to Mr.M.S.SURESHKUMAR, Advocate, SR.No. 51496

+1cc to Mr.S.PON SENTHILKUMARAN, Advocate, SR.No.51571

S.A. (MD) No.39 of 2018
27.02.2018

PMU

KK/SKN RSK/18.04.2018/SAR-3/8P-7C