

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1303 of 1996
and CMP.No.12754 of 1996

Saroja Bai Ammal

... Appellant/Defendant

Vs.

1.Suguna Bai Ammal (Died)

... Respondent/Plaintiff

2.Ajitha Dass

3.Dhanya Kumar

4.Sunantha

5.Ramdass

6.Seetha Lakshmi

7.Chitra

...Proposed Respondents 2 to 7

(RR2 to 7 brought as LRs of the Deceased
Sole Respondent vide order of Court
dated 01/07/2014 in Crl.MP.Nos.669 and 670
of 2010 in S.A.No.1303 of 1996)

PRAYER: This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No. 94 of 1994 on the file of the learned District Judge, Vilupuram, dated 13.02.1995 reversing the judgment and decree made in O.S.No.72 of 1985 on the file of the District Munsif Court, Gingee, dated 24.11.1987.

For Appellant

: Ms.R.Abirami

for Mr.V.Raghavachari

For R2 to R7

: Mr.S.Balasubramanam

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JUDGMENT

The defeated defendant is the appellant herein. Challenging the Judgment and Decree made in A.S.No. 94 of 1994, on the file of the learned District Judge, Villupuram, the defendant has come up with the present appeal.

2. The respondent herein/plaintiff has filed suit in O.S.No.72 of 1985, on the file of the District Munsif Court,

Gingee, for relief of declaration of her title to the suit schedule property and for permanent injunction. The plaint proceeds on the basis that one Gnanamathi Ammal has executed the Settlement Deed under Ex.A.2 on 18.03.1981, settling the suit schedule property in her favour and the settlement was accepted by the respondent herein/plaintiff and she was put in possession of the property and also effected mutation of name in the revenue records as per Exs.A.3 to A.9. It is her further case that in respect of the husband of the appellant/ defendant, the very same donor Gnanamathi Ammal had also executed Will, bequeathing some other property as well.

3. The appellant herein/defendant has filed written statement denying the title and possession of the respondent herein/plaintiff, inter alia contended that the Settlement Deed in favour of the respondent herein/plaintiff has been duly cancelled on 19.05.1984, vide cancellation of Settlement Deed under Ex.B1 and thereafter, in pursuant to the Agreement of Sale already entered between Gnanamathi Ammal and the defendant under Ex.B3/Agreement of Sale, the said Gnanamathi Ammal had executed a Sale Deed in favour of the appellant herein under Ex.B2 and filed the revenue records, namely Exs.B14 to B19.

4. On consideration of both oral and documentary evidence, the Trial Court has held that the cancellation of the Settlement Deed is valid. In other words, the Settlement Deed under Ex.A2 was duly cancelled under Ex.B1 and also held that the Ex.B2/Sale Deed by the Gnanamathi Ammal in favour of the appellant viz., Saroja Bai Ammal is valid and accordingly, dismissed the suit.

5. Aggrieved against the said Judgment and Decree passed by the District Munsif, Gingee, in O.S.No. 72 of 1985, dated 24.11.1987, the defeated unsuccessful plaintiff filed A.S.No.94 of 1994, before the learned District Judge, Villupuram. It appears from the records that the appeal was originally filed before the Sub Court, Gingee in A.S.No. 100 of 1987 and subsequently transferred to the District Court and renumbered as A.S.No.94 of 1994. Pending appeal as against interlocutory applications, CMA was filed before the High Court in CMA.No.452 of 1988 and the matter was remitted back to the Lower Appellate Court with a direction to be tried by the District Court at Villupuram, wherein they were filed interlocutory application in I.A.No. 207 of 1994 to mark certain additional documents at the Appellate stage under Order 41 Rule 27 of the Code of Civil Procedure.

6. On consideration of the reasons assigned therefor, the Lower Appellate Court has allowed the application and marked

Exs.A17, A18 and A19 on behalf of the respondent/plaintiff. It remains to be stated that even before the order passed by this Court in CMA.No. 452 of 1988, when the matter was pending before the Subordinate Court, Thindivanam, Exs.A15 and A16 were allowed. On behalf of the respondents Exs.B20 to B30 were marked before the Sub Court Thindivanam and PW5 and PW6 were examined as an additional witness on behalf of the respondent/plaintiff before the Lower Appellate Court and the defendant DW1 was recalled and further examination was also carried on and additional witnesses viz., B.Udayakumar was examined as DW5. When the first appeal was pending before the District Court, Villupuram, after the order passed by this Court in the above said CMA on behalf of the respondent/plaintiff therein, Exs.A20, A21 were marked.

7. On consideration of both oral and documentary evidence available before the Lower Appellate Court, the Lower Appellate Court has held that based upon the Settlement Deed executed, the revenue records have been effected in favour of the respondent/plaintiff and thereafter, again based upon Sale Deed in favour of the appellant/defendant, another mutation of records has also been effected and they held that based upon the additional documents that has marked before the Lower Appellate Court as Exs. A.20 to A.25, the Lower Appellate Court has held that the Settlement Deed/Ex.A.2 was acted upon and the plaintiff has accepted the Settlement Deed and the same is acted upon and she had taken possession of the suit property and the revenue records is in her name, whereby evidencing her possession and accordingly, reversed the judgment of the Trial Court and decreed the suit as prayed for.

8. Aggrieved against the said judgment and decree passed in A.S.No. 94 of 1994, District Court Villupuram, the defeated defendant Saroja Bai Ammal has preferred the above Second Appeal and the above Second appeal has been admitted on the following substantial questions of law:

"1.Whether the Lower Appellate Court should not have seen that the Settlement Deed had not been proved in the manner known to law by examination of the attestors to the documents namely, Gajendran or Athinatha Nainar and there is no explanation as to why they have not been examined?

2.Whether the Lower Appellate Court should not have held that it is obligatory on the part of the respondent to explain under what circumstances, the document is sought to be filed as an additional evidence and whether the Lower Appellate Court has not

failed in law to apply the principles laid down under Order 41 Rule 27 of the Civil Procedure Code?

3. Whether the Court below should not have held that the deceased Gnanamathi had executed Exs.B1 and B2 conferring the right upon the appellant after cancellation of the deed Executed in favour of the respondent and the circumstances leading to the cancellation had been clearly set out and its order in not appreciating the case of the appellant is not illegal and in any event liable to be set aside?"

9. The learned counsel appearing for the appellant made submissions that Ex.B1/Revocation of Settlement Deed under Ex.A.2 is valid in law and the Lower Appellate Court has wrongly held that Ex.B1 is invalid in the absence of any acceptance of the settlement and in the absence of Ex.A2/Settlement Deed, was not acted upon by the donor, the donor has power to revoke the submission and hence, the Lower Appellate Court has committed mistake in holding otherwise and relied upon the decision of this Court in S.A.Nos. 1656 and 1657 of 2008 dated 23.09.2011 reported in 2008 (1) MLJ 227 - K.A.Shanmugam and another Vs. Tamilarasi and others. The learned counsel has also submitted that the Trial Court ought not to have allowed interlocutory applications for filing under Order 41 Rule 27 of the Code of Civil Procedure for the receipt of the documents at the appellate stage.

10. Per contra, Mr.R.Balasubramaniam, learned counsel appearing for the respondents 2 to 7 would state that the respondent/plaintiff relied upon the Ex.B2/Sale Deed executed in her favour and the same cannot be unilaterally cancelled under Ex.A1 and he has relied upon the following decisions:

1. 1997 (1) CTC 256 - [J.Kuppuswami Mudali and others Vs. Mahalingam]
2. 2009 (5) CTC 558 - [S.Ganesan Vs. Bharathirajan]
3. 2015 (2) CTC 465 - [B.K.Rangachari and others Vs. L.V.Mohan]
4. 2017 (1) CTC 414 (SC) - [Satya Pal Anand Vs. State of Madhya Pradesh]
5. 2012 (5) MLJ 169 - [D.Mohan and another Vs. Sub Registrar, District Registrar Cadre, Registration Department and others]

11. After hearing both the parties and after perusing oral and documentary evidence, it is seen that the respondents 2 to 7 claims title to the property on the basis of Ex.A2/Settlement Deed executed by the Gnanamathi Ammal in her favour. Per contra, the appellant/defendant claims title to the suit property by virtue of the Sale Deed dated 19.05.1984 under Ex.B2

and further contention that Ex.A2/Settlement Deed was duly cancelled under Ex.B1.

12. On perusal of Ex.A2/Settlement Deed, it is seen that there are two items of property, which were conveyed by way of Settlement Deed and which was in possession and enjoyment of the donor Gnanamathi Ammal, they are Survey No. 54/9 acre 1.37 cents and Survey No. 178/1 acre 1.07 cents in Melchithamur Village comprised in Patta.No. 79 situated in Gingee Taluk, Villupuram, Sub Registrar Office jurisdiction. In support of the Settlement Deed, PW1 was examined and the lessee under the plaintiff was examined as PW2 and neighbours are examined as PW3, PW4, PW5. On behalf of the defendants DW1 was examined and Exs.D1 to D4 were marked before the Trial Court. By way of additional evidence PW5/Udayakumar was examined before the Lower Appellate Court while on the side of the appellant PW5 and PW6 were examined.

13. The Lower Appellate Court, on consideration of documentary evidence and also recitals contained therein, had come to the conclusion that on the date of the execution of Ex.A2/Settlement Deed in favour of the respondent/plaintiff, she was put in the possession of the property and also effected mutation of names in the revenue records. So also it appears that based upon Ex.B2/Sale Deed, the appellant/defendant also effected mutation of records and for some time she has also paid the KIST for the land. The Lower Appellate Court has rightly taken into consideration of the fact that the Revenue Department was not acted in the proper manner as they ought to be and also observed that in the Patta transfer proceedings, the Sub Collector has directed that till 15.07.1992, status-quo to be maintained and further held that in view of the additional documents filed at the appellate stage, that are marked as Ex.A20 to A25 and also taking note of the fact that in the absence of any clause in Ex.A2/Settlement Deed reserving the right to cancel the Settlement Deed, the Lower Appellate Court has come to the conclusion that Ex.B1/ Cancellation of Deed cannot be done unilaterally by the donor and found that unilateral Cancellation of the Settlement Deed Ex.A2 is invalid in law. It is also useful to refer to the fact that there was no clause in the Settlement Deed for reserving her right to revoke the Settlement Deed coupled with the fact that what was done, was a unilateral cancellation, which impossible in law.

14. At the time of the cancellation of the Settlement Deed under Ex.B1, observed that the respondent/plaintiff is in possession and enjoyment of the property recovered under Ex.A2/Settlement Deed.

15. The Lower Appellate Court has also rightly taken note of the admission of DW1 and DW2 to the effect that on the date of the execution of Ex.B1/Cancellation Deed, the settler is aged about 90 years and is not having stable mental condition and physically weak. Besides, the registration of that document has taken place only at the home of the settler and hence, had expressed reservation regarding the mental and physical capacity of the donor to unilateral revoke Settlement Deed executed in favour of the respondent/plaintiff also assumes significance.

16. Further, it is to be noted that the admitted relationship between parties are to the effect that the husband of the Gnanamathi Ammal is Sigamani Nainar, who had two wives. The first wife is the donor viz., Gnanamathi Ammal, while the second wife is Vasundarai Ammal and the defendant/appellant is the daughter born to Sigamani Nainar and Vasundarai Ammal. In other words, the defendant is the step daughter of the Gnanamathi Ammal, while the plaintiff is the granddaughter of the sister of Gnanamathi Ammal.

17. Taking into consideration, the submission made by the learned counsel for the appellant that there is no need for gift or settlements to be executed by the Gnamathi Ammal and they are also not maintained the settler properly, resulting in displeasure and there is also recital to that effect in Ex.B1/Cancellation Deed.

18. Considering the fact that the Settlement Deed was executed under Sections 121 and 122 of Transfer of Property Act, in the absence any clause reserving the right of the settler for revocation coupled with the fact that on the date of the Settlement Deed, the plaintiff was in possession of the property and also effected mutation of names and following ration laid down by the Hon'ble Apex Court and this Court in various decisions, cited supra, this Court is of the considered view that an unilateral cancellation of the Settlement Deed namely Ex.A2 under Ex.B1 is not legally valid and hence, substantial questions of law Nos. 1 and 3 are answered in negation and held against the appellant.

19. As pointed out by the learned counsel for the respondent/plaintiff that there is a specific clause in Ex.B1/Cancellation of Deed, wherein reasons for such a cancellation and the necessity for such a cancellation has been clearly spelt out. On a perusal, this Court finds that the settler, who is aged about 90 years have settled the land in favour of the respondent/plaintiff with found hope that she will

maintain her and as the said settlee has not kept her words in maintaining the aged lady, she had taken an unilateral decision to revoke Settlement Deed.

20. It is to be stated that the settler/donor is an aged childless widow and the plaintiff being the grand daughter of her sister while, the defendant is the step daughter born to the second wife of her husband. At the old age, she being a childless widow, in the absence of the husband and any one to look after her, however having possessed the property with a fervent hope, appears to have executed the Settlement Deed, whereby gifting the property under the Deed of Settlement to the granddaughter of her sister. However, as she has not maintained her, she is to seek assylum in the step daughter's house during which period, it is projected that the same has resulted in cancellation of the Settlement Deed.

21. In view of the law laid down by the Hon'ble Supreme Court in the judgment reported in 2017 (1) CTC 414 (SC) as cited above, unilateral revocation of the Settlement Deed is not permissible in law. In this view of the matter, the Second Appeal is dismissed.

22. The learned counsel for the appellant has also contended that the Lower Appellate Court has committed an error in the allowing application in Order 41 Rule 27 CPC for receiving additional documentary evidence, Exs.B20 to B25.

23. On a perusal of the judgment by the Lower Appellate Court, the Lower Appellate Court has specifically assigned reason for acceptance of the additional evidence at the Appellate stage and also held that the document now sought to be filed are obtained from the Revenue Department and hence, the reason assigned by the Lower Appellate Court for accepting the adduced additional documents at the Appellate stage, having satisfying the pre-condition contemplated under Order 41 Rule 27, has allowed the petition. The same is does not suffer from any error or mistake in admitting those documents by the Lower Appellate Court. In this view of the matter, IA allowed by the Appellate Court does not warrant any interference with this Second Appeal. Accordingly, second substantial question of law is answered in negation against the appellant and consequently, all the substantial questions of law are answered against the appellant and the judgment and decree passed by the Lower Appellate Court is held to be sustainable in law and hence, the Second Appeal is devoid of merits.

24. In the result, the Second Appeal is dismissed, confirming the judgment passed by the learned District Judge, Villupuram in A.S.No.94 of 1994 whereby reversing the judgment passed by the District Munsif Court, Gingee in O.S.No.72 of 1985. No costs.

25. It is seen that as per Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which governing such eventuality based on the senior citizens, when the siblings of the settler/donor has failed to keep up faith and failed to take care of the donor in maintaining them at the advance age, as in the instant case, at the time of the settlement, the donor is 90 years; at the time of the revocation, 93 years of age, Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 provides for cancellation of Settlement Deed on such circumstance by way of declaration to declare the gift deed as void and the Revenue Divisional Officer has been empowered in this connection.

26. The scheme formulated by the National Legal Services Authority viz., NALSA (Legal Service to Senior Citizen) Scheme 2016, Article : 6(5) and 7(7), the Scheme for the protection of the Senior Citizens, inter alia provides for spreading of legal awareness among the senior citizens regarding the provisions for cancellation of the Settlement Deed when the Senior Citizen/donor were found to be cheated by their sibling's/child, (who are the settllee) and to render legal assistance of senior citizens, who are in need. Hence, the copy of this judgment to be circulated to all the District Legal Services Authority and Taluk Legal Services Authority to make endeavour to spread Legal awareness about the rights and provisions made to protect to Senior Citizens and the Scheme provided by the National Legal Services Authority. Therefore, the Registry is directed to circulate the copy of this judgment to the Member Secretary of Tamil Nadu State Legal Services Authority for circulation of this Judgment to the District Legal Services Authority/Taluk Legal Services Authority to comply with the legal awareness program after getting necessary permission from My lord Hon'ble Chief Justice.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Judge,
Vilupuram.

2.The District Munsif,
Gingee.

3.The Registrar General,
High Court of Madras, Chennai.

Copy to : 1.The Section Officer,
V.R. Section, High Court of Madras, Chennai.

2.The Section Officer,
Judicial Section, High Court of Madras, Chennai.

+2cc to M/s.V.Raghavachari,Advocate Sr.No. 71462

+1cc to M/s.S.Balasubramanian, Advocate Sr.No.71355

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