

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.1066 of 2009
and M.P.No.1 of 2010

T.V.Kanakaraj

... Appellant/Plaintiff

Vs.

1. T.Meyvel

2. T.Mani

3. T.Madhu

4. Smt.Kuppayee

... Respondents/Defendants

PRAYER: Second Appeal has been filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 29.08.2008 in A.S.No. 9 of 2008 on the file of the Principal Subordinate Judge, Salem confirming the Judgment and decree dated 25.08.2005 in O.S.No.928/1997 on the file of the II Additional District Munsif, Salem.

For Appellant

: Mr.P.Jagadesan

For Respondents

: Mr.D.Shivakumaran

J U D G M E N T

This second appeal has been filed against the judgment and decree dated 29.08.2008 in A.S.No. 9 of 2008 on the file of the Principal Subordinate Judge, Salem confirming the Judgment and decree dated 25.08.2005 in O.S.No.928/1997 on the file of the learned II Additional District Munsif, Salem.

2. The brief fact of the pleading to file this second appeal is as follows:

(i). The plaintiff and defendants are brothers and sisters. The plaintiff's father had purchased the property on 16.08.1948 and on 17.02.1971 respectively. Thereafter, the plaintiff's father died on 08.04.1974 and plaintiff's mother died on 11.06.1982.

(ii). It is the case of the plaintiff that he had entered into an agreement to purchase a vacant site measuring 1100 sq.ft by paying Rs.500/- as advance on 02.01.1980. Thereafter, the property was purchased on 03.11.1980, after paying the balance sale consideration. Since at the time of registering the documents, a sum of Rs.250/- was

in deficit, his mother provided it, so, the sale deed was registered in the name of his mother. Subsequently, on 20.03.1989, he paid back the amount to his mother and he obtained that property from her by way of a gift settlement deed in order to minimise the expenses. Thereafter, the plaintiff has married other caste women, so that, the defendants were developed a grudge against him.

(iii) On 09.02.1993, the plaintiff lodged a police complaint that the defendants attempted to transfer the patta in respect of the joint properties in their own name, omitting his name. Hence, he issued a notice of objection to the Tahsildar on 22.12.1993. Again on 17.01.1994, the plaintiff lodged an another complaint to the Police and his wife also lodged a complaint on 22.01.1994 against the defendants that they were attempted to execute the documents behind the back of the plaintiff, for which, the plaintiff gave an objection to the Sub Registrar's Office, Salem on 19.10.1994. However, the defendants forced the plaintiff to sign the partition deed dated 27.10.1994 and the above deed was obtained by coercion and undue influence. In the above partition deed, the property allotted in favour of the plaintiff is only a meager and lesser share. Therefore, he filed a suit in O.S.No.928 of 1997 to declare that the above partition deed is null and void.

3. It is the contention of the learned counsel appearing for the defendants that as per the partition deed dated 27.10.1994, the plaintiff and defendants are in separate possession and enjoyment of their portions. In 1984, their father purchased the middle portion of the 2nd item of the suit property from joint family funds and they were jointly residing in the thatched house and the property was treated as joint family property. Plaintiff's mother had no money of her own and no means to purchase any property of her own at any time. The 1st item was purchased by their father in 1971 and subsequently, on 03.11.1980, two plots adjacent to their property were purchased by his father in the name of his wife namely the mother of the parties. According to the

defendants, the plaintiff has not purchased the above plot. The alleged settlement deed was forcibly obtained by the plaintiff from her mother by way of a gift deed. The gift deed which covers property, was not the property of the mother and so, it conveys nothing. The plaintiff's father was also not aware of the gift deed.

4. According to the defendants, all the properties have been partitioned and the property which was a subject matter of the settlement deed was treated as a joint family property. Apart from that, another 288 sq.ft adjacent to the above site is also allotted to the plaintiff.

5. The trial Court examined P.W.1 and P.W.2 on the side of the plaintiff's witnesses; D.W.1 to D.W.4 were examined on the side of the defendants and marked Ex.A1 to Ex.A17 on the side of the plaintiff's and Ex.B.1 to Ex.B10 on the side of the defendants. The trial Court has analysed the entire evidence and found that the contention of the plaintiff is not correct and hence, dismissed the suit.

6. As against the above said judgment, the plaintiff filed A.S.No. 9 of 2008 before the First Appellate Court. The First Appellate Court has also dismissed the suit and confirmed the judgment of the trial Court and categorically come to the conclusion that the alleged sale of 1100 sq.ft has contented by the plaintiff is false and the so called agreement is fake. As against which, the present second appeal came to be filed before this Court.

7. The learned counsel appearing for the plaintiff would contend that admittedly, 1100 square feet was gifted to the plaintiff by his mother which was marked as Ex.A2, since the above property was purchased by the plaintiff. Because the property was originally registered in the name of the mother, it cannot be said that it is a joint family property. It is the allegation of the plaintiff that the defendants developed a grudge against his wife, as she belongs to another caste and there is a specific allegation that there was a coercion or undue influence with regard to the registration of the partition deed. Even prior to the partition deed, the plaintiff has given a complaint to the Sub-Registrar, not to register the property, whereas, very next day to the above complaint, the plaintiff was forced to sign in the partition deed by convening the panchayat. In the partition deed, unequal distribution was made. The above conduct itself clearly shows that the document is the result of coercion and undue influence. Hence, the trial Court and the First Appellate Court have not considered

these aspects and he prays for allowing this appeal.

8. The learned counsel for the defendants contended that there is no pleading with regard to the coercion and undue influence and the entire evidence has been analysed by the trial Court and the First Appellate Court. In fact, the property is the joint family property. In the partition deed itself, it is clearly mentioned that apart from 1100 sq.ft land, the other 288 square feet is allotted to the plaintiff. When the partition is in fact equal to all members of the family, there is no undue influence, coercion or fraud. Hence, he prays for dismissal of the appeal.

9. I have perused the pleadings and judgment of the trial Court. The trial Court and the First Appellate Court has thoroughly analysed the facts and came to conclusion that there is no undue influence or coercion or fraud as alleged by the plaintiff. It is to be noted that the main contention of the plaintiff is that the partition deed was obtained by coercion only. 288 sq.ft land was allotted to him, which is unequal, such property itself was the subject matter of Ex.A.2 settlement deed which is said to have been executed by the plaintiff's mother. It is the contention of the plaintiff that 1100 sq ft is not a joint family property and it is a self acquired property. It is curious to note that his defence that he has purchased the property by entering into an agreement of sale. The Court below found that the agreement for sale cannot be believed at all and in fact, does not contains his own signature and it has been created. It is to be noted that it is the contention of the plaintiff that only on payment of Rs.250, the property has been transferred and registered in the name of his mother is highly improbable. It is further to be noted that the gift deed is not proved in the manner known to law. None of the witnesses had proved the settlement deed. This fact is not in dispute.

10. The only issue involved in the second appeal is whether the partition deed dated 27.10.1994 is a result of undue influence or coercion or fraud. It is to be noted that it is the contention of the plaintiff that he was forced to sign the partition deed by the defendants, whereas, the evidence adduced by the parties, clearly indicates that before partition a panchayat convening, the plaintiff is also very much participated in the panchayat which indicates that though he sent same communication prior to the registration in the Registrar Office. Subsequently, the partition deed was registered on 27.10.1994, on that date, he has not made any allegation

about the registration of the documents. Thereafter, he also remained silent for three years without taking any action. Only on last date of limitation, he filed the present suit.

11. The above conduct itself clearly shows that there is no coercion or undue influence and makes it clear that his contention is not true. It is also to be noted in the the entire plaint pleading except contending that the document so obtained by coercive and undue influence, no other details were pleaded in the entire plaint. It is to be noted that Order 6 Rule 4 of CPC mandates that the particulars to be pleaded by the party to pleading any misrepresentation, fraud, breach of trust, wilful default or undue influence, such particulars to be noted, whereas, nothing pleaded in the entire plaint. In fact, prior to the partition deed, he has given some alleged police complaint against the defendants, but, no such complaint whatsoever filed after partition deed. The above conduct makes it clear that his allegation that the document was obtained by force or coercion cannot be countenanced. In the partition deed, in fact, taking note of the shares to be allotted to parties, all properties are treated as joint family properties. Therefore, in the absence of evidence and pleading proving the alleged undue influence and coercion, merely on the basis of mere allegations, the undue influence and coercion cannot be presumed. In fact, the plaintiff himself admitted that he convened the panchayat. Thereafter, the partition deed is executed. Hence, I do not find any substantial question of law in this appeal. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

msv

To

1. The Principal Subordinate Judge,
Salem.

2. The learned II Additional District Munsif,
Salem .

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

+1cc to Mr. P.Jagadesan, Advocate SR.No. 25027
+1cc to Mr.D.Shivakumaran , Advocate SR.No. 24656

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A.SK(25/06/2019)



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