

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Date of Reserving Judgment :<br>12.12.2018 | Date of Pronouncing Judgment<br>04.01.2019 |
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Coram

The Honourable Mr.Justice M.M.Sundresh  
and  
The Honourable Mr.Justice Krishnan Ramasamy

Original Side Appeal No.405 of 2010

B.Saroja Ammal (deceased)

1. V.Anandhi

2. S.Usha Rani

3. B.Sridhar

... Appellants/Defendants 3,4 and 6

Vs.

1. Murali doss

2. G.Prema

3. Prasanna

... Respondents/Plaintiffs and  
Defendants 2 and 5

(Cause title accepted as per order  
dated 15.04.2010 made in OSA SR 342/08)

Prayer : Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent, against the judgment and decree dated 30.07.2007 made in C.S.No.769 of 1998 on the file of this Court.

For Appellants : Mr.K.P.H.Thulasi Raman

For Respondent-1 : Mr.S.Prem for

M/s.T.V.Krishnamachari

R2 & R3 : No appearance for R2 & R3

J U D G E M E N T

KRISHNAN RAMASAMY, J.

This Original Side Appeal has been preferred against the judgement and decree dated 30.07.2007, passed by the learned Single Judge in C.S.No.769 of 1998, in and by which, the suit filed by the first respondent is partly allowed.

2. The appellants herein are the defendants 1, 3, 4 and 6, the first respondent is the plaintiff and the respondents 2 and 3 are the defendants 2 and 5 in the above said Civil Suit. First defendant is the mother of the plaintiff and defendants 2, 3, 4 are his sisters and the fifth defendant is the son of his deceased sister and the sixth defendant is his younger brother.

3. The plaintiff filed the suit for the relief of declaration and permanent injunction.

4. The case of the plaintiff/first respondent is as follows :-

i) The suit property originally belonged to one R.S.P.Naidu, who had two wives. His first wife predeceased him. However, he had no issues out of first wedlock. The said R.S.P.Naidu, while working in Burma had close association with Balaramam. Evenafter their return to India, their friendship continued to be so. Since the R.S.P.Naidu had no issues despite his second marriage with Dhanammal, himself and his wife Dhanammal adopted the plaintiff, who is none other than son of his friend Balaraman. In the year, 1945, said R.S.P.Naidu executed a settlement deed, settling the suit property in favour of his two wives for life interest, and thereafter, to the father of the plaintiff, viz., Balaraman and his brother-in-law, by name Dhamodaran, who is the brother of his second wife Dhanammal. Subsequently, in the year, 1950, he revoked the settlement deed, dated 29.11.1945, by executing another settlement deed, i.e. on 07.11.1950.

ii) The plaintiff further averred that his marriage was performed by R.S.P.Naidu and Dhanammal and he was living with them. After the death of R.S.P.Naidu on 26.10.1956, at the request of Dhanammal, the plaintiff brought his biological parents and his family members to live along with him in his place (suit property). Due to some quarrel between Dhanammal and the sisters of the plaintiff, Dhanammal asked Balaraman's family members to get out of the suit property in 1976. Subsequently, Dhanammal died on 31.12.1981. After her death, the defendants are claiming share in the property by virtue of a settlement, dated 29.11.1945, which was subsequently got annulled by virtue of another settlement deed, dated 07.11.1950. Since the defendants attempted to dispossess the plaintiff from the suit property, he filed the suit for i) declaration, declaring him as a owner of the suit property and for ii) permanent injunction, restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property.

5. The first defendant contested the suit by filing a written statement, which was adopted by other defendants, wherein, it is stated as follows:-

i) Her husband was the grand son of R.S.P.Naidu's sister. Her husband was treated as the son of R.S.P.Naidu, since R.S.P.Naidu had no issues. Out of love and affection, R.S.P.Naidu executed a settlement deed dated 29.11.1945, in respect of the suit property in favour of her husband, Balaraman after the life interest of himself and his first wife. Insofar as the property, bearing Door No.16, Muthialu Naicken Street, Purasawalkkam, Chennai, is concerned, the same was executed in favour of his second wife Dhanammal for her life interest, and thereafter in favour of his brother-in-law Dhamodaran. The said settlements were given effect to and acted upon. Whereas, the settlement deed, dated 07.11.1950, based on which, the plaintiff claims right over the suit property was not given effect to.

ii) The first defendant also denied the averment made in the plaint that the plaintiff was given in adoption to R.S.P.Naidu and Dhanammal. Since the father of the plaintiff was often transferred to a far off place and since the plaintiff was studying S.S.L.C. in order to provide uninterrupted education, the plaintiff was left with the care of R.S.P. Naidu and Dhanammal. In the year 1961, the plaintiff was taken back by them and they performed his marriage and not by the plaintiff's adoptive parents as alleged in the plaint. The first defendant and her family are in occupation of the suit property from 1970 and she was paying taxes, electricity charges etc. The plaintiff was inducted into the suit property only by her in the year 1994. After the death of Dhanammal, the plaintiff claiming himself to be her sole heir wants to enjoy exclusive right over the property. It is her further case that the defendants are co-owners and co-sharers of the suit property. Hence, sought for dismissal of the suit.

6. The learned Single Judge based on the pleadings of the parties framed the following issues for consideration:-

- i. Whether the plaintiff is the adopted son of R.S.P.Naidu and whether the adoption is true, legal and valid?
- ii. Whether the settlement deed dated 29.11.1945 is legal, valid and binding and given effect to?
- iii. Whether the revocation deed dated 07.11.1950 is legal and valid?
- iv. Whether there was a family arrangement and whether the suit property was allotted to the plaintiff?
- v. Whether the plaintiff is the sole and absolute owner of the suit property and whether he perfected his title by adverse possession?
- vi. Whether the plaintiff and the defendants are co-owners and co-sharers and whether they are entitled to equal shares in the suit property?

- vii. Whether the plaintiff is entitled to the suit relief?
- viii. To what relief, the parties are entitled to?

6.1 As far as the first issue is concerned, viz., the issue regarding whether the plaintiff is the adopted son of R.S.P.Naidu, though the plaintiff has filed certain documents to prove that he is adopted son of R.S.P.Naidu, the learned Single Judge found the same to be unsatisfactory and held that the plaintiff has not proved that he is the adopted son of R.S.P.Naidu and answered issue No.i) against the plaintiff.

6.2. As far as the Issue Nos.ii) and iii) are concerned, viz., validity of the settlement deed dated 29.11.1945 and the revocation deed dated 07.11.1950, the learned Judge found the settlement deed dated 29.11.1945 to be a Will and answered issue No.ii to the effect that the Will dated 29.11.1945 was found validly revoked and consequently, answered the issue No.iii to the effect that Ex.P.4 revocation deed cancelling the settlement deed dated 29.11.1945 is valid.

6.3. With regard to Issue No.iv) Whether there was a family arrangement, settling the property in favour of the plaintiff, the learned Single Judge found that there was no family arrangement as alleged by the plaintiff. Further, the plaintiff also did not produce any document to prove the same. Therefore, the learned single Judge answered the Issue No.iv) against the plaintiff.

6.4. With regard to the Issue No.v) viz., the claim of the plaintiff that he is absolute owner of the suit property and he perfected title over the same by adverse possession, the learned Single Judge answered the said issue against the plaintiff as there was no evidence about his possession of the property till 1970 when Balaraman took possession thereof and he was living there. Rather, it was the first defendant, the wife of Balaraman, was living in the suit property up to 1995, which fact was even admitted by the plaintiff that after 1977, his mother was living in the suit premises. Therefore, there is no adverse claim that could be made by the plaintiff, who is none but son of Balaraman, and when he was away from the suit property between 1962 to 1977 owing to his employment in Indian Airforce.

6.5 With regard to the Issue No.vi) viz., the plaintiff and the defendants are co-owners and as co-sharers, they are entitled to equal shares in the suit property, the learned single Judge answered the said issue against the plaintiff on

the ground that since Ex.P.3 was found to be a Will and not a settlement deed, there is no question of co-owners and they are not entitled to equal shares in the suit property.

6.6. With regard to issue No.vii) the plaintiff's entitlement to the relief sought for, the learned Single Judge rejected the relief of declaration to declare him as the owner of the suit property. However, with regard to the relief of permanent injunction, granted the same, thereby, restraining the defendants or their men or agents or any persons claiming through or under them from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property, as they are no way connected with the property and they cannot claim any right over the suit property based on Ex.P.3, since Ex.P.3, settlement deed was revoked by Ex.P.4 and by virtue of Ex.P.4, the defendants not at all entitled to any share in the suit property.

6.7 Further, the learned Single Judge held that, Mr.Damodharan, brother-in-law of the testator, as a trustee, would be entitled to administer the property as per the last wishes of the testator, and therefore, the plaintiff also has no interest in the suit property but Damodharan, the trustee, has not taken possession of the property and further he is not a party to the suit proceedings. In the said circumstances, the learned single Judge though declared that the plaintiff as not the owner of the property, since he is having possession of the property, protected his possession against all others, except the true owner i.e., Damodharan. Thus, by holding so, partly allowed the suit and answered Issue No.viii) accordingly.

7. Aggrieved by the judgement passed by the learned Single Judge, dated 30.07.2007 in C.S.No.769 of 1998, the legal heirs of the first defendant have preferred the present Original Side Appeal.

8. The point that arises for consideration in this Appeal are :-

- i. Whether the learned Single Judge is right in treating the settlement deed dated 29.11.1945 as a Will ?
- ii. Whether the learned Single Judge is right in holding that by virtue of the cancellation of the settlement deed, (deeming the same to be as a Will) dated 29.11.1945, through the revocation deed dated 07.11.1950 is valid?
- iii. Whether the appellants are entitled to any share in the suit property in terms of Ex.P.4?

9. As far as the first point is concerned, the learned counsel appearing for the appellants submitted that by virtue of Ex.P.3, the appellants are entitled to the suit property. The learned counsel contended that it was the mother of the plaintiff, first defendant, who was residing in the suit property for a long time, i.e. from 1970 and she was paying the electricity charges, water charges and her right over the property was also confirmed through Ex.P.3. Ex.P.3 was already acted upon and the property was already handed over to the appellants and the appellants have been enjoying the property after the demise of the settlor. Once Ex.P.3 was acted upon through the appellants, the question of revoking the Ex.P.3-settlement deed, through Ex.P.4. does not arise, as the same is legally sustainable in law.

10. Further, the learned counsel for the appellants contended that, it is a settled law that, once, as per the deed of settlement, the property divested with the settlee, settlor has no longer right over the property covered under such settlement. Therefore, the settlor, in this case, viz. R.S.P.Naidu does not have any legal right over the property. Though the provisions contained in Ex.P.3 empowers the settlor to revoke the settlement deed, it cannot be validly made due to the reason that the settlement deed was already acted upon and the possession of the property is with the appellants. Hence, the settlor lost his right of revocation. Further, learned counsel contended that Ex.P.3 is only a settlement deed and it is not a Will, and therefore, the appellants are entitled to equal share in the property as per Ex.P.3.

11. Per contra, the learned counsel for the contesting first respondent submitted that the appellants are not entitled to any share in the suit property, as claimed by them. The possession of the suit property is neither with the appellants nor with the other defendants. On the other hand, the first respondent is having the possession of the property and the same has been very well recognised by the learned Single Judge and rightly held that the appellants are not entitled for any right over the property either in terms of Ex.P.3 or Ex.P.4. Further, the learned Single Judge having found that the plaintiff is in the possession of the property, confirmed his right to enjoy the property and the said right cannot be interfered by virtue of false claim made by the appellants. In support of his contention, the learned counsel relied upon the principles laid down by the Hon'ble Supreme Court in the case of Mathai Samuel and others Vs Eapen Eapen and others reported in [(2012) 13 SCC 80] and the relevant portions from the said judgement is extracted herein below:-

"11. We have already indicated that Exhibit A1 document has both the characteristics of a settlement and a testamentary disposition. Let us examine the basic and fundamental difference between a testamentary disposition and a settlement.

12. Will is an instrument whereunder a person makes a disposition of his properties to take effect after his death and which is in its own nature ambulatory and revocable during his lifetime. It has three essentials:

1. It must be a legal declaration of the testator's intention;
2. That declaration must be with respect to his property; and
3. The desire of the testator that the said declaration should be effectuated after his death.

13. The essential quality of a testamentary disposition is ambulatoriness of revocability during the executant's lifetime. Such a document is dependent upon the executant's death for its vigour and effect.

14. Section 2(h) of the Succession Act, 1925 says:

"2. (h) 'will' means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death".

In the instant case, the executants were Indian Christians, the rules of law and the principles of construction laid down in the Succession Act, 1925 govern the interpretation of will. In the interpretation of will in India, regard must be had to the rules of law and construction contained in Part VI of the Succession Act, 1925 and not the rules of the interpretation of statutes".

12. We have considered the submissions made by the learned counsel for the appellants and the learned counsel for the first respondent and perused the materials placed on record and also the principles of law laid down by the Hon'ble Supreme Court of India, in the case of Mathai Samuel (as mentioned supra).

13. The contentions of the learned counsel appearing for the appellants that Ex.P.3 was already acted upon; that the property already divested with the appellants, therefore, the question of revocation of Ex.P.3 does not arise; that the revocation of Ex.P.3 through Ex.P.4 is not valid and there is no sanctity in the eye of law; that the learned Single Judge was wrong in treating Ex.P.3 to be a Will; and the consequential findings of the learned Single Judge that revocation of Ex.P.3 is valid by virtue of Ex.P.4 is totally wrong are all untenable for the reason that, on perusal of Ex.P.3, it is seen that, the settlor had life interest over the property and all others (both appellants and the respondents) were given life time enjoyment over the property.

14. Therefore, when it is an admitted fact that the settlor had life interest over the suit property, obviously, disposition will come into effect only after the settlor's life time. Further, it is seen that Ex.P.3 contained a clause for revocation, which clearly depicts the character of a Will. Therefore, it is clear that the settlor, reserved his right to revoke Ex.P.3- settlement deed. This was well founded by the learned Single Judge and treated Ex.P.3 as a Will, and rightly came to the conclusion that the settlor had right to revoke the settlement deed during his life time and by invoking such revocation clause in Ex.P.3, the settlor had revoked Ex.P.3 and executed another settlement deed-Ex.P.4, and held Ex.P.4 as valid. Further, by applying the principles laid down by the Hon'ble Supreme Court, in the case of Mathai Samuel (as mentioned supra), we are of the view that Ex.P.3 is only a Will and not a settlement deed.

15. Further, as rightly pointed out by the learned counsel for the first respondent, the learned Single Judge having found that the first respondent was holding possession of the property, decided to confirm his right to enjoy the property, and therefore, held that the appellants are not entitled to any right over the property. Furthermore, the learned Single Judge found that, one Mr.Damodharan, brother-in-law of the testator to be a trustee of the property and he would be entitled to administer the property as per the last wishes of the testator, and therefore, the plaintiff also has no interest in the suit property. However, since the said Damodharan has not

taken possession of the property so far and further he is not a party to the suit proceedings, in the said circumstances, though declined to grant the relief of declaration, having found that the plaintiff is having possession of the property, protected his possession against all others, except the true owner i.e., Damodharan. Accordingly, granted the relief of permanent injunction, restraining the defendants from interfering with his possession.

16. Therefore, we do not have any hesitation to hold that Ex.P.3 is a Will and it is not a settlement deed and Ex.P.4, cancelling Ex.P.3 is valid and based on Ex.P.4, neither the appellants nor the respondents 2 and 3 in the present appeal can claim any right over the suit property. Accordingly, point Nos.1 to 3 are answered accordingly.

17. In the result, we do not find any merit in this Appeal and the same is dismissed. The parties are directed to bear their own costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq/sd

To

1. The Sub Assistant Registrar (Original Side),  
High Court, Madras.

+1 cc to Mr.K.P.H.Thulasiraman, Advocate Sr.No.675

+1 cc to M/s.T.V.Krishnamachari, Advocate Sr.No.1290

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Original Side Appeal No.405 of 2010

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