

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2019

PRONOUNCED ON : 01.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1029 of 2005

1.Dhanalakshmi
2.Venkatesh

...
Vs.

Appellants

1.Ramasamy Gounder (Deceased)
2.Kandayammal
3.Palanisamy

...

Respondents

(RR2 & 3 are recorded as LRs of the deceased viz., Ramasamy Gounder vide order of court dated 06.02.2019 made in S.A.No.1029/2005 as per memo dated 05.02.2019 is recorded)

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 07.01.2005 passed in A.S.No.126 of 2003 on the file of the Additional District and Special Judge for EC Act cases Salem, reversing the judgement and decree dated 05.02.2003 passed in O.S.No.29 of 2001 on the file of the Subordinate Court, Sankari, Salem District.

For Appellants

: Mr.S.Lakshmanasamy
for M/s.V.N.S.Law firms

For Respondents

: Mr.N.Manokaran

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 07.01.2005 passed in A.S.No.126 of 2003 on the file of the Additional District and Special Court for EC Act cases, Salem, reversing the judgement and decree dated 05.02.2003 passed in O.S.No.29 of 2001 on the file of the Subordinate Court, Sankari, Salem District.

2.The second appeal has been admitted on the following substantial question of law:

" In the face of Ex.B4 – a registered instrument, in and by which the plaintiff had released all his rights in the property forming the subject matter of the suit for partition in favour of defendants 3 and 4, has not the Appellate Court committed an error of law in ignoring a nonexistent ground in law to reverse the judgment of the trial Court?"

3.Considering the scope of the issues involved in the second appeal between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.The parties are referred to as per their rankings in the trial Court.

5.The suit has been levied by the plaintiff against the defendants for partition and permanent injunction.

6.It is seen that the first defendant is the wife of the plaintiff, the second defendant is the son of the plaintiff and the first defendant, the third defendant is the wife of the plaintiff and the first defendant's deceased son Athiyannan and the 4th defendant is the son of the third defendant and her husband, the deceased Athiyannan. The relationship between the parties is not in dispute. Claiming that the suit properties are jointly belonging to the plaintiff and the defendants and that, they have not so far divided the same and also alleging that the defendants had colluded together and created some documents in their favour under the style of partition and sale deeds by committing fraud and as the plaintiff is not a party to any of those documents and the same would not bind the plaintiff and accordingly, it is the case of the plaintiff that he is ignoring the abovesaid documents and inasmuch as he is entitled to his due share in the suit properties as put forth in the plaint and as the defendants had deprived the same, according to the plaintiff, he has been necessitated to lay the suit for partition and other allied reliefs.

7.The defendants 3 & 4 resisted the plaintiff's case contending inter alia that the parties had already effected partition in respect of the properties belonging to them and furthermore, the plaintiff agreeing to

the abovesaid partition, had also subsequently relinquished his share and allotted the suit properties to his wife, the first defendant and his son and accordingly, it is stated that the parties to the lis had entered into various transactions as such as partition, sale transactions, release deeds and also panchayat agreement and in such view of the matter, according to the defendants, inasmuch as there had been already a partition effected amongst the plaintiff and the defendants in respect of the suit properties and pursuant thereto, several transactions had also come into effect between the parties as above narrated, it is stated that the plaintiff is not entitled to seek the partition once again on the footing that no partition had taken place and also on the footing that the documents effected between the parties with reference to the suit properties are not binding upon the plaintiff and that they had been fraudulently obtained by the defendants 3 & 4 as such.

8. The trial Court, on a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, was pleased to dismiss the plaintiff's suit. On appeal, the first appellate Court was pleased to set aside the judgment and decree of the trial Court and thereby, granted the reliefs in favour of the plaintiff as prayed for. Impugning the same, the defendants 3 & 4 have come forward with the present second appeal.

9. Materials placed on record go to show that the parties had already effected partition in respect of the suit properties on 05.02.1993 and according to the contesting defendants, in the abovesaid partition, the suit properties had been divided into two shares, one share allotted to the second defendant and another share allotted to the 4th defendant and the abovesaid partition had been effected with the consent and knowledge of all the parties including the plaintiff as well and as the defendants 2 & 4 were minors at that point of time, they were represented by their respective guardian and mother and it is seen that the abovesaid partition deed has been marked as Ex.B1, wherein, the plaintiff has also signed. Though the plaintiff, at the first instance, had denied his signature in Ex.B1, subsequently, he has clearly admitted that he has attested the abovesaid partition deed marked as Ex.B1. In addition to that, the plaintiff has also filed the abovesaid partition deed along with the plaint and in such view of the matter, when the plaintiff has not come forward in the plaint as to for what purpose, the abovesaid copy of the partition deed had been filed by him along with the plaint, however, when the materials placed on record go to disclose that by way of the abovesaid partition, the parties had already effected partition in respect of the suit properties and thus it is seen that unable to challenge the same, the plaintiff has, as above seen, admitted that he had also attested the same knowing the contents of the document.

10. Furthermore, from the materials placed on record, it is found that the parties have also effected various transactions amongst themselves and in this connection, the sale deed dated 05.07.2000 has come to be marked as Ex.B2, wherein also the plaintiff has admitted that his signature and also admitted the signature in the other sale transaction dated 05.07.2000 marked as Ex.B3 and following the same, it is seen that a release deed has also come to be executed by the plaintiff and others on 05.07.2000 marked as Ex.B4 and the plaintiff has also admitted the signature in the abovesaid document and in addition to that, the panchayat agreement entered into between the parties marked as Ex.B5 has been clearly admitted to have been executed by the plaintiff and therefore, when pursuant to Ex.B1 partition deed, the parties had endeavoured to effect various transactions amongst themselves and also endeavoured to release /transfer the share one way or the other in favour of the defendants 3 & 4, in such view of the matter, the plaintiff, without disclosing anything about the abovesaid documents /transactions in the plaint, is found to have come forward with the suit seeking for partition in respect of the suit properties, which are found to have been already divided between the parties as above pointed out and determined by the trial Court.

11. On a perusal of the Panchayat agreement marked as Ex.B5, it is seen that the plaintiff, the plaintiff's wife viz., the first defendant and

their son viz, the second defendant had relinquished their right in favour of the 4th defendant and also had received certain amounts in lieu of the same and the members of the panchayat have also been examined on the side of the defendants as DWs2 & 3 and DW2 in his evidence has clearly deposed that the abovesaid panchayat agreement marked as Ex.B5 had been executed by the plaintiff and the defendants 1 & 2 in favour of the 4th defendant relinquishing their right in respect of the suit properties and receiving the amount as recited thereunder and that, he had attested the said document and furthermore, he has also deposed about the other transactions projected in the matter and similarly, DW3 has also tendered evidence on the same lines with reference to Ex.B5 partition agreement. The evidence of DWs2 & 3 have not been discredited by the plaintiff in any manner during the course of cross examination and on the other hand, their evidence read together along with the evidence of DW1 coupled with the admission of the plaintiff, in all, it is found that the plaintiff being a party to the relinquishment deed, the panchayat compromise agreement etc., cannot be allowed to ignore the same on the footing that they had been fraudulently obtained from him without disclosing the contents and therefore, the said documents are not binding upon him. If that be so, as rightly put forth by the defendants' counsel, the plaintiff should have come forward with the suit seeking necessary reliefs impugning the abovesaid transactions one way or the other as null and void and not binding upon him. On the other

hand, the plaintiff, without challenging the abovesaid documents in any manner, has vaguely averred that certain documents had been fraudulently obtained by the defendants behind his back and accordingly, the same are not binding upon him and that, the plaintiff is ignoring the same, but, when he has not come forward with the clear case as to under what circumstances and on what dates, the abovesaid documents had come to be obtained from him and on the other hand, when during the course of evidence, it is seen that the plaintiff is a willing and consenting party to the abovesaid transactions and admitted his signature in all the abovesaid documents one way or the other, in such view of the matter, when the plaintiff and the defendants are found to have already effected partition in respect of the suit properties and the parties had been allotted their due shares one way or the other, it is thus found and as determined by the trial Court, with a view to deprive the defendants 3 & 4 of the lawfull shares allotted to them, it is seen that the plaintiff has chosen to levy the suit with vague pleas and untenable allegations and however, unable to establish the same one way or the other in the manner known to law and particularly, as put forth by the defendants' counsel, when the plaintiff has not chosen to impugn the abovesaid transactions between the parties as null and void and not binding upon him on the ground that they had been fraudulently obtained by seeking appropriate declaratory reliefs, it is seen that the abovesaid transactions are binding upon the plaintiff as determined by the trial Court.

12.The first appellate Court, after advertng to the abovesaid transactions, held that the defendants 3 & 4 had taken advantage of the plaintiff's old age and got the abovesaid documents stealthily from the plaintiff with a view to obtain a larger share in the suit properties and further holding that the defendants should not be allowed to obtain a larger share in the suit properties one way or the other, on that determination, set aside the judgement and decree of the trial Court and granted the reliefs in favour of the plaintiff. However, when there are no clean pleas and materials placed on the part of the plaintiff whatsoever that the transactions above pointed out had been fraudulently obtained from the plaintiff by the defendants 3 & 4 and on the other hand, the materials placed on record go to disclose that the plaintiff is a willing and consenting party to the abovesaid transactions and accordingly, signed and executed the abovesaid documents one way or the other, in such view of the matter, the abovesaid transactions are legally binding upon the plaintiff and the plaintiff cannot be allowed to ignore the same as such and thereby, be allowed to reopen the partition already effected amongst the parties and seek the division of the suit properties once again and in such view of the matter, the judgment and decree of the first appellate Court granting the reliefs in favour of the plaintiff cannot be allowed to sustain in the eyes of law and accordingly, the same are set aside.

13. In the light of the above discussions and determination, the substantial question of law formulated in the second appeal is accordingly answered against the plaintiff and in favour of the defendants.

14. The plaintiff's counsel, in support of his contentions, placed reliance upon the decision reported in **(2004) 9 Supreme Court Cases 468 (Krishna Mohan Kul Alias Nani Charan Kul and Another) Vs. Pratima Maity and others)**. The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the case at hand.

In the light of the abovesaid discussions, the Judgement and Decree dated 07.01.2005 passed in A.S.No.126 of 2003 on the file of the Additional District and Special Court for EC Act cases, Salem are set aside and the judgement and decree dated 05.02.2003 passed in O.S.No.29 of 2001 on the file of the Subordinate Court, Sankari, Salem District are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
sms

01.03.2019

To

- 1.The Additional District and Special Court
for EC Act cases, Salem.
- 2.The Subordinate Court, Sankari, Salem District.
- 3.The Section Officer,
V.R. Section, High Court, Madras.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1029 of 2005**

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