

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.898 of 2019
and
C.M.P.No.19106 of 2019

G.Saraswathy ..Appellant/Plaintiff

Vs.

1.G.Prabhu Ram
2.B.Prabha ..Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 06.09.2018 made in A.S.No.93 of 2018 on the file of the Principal District Judge at Coimbatore, confirming the judgment and decree dated 02.04.2013 made in O.S.No.154 of 2011 on the file of the Hon'ble III Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.S.Saravanan

For Respondents: Mr.B.Singaravelu for R1
Mr.G.Prabharan for R2

J U D G M E N T

The plaintiff in OS.No.154 of 2011 being aggrieved by the concurrent dismissal of her suit for declaration and partition have come forward with this Second Appeal.

2. The suit was laid by the plaintiff seeking a declaration that the release deed dated 15.09.1995 was obtained by fraud and misrepresentation. Therefore, she sought for a declaration that the document is not binding on her and for partition of her 1/3rd share.

3. The defendants are the son and daughter of the plaintiff. According to the plaintiff, the suit properties belong to the plaintiff and the defendants. Each one of them are entitled to 1/3rd share in the property. In the year 1995, the 1st defendant who is her son had taken her to the Registrar's Office claiming that she has to execute a mortgage deed for

taking a agricultural loan. She also believed her son and executed the document without knowing the contents of the same. After few years due to misunderstanding the plaintiff walked out of his house and was living in her relative's house and her daughter viz., 2nd defendant's house.

4. The plaintiff in 2010 wanted to sell her share in the property and with the help of the consideration spend her last few days decided to apply for encumbrance certificate. Upon obtaining the encumbrance certificate she found that she had in fact been cheated into executing the release deed on 15.09.1995. According to the plaintiff, no consideration was paid for the said release deed. Therefore, according to the plaintiff, the release deed was obtained by fraud and mis-representation and hence, it has to be set aside. She has also further prayed for partition.

5. The 1st defendant resisted the suit contending that the plaintiff was aware of the factum of release and she has received Rs.50,000/- as consideration for the document and executed the said deed. It is also pleaded that the plaintiff is acting at the instigation of the 2nd defendant who is her daughter.

6. The 2nd defendant filed a written statement supporting the case of the plaintiff and she had also sought for decree for partition of her 1/3rd share.

7. The plaintiff examined herself as PW1 and also examined one Rajendran who is the attesting witness to the release deed as PW2. Ex.A1 to A5 were marked on the side of the plaintiff. The 1st defendant examined himself as DW1 and also examined one Prabha as DW2. He had also produced Ex.B1 to Ex.B3.

8. The courts below upon consideration of the evidence found that the plaintiff was aware of the nature of the document even on the date of execution of Ex.A2 release deed i.e., 15.09.1995. In coming to the said conclusion the courts below relied upon the evidence of PW2, wherein PW2 had deposed that he had attested the document and he was aware of the fact that the document is a release deed. The evidence of PW2 to the effect that he did not see the 1st defendant paying a sum of Rs.50,000/- to the plaintiff was rejected.

9. The courts below have also relied upon yet another circumstance to conclude that the plaintiff was aware of the nature of the document when she executed the document i.e., the evidence in the form of Ex.B1 and Ex.B2. Under Ex.B1 dated 24.03.1997, the 2nd defendant had issued a notice claiming that the plaintiff had sold her undivided 1/3rd share in the suit

property to the 1st defendant. To the said notice the plaintiff and the 1st defendant had jointly issued a reply on 06.05.1997.

10. The said reply notice was issued under the instructions of the plaintiff and the 1st defendant. In the said reply notice it is made clear that the document dated 15.09.1995 was in fact a release deed and not a sale deed as claimed in the notice dated 24.03.1997. The courts below also pointed out that Ex.B2 notice was signed by the counsel appearing for the 2nd defendant in the present suit. The Courts below also took note of the fact that the counsel for the 2nd defendant had not denied issuing the said reply notice on 06.05.1997. Courts below also took note of the fact that the plaintiff is not an unlettered lady, she has signed in English in all the papers. Therefore, the courts below found that the plaintiff was aware of the nature of the document that she had executed on 15.09.1995 and the suit filed in 2011 is also hopelessly barred by limitation.

11. The courts below have also pointed out that though the plaintiff claims to have acquired knowledge of the nature of the document only when she obtained encumbrance certificate on 26.11.2010. She did not chose to produce the encumbrance certificate allegedly obtained by her on 26.11.2010.

12. I have heard Mr.S.Saravanan, learned counsel appearing for the appellatant.

13. The Mr.S.Saravanan would vehemently contend that the plaintiff as PW1 has deposed about how she was enticed into the execution of the document dated 15.09.1995. PW2 had deposed that he did not see the 1st defendant paying Rs.50,000/- to the plaintiff. Hence, the courts below were not right in dismissing the suit.

14. The lower appellate court has considered the said evidence. In fact the evidence of PW2 would show that it was PW2 and his father-in-law who had attested the document. They are related to the plaintiff. He has also stated that the document was not read over and explained to the plaintiff, since the plaintiff knows to read. He had also deposed that he does not know as to whether Sub-Registrar questioned the plaintiff about the nature of the document when the document was sought to be registered. PW2 had further deposed that there is a possibility of defendant having paid the consideration even after execution of the document. He had also deposed that he had attested the document knowing the nature of the document.

15. The evidence of PW2 coupled with the fact that the plaintiff had in Ex.B2 very clearly stated that she had executed release deed in favour of the 1st defendant led the courts below

to conclude that the plaintiff's case that the release deed dated 15.09.1995 was executed by fraud and misrepresentation cannot be accepted.

16. The courts below have also taken note of the fact that the same counsel who issued the reply notice dated 06.05.1997 had appeared for the 2nd defendant in the present proceedings and he has not chosen to deny the fact that he issued the reply notice marked as Ex.B2. I therefore do not find any question of law much less a substantial question of law in order to enable this court to entertain this Second Appeal.

17. Hence, this Second Appeal is dismissed without being admitted. There will be no order as to costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

dsa

To

1.The Principal District Judge, Coimbatore.

2.The III Additional Subordinate Judge,
Coimbatore.

+1cc to Mr.B.Singaravelu, Advocate SR.No.76750

+1cc to Mr.S.Saravanan, Advocate SR.No.76455

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S.A.No.898 of 2019

CA (CO)
GMY (10/02/2020)

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