

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.175 of 2014
and M.P.No.1 of 2014

Ponnammal ..Appellant/Ist Respondent/Plaintiff

Vs.

1. Kumudha ...1st Respondent/Appellant/Ist Defendant
2. T.Mohan ..2nd Respondent/2nd Respondent/2nd Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 17.09.2013 in A.S.No.40 of 2013 on the file of the Principal District Court, Erode reversing the judgment and decree dated 08.02.2012 in O.S.No.28 of 2009 on the file of the Subordinate Judge, Perundurai.

For Appellant : Mr.S.Sounthar

For Respondents: Mr.R.Kannan for
Mr.S.Dhanasekaran for R1
Mr.V.Ragunathan for R2

J U D G M E N T

The plaintiff in O.S.No.33 of 2005 (renumbered as O.S.No.28 of 2009) who succeed in obtaining a decree, declaring the Settlement Deed dated 14.11.1977, is valid and binding upon the defendants and permanent injunction restraining the defendants from interfering with her peaceful possession of the suit property, on its reversal by the lower appellate Court has come up with this second appeal.

2. The suit property admittedly belonged to one Subramaniam who died leaving behind his wife, the plaintiff, Ponnammal, only son Thangaraj and three daughters namely Kamalaveni, Pushpam and Chitra. On the death of Subramaniam, the three daughters and the plaintiff executed a release deed in favour of Thangaraj, the only son of the plaintiff on 10.02.1975. On 14.11.1977, the said Thangaraj executed a registered instrument of settlement conferring a life estate on the plaintiff and upon her death, the property is to revert back to him and his heirs. Thangaraj died on October 2002. Claiming that the defendants who are the

wife and son of Thangaraj attempted to interfere with her possession of the suit property, the plaintiff filed a suit for bare injunction in O.S.No.59 of 2004 before the District Munsif cum Judicial Magistrate, Perundurai. The defendants entered appearance and contended that the settlement deed is sham and nominal and it was never acted upon. Upon such plea, the plaintiff withdrew the suit in O.S.No.59 of 2004 with a liberty to file a fresh suit and has come forward with the present suit praying for the reliefs stated above.

3. The defendants resisted the suit contending that the settlement deed dated 14.11.1977 is sham and nominal document and it was never acted upon. The revenue records continued in the name of late Thangaraj. It is also claimed by the 1st defendant that the plaintiff had claimed that she had borrowed heavily on the security of the suit property and such borrowing will not be binding on her.

4. At trial, the plaintiff has examined herself as P.W.1 and two other witnesses namely Balasubramaniam and Rasu were examined as P.Ws.2 and 3. Exs.A1 to A21 were marked on the side of the plaintiff. On the side of the defendants, the 1st defendant was examined as D.W.1 and three other witnesses were examined as D.Ws.2 to 4. Exs. B1 to B8 were marked on the side of the defendants.

5. The trial Court upon consideration of the evidence on record, particularly, the recitals in Ex.A16, Sale Deed dated 26.07.1984 executed by Thangaraj along with the plaintiff and his sisters concluded that the settlement deed was acted upon and it is not a sham and nominal as claimed by the defendants. On the said conclusion, the trial Court decreed the suit as prayed for. Aggrieved, the defendants preferred an appeal.

6. The lower appellate Court, however reversed the judgment and decree of the trial Court and concluded that the settlement deed was not acted upon and the same was only sham and nominal. Aggrieved, the plaintiff has come up with this appeal.

7. I have heard Mr.S.Sounther, learned counsel appearing for the appellant, Mr.R.Kannan, learned counsel appearing for the 1st respondent and Mr.V.Ragunathan, learned counsel appearing for the 2nd respondent.

8. The following substantial question of law was framed at the time of admission:

"Whether the finding of the lower appellate Court that Ex.A4 Settlement Deed dated 14.11.1977 was executed as a sham and nominal document is correct?"
(sic)

9. Mr.S.Sounther, learned counsel appearing for the appellant would vehemently contend that the lower appellate Court erred in concluding that the settlement deed, Ex.A4 dated 14.11.1977 was not acted upon. He would draw my attention to the recitals in Ex.A16, sale deed dated 26.07.1984 executed by the plaintiff, her son Thangaraj and her three daughters and contend that this very document that has been executed after the execution of the settlement deed Ex.A4 would show that Ex.A4 is not sham and nominal as alleged by the defendants. The following recitals in Ex.A16 are relied upon by the learned counsel in support of his submissions:

"The Vendor No.2 who owns the under mentioned immovable properties by virtue of his right as the son of late V.Subramaniya Mudaliar who has obtained release of partition rights in his favour by a registered deed dated 10.02.1975. (Document No.1/1975) executed by Nos.1,3 to 5 and at present in the enjoyment of No.1 by reason of a registered settlement deed dated 14.11.1977 (Document No.61/1978) executed by No.2 giving right of enjoyment for life."

10. The vendor No.1 referred in the said document is the plaintiff and Vendor No.2 is her son Thangaraj, the executant of the settlement deed dated 14.11.1977. The above recitals according to the learned counsel appearing for the appellant, put the controversy regarding the validity of the settlement deed dated 14.10.2019 beyond doubt. Therefore, according to him, the lower appellate Court was not right in concluding that the settlement deed was not acted upon. He would also refer to the recitals in the settlement deed itself which state that the revenue records were to continue to remain in the name of the settlor, since he has transferred only life estate under the said instrument.

11. Contending contra, Mr.R.Kannan, learned counsel appearing for the 1st respondent would submit that the lower appellate Court has taken a note of the fact that the defendants have also continued to be in possession of the property despite the execution of the settlement deed to come to the conclusion that the settlement deed was not acted upon. Even in the plaint, the plaintiff has admitted that the defendants were in possession of a portion of the property. She has also pleaded that Thangaraj and his family were residing with her till his death and even thereafter. Therefore, the existence of some evidence showing that the defendants are in possession of the portion of the property settled will not by itself render the document sham and nominal. As per the registered instrument, the plaintiff has been given a life estate and she has no power of alienation. No doubt, certain debts availed by the plaintiff have been referred to and the same were taken into account by the lower appellate Court. But, those questions are foreign to

the scope of the very suit. The validity, truth or otherwise of the debts and their binding nature on the rights of the defendants over the suit property cannot be gone into in the absence of the Lenders. Hence, this question is left open and the only question to be decided in the suit is the validity or truth of the settlement deed dated 14.11.1977 and the rights that would flow to the plaintiff under the said instrument.

12. As already pointed out by Mr.S.Sounther, learned counsel appearing for the appellant, the recitals in Ex.A16 the sale deed dated 26.07.1984 executed by the settlor under the settlement deed dated 14.11.1977 namely Thangaraj, the appellant herein and her daughters would show that the settlement deed was acted upon and the appellant was in possession pursuant to the same. Hence, I find that the lower appellate Court had given a thoroughly erroneous finding to the effect that the settlement deed was not acted upon. I find that the findings of the lower appellate Court are based on assumptions which are foreign to the very scope of the suit. Therefore, the conclusion of the lower appellate Court that the settlement deed was not acted upon, in my considered opinion, is perverse.

13. In view of the above, the question of law is answered in favour of the appellant. The settlement deed dated 14.11.1977 is held to be true and valid instrument. Hence the appeal is allowed. Therefore, the judgment and decree of the lower appellate Court are set aside and that of the trial Court are restored. It is made clear that the plaintiff would have only the life interest conferred on her under the settlement deed dated 14.11.1977 itself and nothing more. Since the plaintiff herself has admitted that a portion of the property is occupied by defendants, she shall not disturb their possession. Hence a decree for permanent injunction is granted in her favour is limited to her right to be in possession and she is not entitled to disturb the defendants' possession as admitted in the plaint. Consequently connected miscellaneous petition is closed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

vum

To

1. The Principal District Court,
Erode.

2. The Subordinate Judge,
Perundurai.

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

+1cc to Mr.S.Sounthar, Advocate SR.No.93866

+1cc to Mr.V.Ragunathan, Advocate SR.No.93882

S.A.No.175 of 2014
and M.P.No.1 of 2014

CNR (CO)
GMY (12/06/2020)



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