

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :28.06.2019

PRONOUNCED ON:05.07.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.701 of 2019

R.Viswanathan ... Appellant/Appellant/Defendant

Vs.

Christopher Jayaprakash ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 07.01.2019 in A.S.No.286 of 2018 on the file of the XVIII Additional City Civil Court, Chennai, confirming the judgment and decree dated 16.04.2018 in O.S.No.3541 of 2015 on the file of XV Assistant City Civil Court, Chennai.

For Appellant : Mr.K.P.Santhosh

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 07.01.2019 passed in A.S.No.286 of 2018 on the file of XVIII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 16.04.2018 passed in O.S.No.3541 of 2015 on the file of XV Assistant Judge, City Civil Court, Chennai.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3.The suit has been laid by the plaintiff against the defendant for the reliefs of declaration and permanent injunction. The relief of declaration prayed for by the plaintiff is that the cancellation deed dated 01.06.2015 unilaterally executed by the defendant is not valid, illegal and

not binding on him and the relief of permanent injunction is prayed for restraining the defendant, his men, agent and all persons claiming under them from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

4. Shorn of unnecessary details, it is found that the plaintiff claims title to the suit property based on the settlement deed dated 09.04.2007 executed in his favour by the defendant and his wife Thanapackiam, the certified copy of which has been marked as Ex.A2. The defendant is the father of the plaintiff and Thanapackiam is the mother of the plaintiff. According to the plaintiff, the defendant is not entitled to unilaterally cancel the abovesaid settlement deed and inasmuch as the defendant without any basis, had cancelled the settlement deed, by a deed of cancellation on 01.06.2015, the copy of which document has been marked as Ex.A6 and thereby attempted to interfere with his possession and enjoyment of the suit property, according to the plaintiff, he has been necessitated to institute the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that he was suffering from Parkinson's disease and the plaintiff exercising coercion and undue influence had obtained the Ex.A2 settlement deed from him and the plaintiff was in a dominant position and therefore the settlement deed Ex.A2 had not been voluntarily executed by him and in such view of the matter, according to the defendant, he had cancelled the settlement deed by a deed of cancellation on 01.06.2015 and hence it is contended that the plaintiff is not entitled to seek and obtain the reliefs prayed for.

6. As rightly found by the Courts below, it is found that the defendant, as such, has not denied the execution of Ex.A2 settlement deed in favour of the plaintiff, however the defendant would only plead that the same had been obtained by the plaintiff by coercion and undue influence etc., As regards the above case pleaded by the defendant, on the part of the plaintiff in the obtainment of Ex.A2 settlement deed, the person pleading the abovesaid factors should establish the same. Furthermore, according to the defendant, the plaintiff was in a fiduciary relationship with him and in a dominant position and misusing the same had obtained the settlement deed from him and therefore he had been necessitated to cancel the same subsequently.

7. From the materials placed on record, it is found that nearly 8 years after the execution of Ex.A2 settlement deed,

the defendant has chosen to cancel the same by a deed of cancellation on 01.06.2015 marked as Ex.A6. As rightly found by the Courts below, the defendant and his wife are found to be not illiterate persons and on the other hand, both the defendant and his wife had been serving in the Public Works Department and the defendant is found to be a retired section officer in the abovesaid Department. Mrs.Thanabakiyam, the wife of the defendant is found to have left with plaintiff till her life time and the materials placed on record go to show that the relationship between the defendant and his wife has not been cordial and the defendant is found to have deserted his wife during her life time.

8.Considering the facts that the defendant is a retired Government servant and drawing pension and the defendant's daughter is also a practicing doctor and considering the evidence adduced by the defendant and his conduct as above pointed out and discussed by the Courts below, it is found that at no point of time, the defendant and his wife were the dependents on the plaintiff and on the other hand, it is found that the defendant had been acting on his own accord based on his independent decisions and therefore to say that the plaintiff was in a dominant position and in a fiduciary relationship with the defendant at the time, when Ex.A2 was executed, as such, cannot be accepted particularly, when the materials placed on record do not lend support to the abovesaid case of the defendant.

9.If really the plaintiff had obtained Ex.A2 settlement deed by coercion and undue influence as putforth by the defendant, the defendant as a prudent person and worldly wise man, at least immediately thereafter would have lodged necessary complaint against the plaintiff qua the conduct of the plaintiff in the obtainment of the settlement deed as putforth by the defendant. On the other hand, it is seen that no action as such had been taken by the defendant for nearly 8 years after executing the settlement deed in challenging the same. Considering the materials placed on record, it is found that the settlement deed Ex.A2 had been accepted and acted upon by the plaintiff and pursuant to Ex.A2 settlement deed, it is found that the electric service connection, water connection, property tax etc., had been changed in the name of the plaintiff and therefore it is found that inasmuch as the defendant had voluntarily and without any pressure and out of a free state of mind had executed the settlement deed Ex.A2, it is found that thereafter he had not objected to the mutation of the revenue records in respect of the suit property in favour of the plaintiff and therefore the case of the defendant that the plaintiff had exercised coercion and undue influence etc., in the obtainment of Ex.A2 settlement deed, as such, cannot be

accepted and it was rightly turned down by the Courts below. The defendant has also pleaded that he was suffering from ailments such as Parkinson's disease etc., and therefore unable to resist the pressure exerted on him by the plaintiff in the obtainment of the settlement deed. However, with reference to the plea of the defendant that he had been suffering from Parkinson's disease or other ailments and thereby he had been put to pressure by the plaintiff, absolutely there is no material projected on the part of the defendant. On the other hand, as rightly found by the Courts below, the defendant is found to be a hale and healthy person and other than the age factor, the defendant is found to be not suffering from any ill health as such and therefore the case projected by the defendant that he was suffering from various ailments at the time of execution of Ex.A2 settlement deed and unable to resist the pressure put by the plaintiff in the obtainment of the settlement deed, as such, cannot be countenanced and rightly disbelieved by the Courts below.

10. From the materials placed on record, it is found that following the strained relationship between the defendant and his wife, the defendant's wife had lodged the complaint against him and their daughter who has been examined as D.W.2 and the copy of the complaint has been marked as Ex.A12. No doubt, it is found that the defendant had lodged a complaint against the plaintiff and the same could be gathered from the order passed by this Court on 07.07.2015 in Crl.O.P.No.16718 of 2015.

11. In addition to that, the materials placed on record go to show that following Ex.A2 settlement deed, the suit property had been mortgaged and the defendant had also participated in the mortgage transaction along with the plaintiff and the same could be gathered from the documents marked as Exs.A9 and A10 and inasmuch as, Ex.A2 settlement deed had been voluntarily executed by the defendant in favour of the plaintiff and accordingly when the plaintiff had endeavored to mortgage the same, the defendant is also found to have joined the same and if really the settlement deed had been secured by the plaintiff by using coercion or undue influence, the defendant would not have subscribed his signature in the mortgage deed and therefore the case of the defendant that the plaintiff had obtained the settlement deed by exercising third degree methods had been rightly rejected by the Courts below. As rightly found, the defendant's wife i.e., the plaintiff's mother is also a party to the mortgage transaction.

12. In the light of the abovesaid factors, it is seen that the defendant had chosen to cancel the settlement deed only

after his wife had leveled the police complaint against him and considering the entire materials available on record, it is found that following the strained relationship between the plaintiff and the defendant, one way or the other, the defendant had also endeavored to hinder the plaintiff in enjoying the suit property and hence it is seen that the plaintiff had been necessitated to seek the relief for permanent injunction against the defendant.

13.The defendant has not preferred any civil action for the cancellation of the Ex.A2 settlement deed on the grounds put forth by him. On the other hand, he had chosen to unilaterally cancel the settlement deed and it is found that the defendant on the ill advice of his daughter, had embarked upon such an act without any basis and accordingly put forth a false case as if, he had been prevailed upon by the plaintiff, one way or the other, in the execution of the settlement deed in respect of the suit property.

14.In the light of the abovesaid factors, when it is seen that the defendant is not entitled to unilaterally cancel the settlement deed and when the settlement deed Ex.A2 is found to have been voluntarily executed by the defendant and only subsequent thereto, nearly 8 years thereafter, he had without any rhyme or reason had chosen to cancel the same and when the defendant is not entitled to cancel the same and the reasons adduced by the defendant for the cancellation of the same not being supported within any materials and on the other hand found to be on untenable grounds, in such view of the matter, the Courts below are found to be totally justified in accepting the plaintiff's case and rejecting the defence version. No valid reason is warranted to interfere with the determination of the Courts below in granting the reliefs in favour of the plaintiff as prayed for. Thus it is seen that no substantial question of law is involved in this second appeal.

15.The counsel for the defendant/appellant at the time of admission, in support of his contentions placed reliance upon the decisions reported in AIR 2007 SUPREME COURT 1499 [Mehar Chand Das Vs. Lal Babu Siddeque & Others] and AIR 2003 SUPREME COURT 4351 [Krishna Mohan Kul alias Nani Charan Kul and another Vs.Pratima Maity and others]. The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

16.For the reasons aforesated, the second appeal is found to be devoid of merits and accordingly the same is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

mfa

To

1. The XVIII Additional City Civil Judge,
XVIII Additional City Civil Court,
Chennai.
2. The XV Assistant City Civil Judge,
XV Assistant City Civil Court,
Chennai.

Copy to

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

+lcc to Mr.T.Viswanatha Rao, Advocate SR.No.56732

S.A.No.701 of 2019

NRL (CO)
GMY (14/10/2019)

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