

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.69 of 2014

and

MP.No.1 of 2014

R.Shanmugam : Appellant/Appellant/Plaintiff

Vs.

1.R.Pangajam

2.R.Thiyagarajan

3.R.Shanthalakshmi

: Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 23.10.2013 made in A.S.No.68 of 2013 on the file of the learned XVIII Additional Judge, City Civil Court, Chennai in confirming the judgment and decree dated 04.11.2011 made in O.S.No.2368 of 2010 on the file of the learned III Assistant Judge, City Civil Court, Chennai by allowing this Second Appeal.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.P.B.Balaji

J U D G M E N T

The plaintiff, whose suit for partition in O.S.No.2368 of 2010 was dismissed by the trial court, on its affirmation by the lower appellate court, has come forward with this Second Appeal.

2. The plaintiff laid the suit seeking partition contending that the suit property was purchased by his father Rangasamy in the name of his mother Padmavathy. According to the plaintiff, Padmavathy was only a ostensible owner and the sale consideration for the purchase was made by Rangasamy. Therefore, according to the plaintiff, as a son of Rangasamy and Padmavathy, he would be entitled to 1/4th share in the suit property.

3. The suit was resisted by the defendants. The 3rd defendant had filed a written statement denying the plea that the suit property was purchased by Rangasamy in the name of Padmavathy. It was claimed that Padmavathy had her own income to contribute for the purchase of the suit property. It was also contended that Padmavathy had executed a settlement deed on 06.09.1995 which was marked as Ex.B20 settling the property on the 3rd defendant. A Will said to have been executed by Padmavathy on 01.09.1995 which was registered on 11.09.1995 was also projected.

4. The courts below on a consideration of the evidence on record concluded that the plaintiff has not established that the purchase of the property was made by Rangasamy and it was not intended to be for the benefit of his wife Padmavathy. The courts below further concluded that in view of the execution of the settlement deed on 06.09.1995 the 3rd defendant became absolute owner of the property and therefore the plaintiff cannot seek partition. Aggrieved the plaintiff has come up with this appeal.

5. I have heard Mr.N.Manokaran, learned counsel appearing for the appellant and Mr.P.B.Balaji, learned counsel appearing for the respondents.

6. Upon consideration of the pleadings, the evidence on record and the arguments of the counsels on either side the following substantial questions of law is framed for consideration in this appeal:

1. Whether the courts below were right in concluding that the 3rd defendant would become absolute owner of the property by virtue of the settlement deed dated 06.09.1995, when the said document has not been proved in accordance with law as per Section 68 of the Evidence Act?
2. Whether the courts below were right in holding that the prayer for setting aside the settlement deed is necessary?

7. Mr.N.Manokaran, learned counsel appearing for the appellant would vehemently contend that the courts below were not right in coming to the conclusion that the property was purchased by Padmavathy from and out of her own income and the settlement deed dated 06.09.1995 has been proved in accordance with law. He would point out that PW2 Balaraman who is the brother-in-law of Rangasamy had deposed that he had paid the sale consideration of Rs.80,000/- for and on behalf of Rangasamy at the time of execution of the sale deed dated 31.03.1968.

8. However, the said contention cannot be accepted in view of Benami Property Transactions Prohibition Act, 1988. After the introduction of the Benami Property Transactions Prohibition Act, 1988 while it is open to a person to purchase property in the name of the wife or unmarried daughter it shall be presumed that such purchase is for the benefit of wife of unmarried daughter. If that person or any other person seeks to claim title under the purchase, it is for that person who claims to be the real owner to prove that the purchase was not intended for the benefit of the unmarried daughter or the wife, whose name figures as ostensible owner in the sale deed. Such evidence is lacking in the case on hand.

9. No attempt was made to prove that the purchase by Rangasamy in the name of Padmavathy was not intended to be for the benefit of Padmavathy, even assuming that the sale consideration was paid by Rangasamy through Balaraman, PW2. Hence, I am unable to countenance the said submission of Mr.N.Manoharan on the question of purchase of property in the name of Padmavathy by Rangasamy.

10. The second contention of Mr.N.Manoharan deserves to be considered. It is on the proof of the settlement deed dated 06.09.1995. Both the courts below have not adverted to the fact that the settlement deed has not been proved in accordance with law. Attesting witnesses to the document have not been examined and no reason has been given for non-examination of the attesting witnesses or for not proving the document in the manner known to law as per Sections 68 or 69 or 71 of the Evidence Act.

11. Mr.P.B.Balaji, learned counsel appearing for the respondents would contend that the execution of the settlement deed was not specifically denied.

12. I am unable to agree with the said contention. In the plaint the plaintiff has clearly avered that the contents of the reply notice that Padmavathy executed settlement deed in favour of Santhalakshmi on 06.09.1995 is denied. It is also stated as follows:-

"The document mentioned in the reply notice is not a true document and the same should be concocted one. The said Padmavathi had no necessity to execute any document much less the document dated 06.09.1995. It is suspected that some one would have impersonated Padmavathi before the Registrar Office by forging her signature and thumb impression. The settlement deed dated 06.09.1995 is not a genuine document and the same is void and

will not affect the rights of the plaintiff's undivided 1/4th share in the suit property..."

13. In view of the above plea it was incumbent upon the defendants who rely upon the settlement deed to prove the same in accordance with law. The above pleadings would show that there was nothing less than a specific denial of the execution of the settlement deed. Proviso to Section 68 of the Evidence Act only exempts the requirement of proof by examining the attesting witness in the event the execution of the document is not specifically denied. The above pleadings would show that the plaintiff has even in the plaint specifically denied execution of the document by Padmavathy. Therefore, I am of the considered opinion that the courts below were not right in holding that the settlement deed has been proved in accordance with law.

14. On the second question of law Mr.N.Manokaran, would submit that once a person seeks partition claiming to be a co-sharer denying the testamentary or non-testamentary instrument said to have been executed by predecessor in interest, it is for the person who sets up title under that instrument to prove that instrument in accordance with law. The prayer for setting aside the document is not required. The legal heirs can contend that the said document is not true and genuine and seek partition. The prayer for setting aside will arise only when a person suing to invalidate the document is party to the instrument. If the person suing is not a party to the instrument, then such person need not seek to set aside or cancel the instrument before seeking partition.

15. Hence, both the questions of law are answered in favour of the appellant and the appeal is allowed setting aside the judgment and decree of the courts below granting a preliminary decree declaring the plaintiff's 1/4th share in the suit property. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

// True Copy//

WEB COPY

Sub Assistant Registrar

dsa

To

1. The XVIII Additional Judge,
City Civil Court, Chennai.

2. The III Assistant Judge,
City Civil Court, Chennai.

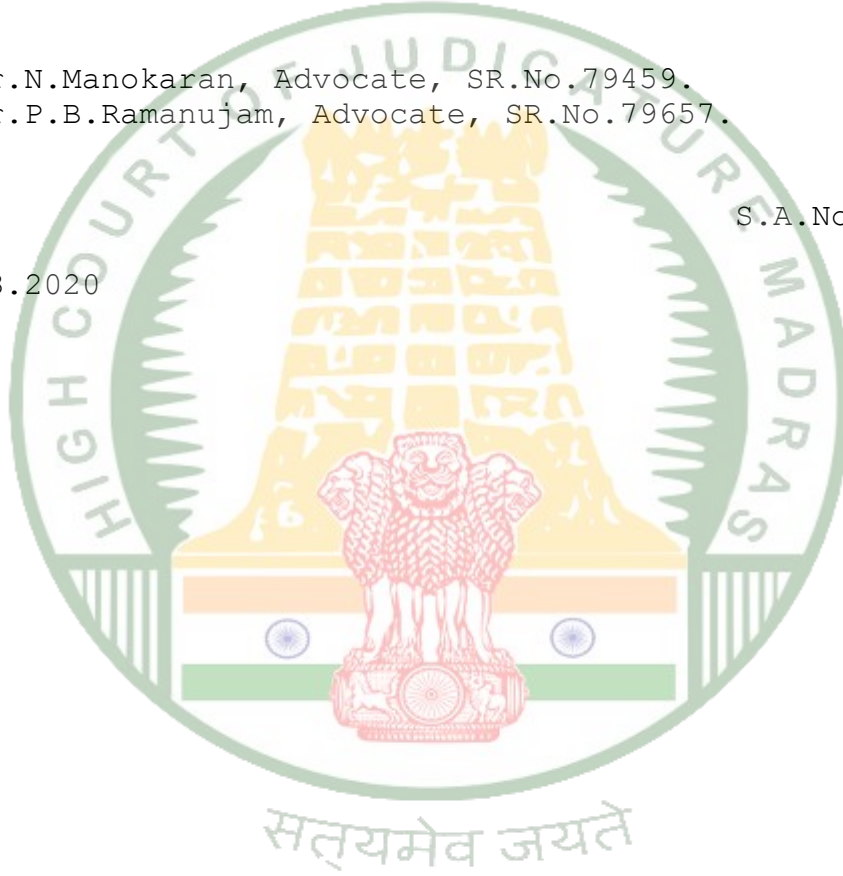
Copy to: The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate, SR.No.79459.

+1cc to Mr.P.B.Ramanujam, Advocate, SR.No.79657.

S.A.No.69 of 2014

SAI (CO)
CSR: 03.03.2020



WEB COPY