

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.897 of 2019

M.S.Manikavasagam

..Appellant/Plaintiff

Vs.

M.M.Ramesh

..Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.112 of 2018 daed 22.01.2019 on the file of III Additional Judge, City Civil Court, Chennai, confirming the judgment and decree in O.S.No.3033 of 2016 dated 20.10.2017 on the file of learned VIII Assistant Judge, City Civil Court, Chennai, and allow the Second Appeal with costs throughout the suit proceedings.

For Appellant : Mrs.R.Chithradevi

J U D G M E N T

This Second Appeal has been filed at the instance of the plaintiff in O.S.No.3033 of 2016. The said suit was filed by the plaintiff seeking a declaration that the settlement deed executed by him on 23.06.2004 in favour of the defendant is null and void as the same was executed under coercion and undue influence and also for a declaration that the revocation of settlement deed executed by the plaintiff in favour of the defendant which was registered as Doc. No.350/2015 in the Office of the Sub-Registrar, Konnur is valid.

2. The defendant is the son of the plaintiff. According to the plaintiff, the defendant being the eldest son of the plaintiff was living with him whereas the other children were living away. During the year 2004, the defendant harassed the plaintiff and his wife and forced him to settle the property in his favour. It was under such coercion and undue influence the plaintiff executed the settlement deed dated 23.06.2004 and the same was registered as Doc. No.3135/2004 in the Office of the Sub-Registrar, Konnur. It is also claimed that coercion is writ large in the face of the document itself. Certain facts like no

shares allotted to other children and the value of the property has been under-stated and other grounds were raised.

3. The defendant resisted the suit contending that the settlement deed was executed by the plaintiff on his own will and volition. It was also pointed out that the defendant was working in Kaziabad at the time of execution of the document i.e., 23.06.2004, therefore, according to the defendant, there was no question of him exercising any coercion or undue influence on the plaintiff.

4. It is also pointed out that the original document relating to the property was handed over to the defendant. After 11 years of the execution of the settlement deed, the plaintiff has filed a complaint before the police and had obtained non-traceable certificate regarding the original documents based on which he had executed the revocation deed revoking the settlement deed dated 23.06.2004. It is the contention of the defendant that the revocation deed is invalid since it is unilateral revocation. It was also further pleaded that he had in fact paid the value of the suit property to the plaintiff as well as the other sons. Evidence was also placed in that regard.

5. Both the courts below upon consideration of the evidence on record had concluded that there was no coercion or undue influence in executing the document. Though a plea was raised by the plaintiff that the suit is barred by limitation, no issue was framed by the courts below with regard to limitation. The courts below on the analysis of evidence particularly the documents that were produced, found that the relationship was quite cordial and normal till the year 2016.

6. In fact it was found that in the sale agreement dated 02.07.2014 executed by the defendant, the plaintiff had signed as a witness. The parent document of the property viz., sale deed executed by Tamil Nadu Housing Board in favour of the Sahul Hameed dated 09.05.1989 and the sale deed executed by Sahul Hameed in favour of the plaintiff on 15.05.1989 were produced as Ex.B2 and Ex.B3 by the defendant.

7. It is also seen from the property tax receipts as well as the water tax receipts that mutation of revenue records was effected in favour of the defendant. Ex.B5 dated 30.01.2003 is the letter addressed by the plaintiff to the defendant, where it is shown that the defendant was resident of Kaziabad at the relevant point of time. Therefore, the theory of coercion was disbelieved by the courts below.

8. The limitation to set aside the document or to have the document declared as invalid is three years from the date on which the facts entitling the plaintiff to have the instrument or decree cancelled or set aside is become known to him. In the case on hand, the essential plea of the plaintiff is that the defendant exercised undue influence and coercion on him at the time of execution of the settlement deed which is on 23.06.2004. The suit came to be filed in the year 2016, nearly 12 years after the execution of the document.

9. The learned counsel for the appellant would submit that the plaintiff became aware of the coercion only in the year 2016. The said plea cannot be entertained. It is not the case of the plaintiff that he did not know the nature of the document itself. Very pleading of the plaintiff is that he settled the property in favour of the defendant knowing that it is a settlement deed. His further plea is that he was coerced to execute the document. Therefore, it is clear that the plaintiff was aware of the fact that he was coerced to execute the settlement deed even on the date of execution of the document viz., 23.06.2004. Therefore, he should have filed the suit within three years from the date of execution of the settlement.

10. The conduct of the plaintiff and the evidence on record would show that the plaintiff has changed his mind only in the year 2015 and chosen to revoke the settlement deed by adopting an illegal method of filing a complaint with police and obtaining a non-traceable certificate. Therefore, I do not find any ground to interfere with the conclusion of the courts below in dismissing the suit. I don't find any question of law much less a substantial question of law in order to enable this court to entertain this Second Appeal.

11. Hence, this Second Appeal is dismissed without being admitted. There will be no order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

dsa

To

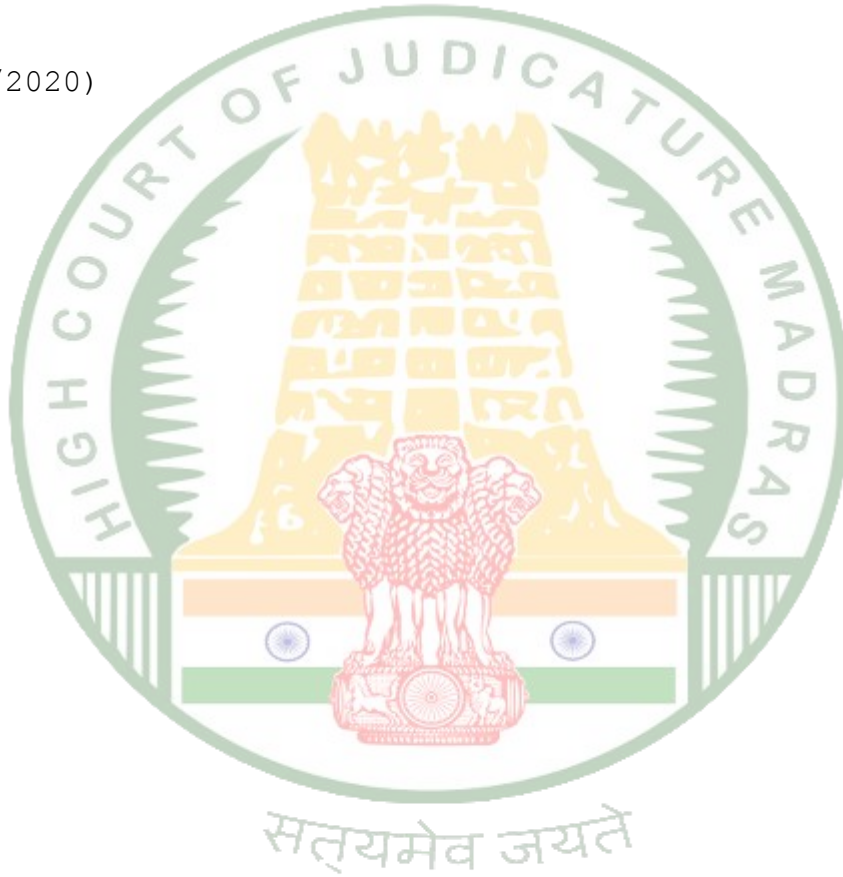
1. The learned III Additional Judge,
City Civil Court, Chennai.

2. The learned VIII Assistant Judge,
City Civil Court, Chennai.

+2cc to Mr.V.Balaji, Advocate SR.No.76394

S.A.No.897 of 2019

CA(CO)
GMY(09/01/2020)



WEB COPY