

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice C.SARAVANAN

A.S.No.238 of 2017
and
C.M.P.No.6238 of 2019

1.Anthoniammal
2.Backialakshmi ... Appellants/Defendants 2 & 3

Vs

1.A.Juliet ... 1st Respondent/Plaintiff
2.Premanandam ... 2nd Respondent/1st Defendant

Appeal preferred under Section 96 C.P.C. r/w Order XLI Rules 1 and 2 C.P.C. against the judgment and decree dated 03.10.2016 made in O.S.No.12 of 2015 on the file of the III Additional District Judge, Tiruvallur at Poonamallee.

For Appellants ... Mr.R.Thiagarajan
For Respondents.. Mr.S.Ramajayam

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The unsuccessful defendants are the appellants. The suit has been filed for declaration, possession and compensation. The suit was decreed as prayed for. Hence the present appeal.

2.The case of the first respondent/plaintiff is as follows:

The suit property originally belongs to one Sarojammal. A sale deed was executed in favour of the vendor of the deceased Sarojammal dated 05.10.1986. Thereafter, a sale deed was executed under Ex.A2 in favour of the deceased Sarojammal and her husband. The husband of Sarojammal predeceased her. Under Ex.A3, a cash receipt for a sum of Rs.16 lakhs was paid by the husband of the first respondent/plaintiff on 02.06.2008. On the very same day, a registered power deed was executed by Sarojammal in his favour. Under Ex.A5, a sale deed was executed by Krishnamurthy, husband of the first respondent/plaintiff in her favour. Ex.A6 is the electricity consumption charges. Exs.A7

to A16 are the documents evidencing properties standing in the name of the first respondent/plaintiff. Ex.A7 is the name change certificate issued by the Corporation of Metro Water dated 31.08.2010 in the name of the first respondent/plaintiff after execution of the sale deed under Ex.A5.

3.It is the case of the first respondent/plaintiff itself that few days before the death of deceased Sarojammal, she was suffering from chronic illness of cancer. Ex.B1 Will was executed on 13.07.2010. Thereafter, she died on 23.08.2010 as per the death certificate Ex.B2 dated 29.10.2010. After the execution of Ex.B1 and immediately after few days before the death of Sarojammal, the second appellant, who is the daughter of the first appellant executed Ex.B3 by way of settlement deed. Exs. B4 to B17 are the documents pertaining to Sarojammal and her late husband.

4.An application was filed during the course of hearing seeking to invoke Order 41 Rule 27 C.P.C. to mark additional documents. These documents are also pertaining to either Sarojammal or her husband. One of the documents show the name of the second appellant along with another adopted son of her viz., Idayachandran. Before the trial Court, the first respondent/plaintiff marked Exs.B1 to B17 apart from the additional documents sought to be marked before us. Both the first respondent/plaintiff and her husband were examined as P.Ws.1 and 2. D.W.1 is the third defendant viz., Backiyalakshmi, who is the second appellant. D.W.2 is the attesting witness to Ex.B1 and D.W.3 is the first appellant. Before the trial Court, six issues have been framed. These issues are with respect to the relief of declaration, possession and title of the first respondent/plaintiff, adequate payment of court fee and entitlement of compensation. The trial Court answered the issues in favour of the plaintiff and decreed the suit. Challenging the same, the present appeal is before us.

5.Mr.R.Thiagarajan, learned counsel appearing for the appellants submitted that there are suspicious circumstances covering the case and there is no dispute with respect to title of Sarojammal. The second appellant was the adopted daughter of the deceased. The relationship between the parties viz., the appellants on the one hand and the deceased on the other hand is not in dispute though the same is with respect to Idayachandran. It is the case of collusion between Idayachandran and the first respondent/plaintiff and her husband without the knowledge of the deceased. Though cash receipt was executed on 02.06.2008, the sale deed speaks about only part of the amount of sale consideration. There is no need for the power of attorney executed on 02.06.2008. The additional documents will not take away the right of the appellants. The evidence will have to be seen as a whole. The conduct of the parties also will have to be

seen. Therefore, Exs.A3 and A4 are to be treated as void documents. They have been executed by taking note of the illness and the illiteracy of the deceased. Hence the appeal will have to be allowed.

6.On the application filed, it is submitted that these documents came to be filed on an earlier occasion for the reasons stated in the affidavit filed in support of the application. One of the documents clearly mentions the name of the second appellant. This lends credence to her case that she was treated as adopted daughter along with Idayachandran. Therefore, in the interest of herself, this document will have to be taken as additional document and thus the appeal will have to be allowed.

7.Learned counsel appearing for the respondents would submit that the documents have been created by the appellants. Execution of the documents was not denied by the appellants specifically. The signatures of the deceased were also admitted. The deceased lived for more than two years thereafter. The circumstances governing execution of Exs.A3 and A4 were explained. The consideration mentioned in the sale deeds was for the purpose of avoiding excess payment beyond the guideline value. In any case, Ex.A3 clearly speaks about transfer of money in favour of the vendor. The past conduct of the husband of the first respondent/plaintiff is irrelevant. That has been explained. The complaint given was withdrawn by the deceased herself. Only thereafter, the documents have been executed. She has also executed a document much prior to the diagnosis of cancer as admitted by the appellants themselves. The appellants created the Will and the settlement deed. The Will was created few days before the death of the deceased and the settlement deed after her death immediately. At the time of execution of the Will, both the appellants were present as deposed by them. There is no explanation for non-production of the original documents at the time of execution of the Will. In such view of the matter, the appellants were very much aware of the execution of Exs.A4 to A6 coupled with Ex.A7. That is the reason why the documents were created. Therefore, the appeal will have to be dismissed.

8.The question for consideration is as to whether the judgment and decree rendered by the Court below requires interference along with the issues framed.

9.The title is not in dispute atleast with respect to Sarojammal. We will first take the documents relied upon by the first respondent/plaintiff. Ex.A3 is the cash receipt. The signature of Sarojammal is not disputed as seen from the evidence adduced on behalf of the appellants. This document is also attested by Idayachandran. The fact that Idayachandran was

also living with Sarojammal is not in dispute. In fact, it is the case of the appellants themselves that the deceased Sarojammal treating him as her son and gave one of the properties. Similarly, the other documents were also attested by Idayachandran. Exs.A4 and A5 are the registered documents. As stated above, these documents were not specifically denied. However, it is the case of the appellants that these documents were obtained by force. As rightly held by the Court below, we are not inclined to accept the said submission, particularly when the deceased was alive for two years and at least at that point of time, she was not suffering from cancer. We are also inclined to hold that the appellants were aware of those documents. The name change certificate under Ex.A7 is also dated 31.08.2010. If that is the case, there was no reason as to why the appellants have not challenged those documents before the competent Court. Thus, we hold that Exs.A3 to A5 have been proved in the manner known to law. Execution of Ex.A5 between the husband and wife cannot be a factor to raise a dispute against Ex.A7. Once Ex.A3 is proved, the consequence will have to follow. Admittedly, there is a power deed executed in favour of the husband of the first respondent/plaintiff. If Ex.A3 speaks about the sale consideration, nothing more is required. As stated above, the deceased was living for more than two years thereafter. We also take note of the fact that all the original documents are in possession of the first respondent/plaintiff through the power holder her husband. In such view of the matter, we are inclined to uphold Exs.A3 to A5 coupled with Ex.A7.

10.The documents relied upon by the appellants cannot be accepted as true and genuine. Ex.D1 was said to have been executed by the deceased in favour of the second appellant. The evidence on record would show that she was accompanied by both the appellants. She was suffering from cancer and died few weeks thereafter. Admittedly, at that point of time, the original documents were not with the deceased Sarojammal. Even as from the evidence of the appellants, both in the proof affidavit and the cross-examination, the deceased contracted cancer in December, 2008, which is sought to be contradicted by stating that she was actually contracted in the year 2009. Be that as it may, Exs.A3 to A5 were executed between 02.06.2008 and 17.06.2008. In such view of the matter, we are of the view that Exs. B1 and B3 cannot be relied upon. Ex.B3 was executed between themselves after the death of Sarojammal. Perhaps, the appellants did not want her to execute the sale deed instead of Will, which would not have been registered in view of the earlier one done. Be that as it may, we do not find any error in the judgment and decree rendered by the trial Court in placing reliance upon Exs.A3 to A5 and A7 as against Exs.B1 and B3.

11.The other documents sought to be relied upon by the appellants would not help their case. There is absolutely no document to show that the deceased treated the second appellant as her adopted daughter. Though one of the documents, which is sought to be relied upon by way of additional documents, says that she was living with her along with Idayachandran, that itself may not be a ground to support the case of the appellants. After all, for invoking Order 41 Rule 27 C.P.C., the parameters mentioned by way of restrictions will have to be satisfied. These documents are sought to be marked only at the time of arguments before this Court. In fact, the matter has been heard and adjourned and thereafter, these documents have been filed. Even assuming these documents are to be admitted, they will not enhance the case of the appellants.

12.In such view of the matter, we do not find any error warranting interference in the judgment and decree rendered by the Court below. We can only hold that the appellants were quite conscious and aware of Exs.A3 to A5 and that is the reason why they created Exs.B1 to B3. If they are of the view that the documents executed under Exs.A3 and A5 were done by force or coercion, they could have filed a comprehensive suit. As discussed earlier, for about two years, Sarojammal has not chosen to challenge those documents. She did not even make an endeavour to find out the missing documents. If Sarojammal could call D.W.2 and ask him to come for execution of Ex.B1, nothing prevented her from cancelling Exs. A4 and A5. Even according to the appellants themselves, Exs.A4 and A5 were executed by her in her own signature with the attestation of Idayachandran before the registering authority. Thus, looking from any perspective, we do not find any merit in this appeal.

13.In such view of the matter, we are inclined to reject the application filed for additional documents as well. Yet another aspect is to be considered. That is with respect to possession which has been enjoyed by the appellants. The fact remains that the appellants are in possession over the years. There are some evidence to suggest that even at the time of death of Sarojammal, appellants were living with her. Therefore, even after the execution of Exs.A4 and A5, Sarojammal was permitted to live in a portion of the property. The appellants were also living in the said place thereafter. Therefore, it is not as if the possession of the appellants is totally unauthorised. Probably, had Sarojammal lived for some more time, the first respondent/plaintiff would not have taken action against the appellants. For seeking compensation, the first respondent/plaintiff will have to substantiate the case. Though she is entitled for possession on the footing that she is the owner, the appellants could be stated to be in permissive

possession.

14. In such view of the matter, we are of the view that though the respondents are entitled for possession, the question of compensation would not arise. Therefore, we are inclined to interfere with the judgment and decree insofar as compensation is concerned. Accordingly, the same stands set aside insofar as compensation is concerned. Thus, the judgment and decree rendered by the Court below stands confirmed insofar as declaration and possession are concerned, however, the decree granted for compensation is set aside. Appellants are directed to hand over possession to the respondents within three months from the date of receipt of a copy of the judgment.

15. The appeal suit is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is dismissed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

mmi

To

1. The III Additional District Judge,
Tiruvallur at Poonamallee.

2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.S.Ramajayam, Advocate sr 31195.

+2 Ccs to Mr.R.Thiagarajan, Advocate sr 31762.

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A.S.No.238 of 2017

CNR (CO)
SP (22/04/2019)

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