

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on: 24.01.2020

Delivered on: 29.01.2020

Coram:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

S.A.No.873 of 2008

and

M.P.No.1 of 2008

J.Xavier Appellant/Respondent/Plaintiff

vs.

Joseph,
Son of Sigamani ... Respondent/Appellant/Defendant

Second Appeal is filed against the judgement and decree dated 13.12.2007 passed by the Sub Court, Vellore, in A.S.No.57 of 2007 reversing the judgement and decree dated 26.04.2006, passed by the District Munsif Court, Tirupattur, in O.S.No.506 of 1996.

For appellant :: Ms.V.Srimathi for
M/s.V.Raghavachari

For Respondent :: No appearance

JUDGEMENT

This second appeal is filed by the plaintiff in the suit as against the judgement and decree, dated 13.12.2007 passed by the Sub Court, Vellore, in A.S.No.57 of 2007, reversing the judgement and decree, dated 26.04.2006, passed by the District Munsif Court, Tirupattur, in O.S.No.506 of 1996, which was one for permanent injunction.

2.The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3.The appellant herein is the plaintiff and the respondent is the defendant in the suit. The plaintiff approached the trial Court, by filing O.S.No.506 of 1996,

for permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property.

4.The plaintiff is the son of the defendant. According to the plaintiff, the defendant had executed a Registered Settlement Deed-Ex.A1, on 15.07.1992. By virtue of the said settlement deed, the plaintiff derived his title to the suit schedule property. According to the plaintiff, the Revenue records were also mutated in his favour in respect of the suit property and he has been paying the property tax in his own name, thereafter. The defendant also had given his consent in writing to the Electricity Board for the transfer of service connection to the suit property and the transfer had also been effected in the name of the plaintiff and the plaintiff has been paying the Electricity charges in his own name ever since.

5.According to the plaintiff, the defendant has been residing with his second wife in a different place. However, as far as the plaintiff is concerned, he being a Police Constable, was away from the suit schedule property, quite often. On 05.07.1996 when the plaintiff was staying in the suit schedule property, the defendant appears to have demanded the vacation of the property by the plaintiff by stating that he had revoked the Settlement Deed-Ex.A1. According to the plaintiff, the defendant also threatened him that he would forcibly take possession of the same. In the said circumstances, the suit was laid seeking the prayer of permanent injunction.

6.The defendant, the father of the plaintiff, filed the written statement resisting the prayer of the plaintiff on the ground that the plaintiff had compelled him to execute the Settlement Deed in his favour and the settlement deed was, therefore, executed under compelling circumstances and also believing that the plaintiff would look after him and his second wife. However, later on, according to the defendant, possession was not handed over, since he and his wife were living in that place.

7.The trial Court, having dealt with the rival contentions of the parties and also considering the materials and evidence placed on record, has found that the claim of the plaintiff was established and accordingly decreed the suit. The trial Court, while decreeing the

suit, has held that the Settlement was acted upon and there was also mutation of Revenue records, on the basis of the Settlement Deed, which was marked as Ex.A1. The trial Court also found that the defendant's second wife was also a party to the document as one of the witnesses. In fact, the trial Court found that the plea taken by the defendant that the Settlement Deed was revoked/cancelled was not supported by any evidence. According to the trial Court, cancellation of settlement was a self-serving document, which cannot bind the plaintiff. The trial Court has also found that the property tax and all other relevant records stood in the name of the plaintiff, subsequent to the Settlement Deed. Moreover, crucially the trial Court found that the Settlement Deed (Ex.A1) itself contains a clause that the same is irrevocable and once such a clause was incorporated in the Settlement Deed, under no circumstances, the Settlement Deed could be revoked, legally. In all fours, the trial Court agreed with the claim of the plaintiff and granted permanent injunction as prayed for. As against the judgement and decree of the trial Court, the defendant filed an appeal, in A.S.No.57 of 2007, on the file of the Sub Court, Vellore.

8.The appellate Court, which dealt with the appeal, has reversed the judgement and decree of the trial Court, on the ground that there was a possibility of the plaintiff's sister might stake a share in the property and therefore, the plaintiff could have pressurized the defendant to execute a Settlement Deed in his favour. The appellate Court concluded that the plaintiff alone was given enjoyment, possession and title of the property belonging to the defendant and hence, there was a strong possibility that such Settlement Deed-Ex.A1 could have been given under compelling circumstances by the defendant. On the basis of such presumption, the appellate Court has reversed the findings of the trial Court. Aggrieved by the said judgement and decree of the lower appellate Court, the present Second appeal has been filed by the plaintiff.

9.The Second Appeal was admitted by this Court on the following Substantial Question of Law:

"Whether the judgements and decrees of the Courts below are perverse on account of its misconception of the documents in Exs.A1, A3, A10 as well as Ex.B3?"

10.Ms.Srimathi, the learned counsel appearing for the appellant/plaintiff would submit that it was quite strange that the lower appellate Court, which was to deal with the appeal on the basis of the materials placed on record, had completely ignored the findings of the trial Court and premised its reversal findings on the basis of presumption alone. The presumption drawn by the appellate Court would have been born out of its fertile imagination, not based on any document. When the Settlement Deed was a registered one and was an irrevocable document, the question of its cancellation did not arise at all. The trial Court, after appreciating the legal principle and also the factum of mutation effected in the Revenue records and the factum of the Settlement Deed being acted upon by the parties, had come to the right conclusion and the lower Appellate Court has completely misdirected itself by overturning the verdict of the trial Court and therefore, the learned counsel would implore this Court to set aside the judgement and decree of the lower appellate Court.

11.The learned counsel would also submit that in order to revoke the Settlement Deed, there must be a specific clause in the deed, for which, the learned counsel would rely on the judgement of the learned single Judge of this Court in the case of 1.Ramachandran and another vs. 1.Baby and five others [2003-3-L.W.189]. The learned counsel would draw the attention of this Court to Paragraph No.32 of the judgement, a portion of which is extracted hereunder.

"32.The recitals in Ex.A2 are so categorical that out of love and affection which the donor had with the donee, he had executed the settlement deed and also specifically stated that he had given possession of the property and the donee had also taken possession of the same. Above all it is also stated that the donor had no right to revoke the settlement deed in any circumstance. It is, therefore, clear that the donor had not reserved any right to cancel and in the absence of the same, the cancellation deed executed by the donor under Ex.A3 is not valid in law.
. . . . "

12.The learned counsel would submit that in fact, on the contrary, Ex.A1- Settlement Deed contains a clause that the document is irrevocable.

13.The learned counsel would also rely on the decision of the Hon'ble Supreme Court of India in the case of K.Balakrishnan vs. K.Kamalam and Others [(2004)1 Supreme Court Cases 581]. She would particularly draw the attention of this Court to Paragraph No.31 of the decision, which is extracted hereunder:

"31.In our considered opinion therefore, the trial court and the High Court were wrong in coming to the conclusion that there was no valid acceptance of the gift by the minor donee. Consequently, conclusion has to follow that the gift having been duly accepted in law and thus being complete, it was irrevocable under Section 126 of the Transfer of Property Act. Section 126 prohibits revocation of a validly executed gift except in circumstances mentioned therein. The gift was executed in 1945. It remained in force for about 25 years during which time the donee had attained majority and had not repudiated the same. It was, therefore, not competent for the donor to have cancelled the gift and executed a Will in relation to the property."

14.In the above case, the Hon'ble Supreme Court of India has held that a Gift Deed, which was acted upon by passage of time, cannot be unilaterally revoked.

15.Despite notice having been served on the respondent/defendant and his name also appeared in the cause list, there is no appearance on behalf of the respondent/defendant.

16.This Court considered the submissions of Ms.Srimathi, learned counsel appearing for the appellant/plaintiff and perused the materials and pleadings placed on record.

17. At the outset, this Court has to conclude that it is an open and shut case for the plaintiff, i.e. when the Settlement Deed was executed on 15.07.1992 (Ex.A1), which particularly contains a clause that the same was irrevocable, the defendant having executed the Settlement Deed, is prohibited in law from cancelling the document. The reasons, as assigned by the defendant, in the written statement, for cancelling the Settlement Deed, are hardly convincing and the same do not carry conviction with the Court. Whatever be the reasons for cancellation, ultimately the Courts have to see as to whether such cancellation or revocation is permissible in law. Once a Settlement Deed is executed and acted upon, unless there is any condition or any rider for its revocation, any Settlement Deed becomes irrevocable. In this case, more so, when a clause is incorporated in the Settlement Deed itself that the document is irrevocable and therefore, the defendant cannot come out with any reason for its cancellation, as it is prohibited in law from going back on the Settlement Deed, which deed was acted upon by the parties.

18. The decisions cited on behalf of the appellant would reinforce the arguments advanced on behalf of the appellant that the document like the present one, viz., Ex.A1- Settlement Deed, executed, cannot be revoked at all.

19. The trial Court has rightly understood the law and also rightly appreciated the factual matrix of the rival claims and decreed the suit as prayed for. In fact, the trial Court has also found that the defendant's wife herself was a party to the document.

20. However, unfortunately, the lower appellate Court has reversed the findings of the trial Court on the basis of extraneous and strange presumption that there may be a possible claim by another legal heir of the defendant, viz., the sister of the plaintiff, for a share in the property. It looks like the appellate Court has stepped into the shoes of the defendant and viewed the case as if its role is to protect the interest of the family of the defendant de hors the decision taken by the defendant himself. This Court is unable to appreciate as to how the lower appellate Court can act upon such needless presumption, ignoring the materials and facts, which were rightly appreciated by the trial Court. Therefore, this Court has to come to an irresistible conclusion that the

decision of the lower appellate Court is contrary to law and facts. Therefore, the finding rendered by the lower appellate Court, which was the basis for its judgement and decree, has to go lock, stock and barrel.

21. In the above circumstances, this Court is of the considered view that the judgement and decree of the lower appellate Court, passed in A.S.No.57 of 2007, dated 13.12.2007, are liable to be set aside and the same are set aside. The judgement and decree of the trial Court, passed in O.S.No.506 of 1996, dated 26.04.2006, are upheld. The Second Appeal stands allowed. The Substantial Question of Law framed by this Court is answered in favour of the appellant/plaintiff. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Msk

To

1.The Sub Court,
Vellore

2.The District Munsif Court,
Tirupattur.

Copy to: The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.6438

KS(CO)
CB(05/10/2020)

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