



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.11.2020

PRONOUNCED ON: 11.11.2020

WEB COPY

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.745 of 2010
& M.P.No.2 of 2010

P.Vasanth,
W/o.M.Paramasivan,
No.7/2, Barathi Street,
Saidapet,
Chennai - 600 015

...Appellant

/versus/

1. Mrs.Anusuya,
W/o.G.Ganesan,
No.214/16, Paper Mills Road,
Perambur, Sembian,
Chennai - 600 011.

2. Mrs.S.Punitha,
W/o.G.Saravanan,
No.214/17, Paper Mills Road,
Perambur, Sembiam,
Chennai - 600 011.

...Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C., praying against the judgment and decree dated 23.07.2008 made in A.S.No.640 of 2007 passed by the VII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 13.07.2007 passed in O.S.No.1379 of 2004 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.G.Thangavel

For Respondents: No appearance

JUDGMENT

(The case has been heard through video conference)

The Second Appeal is directed against the dismissal of the suit filed to declare the settlement deed dated 21.03.2003 as obtained by fraud, coercion and undue influence by the



defendants and consequentially for partition and allot 1/3rd share to the plaintiff in the suit properties.

2. Plaintiff averments:

The suit filed by the plaintiff claiming that she is the eldest daughter of late V.Subramani. The 1st defendant is the second daughter of late V.Subramani and the 2nd defendant is the grant daughter of Subramani born to his son. The said V.Subramani died intestate on 01.08.2003 leaving behind the suit properties morefully described in the plaint as "A" schedule (residential building bearing door Nos.214/16 and 214/17, Paper Mills Road, Perambur, measuring to an extent of 990 sq.ft in total extent of 1810 sq.ft) and "'B'" Schedule - Item No.1 (Punja lands in Athupakkam Village, Tiruvallur District bearing S.No.74-1 B 1 - 00.76 acres, S.No 74 -2A1 00.70 acres, S.No. 74 - 2B1 - 00.20 acres. Item No.2 (Manavari land in S.No.19-2B measuring 02.00 acres). After the demise of Subramani, the defendants refused to effect partition of the suit schedule property in spite of legal notice dated 19.09.2003 caused to them. They claim exclusive right in the suit property on the premise that late V.Subramani, had executed a settlement deed dated 21.03.2003 in favour of the 2nd defendant therefore, the plaintiff is not entitled for any share. The alleged settlement deed is not a genuine document. Mr.V.Subramani, used to sign his name in Tamil and he never put his LTI. Whereas, in the impugned settlement deed, LTI of V.Subramani, is affixed and no reason stated in the said deed why Subramani did not affix his signature, though he is always used to affix signature. Therefore, there is doubt about the execution of the settlement deed. Alleging that the said settlement deed is a fabricated document to cheat and deprive the plaintiff from getting share in her father's property, the suit has been laid for relief to declare the said deed obtained by fraud, coercion and undue influence and consequentially to declare 1/3rd share in the suit property to the plaintiff and divide it by metes and bounds.

3. Written statement and additional written statement:

The suit claim denied. The residential house bearing Door No.214/16 at Paper Mills Road is the absolute property of the first defendant which she purchased under sale deed dated 11.05.1984 from one Venu Ammal. The house in Door No.214/17 is the absolute property of the 2nd defendant which she got under the settlement deed dated 21/03/2003 executed by late Subramani and duly registered at SRO, Sembiam. The late Subramani had also settled his property at Athupakkam Village (0.55 cents in S.No.19/2) to the second defendant under settlement deed dated 09.04.2003 and the same duly registered at SRO, Gummidipoodi. The Sub-Registrars concern, after due verification had permitted the executants to affix his thumb impression, since he was not able to sign. The settlement deed was executed with free will



and own volition without any fraud, coercion or undue influence. Only in respect of other properties left intestate by late Subramani, the plaintiff and defendants are entitled for share.

4. The Trial Court, on the basis of the pleadings, had framed the following issues:

"1. Whether the plaintiff is entitled to get preliminary decree for partition as prayed for?

2. Whether the plaintiff is entitled to get declaration as prayed for?

3. Whether door No.214/16 is belonged to 1st defendant?

4. Whether door No.214/17 is belonged to 2nd defendant?

5. Whether the settlement deed dated 09.04.2003 is valid as alleged by the defendants?

6. To what relief the plaintiff is entitled to?"

5. Before the Trial Court, the plaintiff Vasantha and one Sambasivam were examined as P.W.1 and P.W.2 respectively. The notice dated 19.09.2003 sent to the defendants seeking division of the properties and the postal acknowledgement were marked as Ex.A-1 and Ex.A-2 respectively through PW-1. The certified copy of the settlement deed dated 21.03.2003 executed by V.Subramani in favour of 2nd defendant Punitha. The original sale deed Ex.A4 dated 14/09/1956 executed by Masilamani Chettiar in favour of Muniammal in which Late Subramani alleged to have signed as witness, the Koor chit partition between Subramani and his brother Govindan, entered during the month of March, 1983 and the unregistered exchange deed dated 10.11.1998 between Subramani and Sambasivam in respect of 0.05 cents of land in Athupakkam village are marked as Ex.A-4 to Ex.A-6 through PW-2, Sambasivam.

6. On behalf of the defendants, the 2nd defendant Punitha and A.K.Ummal Hidhala the witness to the settlement deed dated 09.04.2003, were examined as D.W-1 and D.W-2 respectively. The certificate copy of the sale deed dated 11.05.1984 in favour of the 1st defendant executed by Somu Ammal in respect of Door No. 214/16 Paper Mills Road, the certified copy of the settlement deed dated 21.03.2003 executed by Subramani in favour of Punitha in respect of superstructure in Door No. 214/17, Paper Mills Road and the settlement deed dated 09.04.2003 in respect of 55 cents Punjai land comprising in S.No.19/2 at Athupakkam Village are marked as Ex.B-1 to Ex.B-3 respectively.



7. The Trial Court dismissed the suit for the reason that in the plaint schedule, the plaintiff has not included the entire property left by deceased Subramani and the plaintiff has not come forward with correct information for redressal.

8. Alleging error in the Trial Court judgment, the plaintiff filed Appeal Suit A.S.No.640/2007, in which, it was contented that the Trial Court after holding that the settlement deed dated 09.04.2003 has not been proved by the defendants as validly executed, erred by not answering issues Nos.3 and 4 saying they are not required for the instant subject matter. The suit properties being ancestral property and after holding the execution of settlement deed not proved by the defendants, the trial Court ought not to have dismissed the suit on the ground, the suit for partial partition not maintainable. The said finding is perverse and to be set aside.

9. The defendants filed cross objection stating that, though the suit was dismissed in favour of them, the observation of the Trial Court that the settlement deed dated 09.04.2003 not substantiated and proved by the defendants is erroneous and contrary to the evidence. The reason for affixing LTI by Subramani and acceptance of it by the Sub Register has been spoken by D.W-2, who is one of the attesting witness of the document. Therefore, the said observation has to be expunged.

10. The Lower Appellate Court, after considering the memorandum of grounds of appeal and the cross objection, re-appreciated the evidence and has held that, the first defendant through the sale deed Ex.B-1 had proved her title and exclusive right over the property bearing door No.214/16 which she purchased in the year 1984 from one Somu Ammal. It is not the property of Subramani and the plaintiff has no right to claim share in this property. Relying upon the deposition of DW-2 the attesting witness to the document Ex.B-3 settlement deed, the Lower Appellate Court rejected the plea of the appellant challenging its validity that by fraud, coercion and undue influence, the settlement deeds were obtained from late Subramani.

11. The evidence of P.W-2, Sambasivam and Ex.A-4 to Ex.A-6 marked through him were held to be unconnected to the suit properties. The first appellate Court accepted the averment of the defendants that late Subramani was not keeping good health and was suffering from nervous disorder. So, he was not capable of signing at the time, when Ex.B-2 and Ex.B-3 executed. Since, there was no contra evidence on the side of the plaintiff to disprove the defendants plea, the lower appellate court dismissed the appeal holding that, the assertion of the plaintiff that these two documents were obtained by fraud, coercion and undue influence lack evidence and proof. In view of the dismissal of the appeal, the cross objection filed by the



defendants was disposed as needless to pass separate order.

12. In the second appeal, on hearing the appellant, this Court noticed that when there were two settlement deeds Ex.B-2 & Ex.A-3 dated 21/03/2003 and Ex.B-3 dated 09/04/2003 alleged to have executed by late Subramani by affixing his LTI, the trial Court has framed issues only in respect of the validity of the settlement deed dated 09.04.2003 as issue No.5. The trial Court though framed issue (issue No.4) in respect of property in door No.214/17 which is the subject matter of settlement deed Ex.B-2=Ex.A-3, it has for reasons best known left the issue Nos.3 and 4 unanswered as not required. Further, one of the reasons for dismissal was attributed to non-inclusion of entire the properties left by Subramani and bar of partial partition.

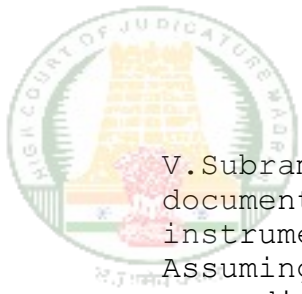
13. Hence, the following Substantial Questions of Law were formulated:-

"i)Whether the Courts below had properly appreciated the settlement deeds marked as Exs.B2 and B3 and whether the same have been proved in the manner known to law? And

ii)Whether the finding of the Courts below that the suit is bad for partial partition is perverse and contrary to the pleadings?"

14. The Appellant herein claims to be the eldest daughter of late Subramani and the suit schedule properties are the estate of late Subramani left intestate for his legal heirs to inherit. It is also claimed by her that they the ancestral properties of V.Subramani. Initially, the suit was filed for partition, later after the written statement by the defendants, the suit prayer was amended to include the relief of declaration in respect of settlement deed dated 21.03.2003. It is pertinent to point at this juncture, when the defendants have set up their respective title over the 'A' schedule property under Ex.B-1 sale deed and Ex.B-2 Settlement deed and in respect of property item No.2 in Schedule 'B' to an extent of 0.55 cents under Ex.B-3, the plaintiff had amended the plaint and added the relief to declare Ex.B-2=Ex.A-3 settlement deed dated 21.03.2003 alone as void due to fraud, coercion and undue influence and not the other two documents more particularly Ex.B.3. This leads to the conclusion that the plaintiff had implicitly conceded the defendants plea regarding these properties.

15. The Appellant, who had sought for partition of the suit property claiming them through her father as ancestral properties, had failed to produce documents that the suit properties were really the properties of Subramani and he has right and title over those properties. The settlement deeds of



V.Subramani and the Koor chit Ex.A-5 of the year 1983 are the documents to infer the properties covered under these instruments were in enjoyment and possession of Late Subramani. Assuming that, the Subramani had right over the suit properties, according to the settlement deed Ex.B.2, he held only the superstructure in door No.214/17 and the site belongs to Tawer's family Trust. As far as superstructure measuring 900 sq.ft in door No.214/17, Paper Mills Road, Perambur is concerned, he has settled it in favour of 2nd defendant under Ex.B-2. The plaintiff, who had pleaded that during his life time her father told that she has right in the property and sought the relief to declare the settlement deed as obtained by fraud, coercion and undue influence, ought to have adduced evidence to that effect to sustain the allegation. The Appellant wants to declare Ex.B.2 void drawing adverse inference from the evidence of PW-2 and Ex.A-4 to Ex.A-6 that the late V.Subramani was capable of signing but in the settlement deed, he has affixed his thumb impression and no reason for affixing thumb impression is stated in the said document.

16. Such inference is not sustainable when there is presumption under Section 114 (e) of the Indian Evidence Act, 1872 in respect of official Act. In this case, both the settlement deeds are registered document and after ascertaining the identity of the executant, the Sub Registrar had admitted the document for registration. No doubt, this presumption when tested, the person who rely on the Settlement deed, which requires attestation, has to prove the execution by examining atleast one of the attesting witness. This condition is subject to the exemption mentioned in proviso to Section 68 of the Indian Evidence Act, 1872. The denial of execution of these documents has come from the appellant. The denial is not specific but a vague suspicion, in view of the thumb impression affixed by the executant, instead of signature. The vague suspicion and doubt has been cleared through the evidence of D.W-2, the attesting witness to Ex.B.3 who had deposed that during the relevant point of time, Late Subramani was no healthy and was not able to sign due to his nerves disorder. So, he affixed his LTI in his presence and he witnessed the execution.

17. Regarding the issue of partial partition, it is to be noted that, the plaintiff claims properties which are either not the property of Subramani or settled to 2nd defendant by V.Subramani during his life time. Insofar as the "A" schedule property, Ex.B-1 and Ex.B-2 proves that the 1st and 2nd defendants are the absolute owners. In "B" schedule property, 0.55 cents is gifted by V.Subramani under Ex.B.3 to the 2nd defendant. For the remaining properties, there is no documents to show that they were held by V.Subramani at the time of his death. In the said circumstances, except to dismiss the suit for lack of pleadings and want of proof, there can be no other conclusion.



Though the reasoning of the Courts below differ, the conclusion is legally sustainable. The Substantial Questions of Law framed are answered accordingly holding against the appellant.

18. In the result, this Second Appeal is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To:

- 1.The VII Additional Judge,
City Civil Court, Chennai,
- 2.The VII Assistant Judge,
City Civil Court, Chennai.
- 3.The Section Officer,
V.R.Section, High Court,
Madras.

S.A.No.745 of 2010
and M.P.No.2 of 2010

SPD(CO)
RGA(11/08/2021)