

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R. SURESH KUMAR

O.S.A.Nos.98 & 99 of 2019

1.G. Uma Devi

2.Revathy ... Appellants in both appeals

-vs-

1. M. Krishnamurthy Reddiar

2. K. Vijayalakshmi

3. K. Veeraraghavan

4. K. Magesh

5. Nirmala Sathyanarayanan

6. Kalavathi Sethuraman ... Respondents in both appeals

Original Side Appeals filed under Order 36, Rule II of O.S.Rules r/w.Clause 15 of the Letters Patent against the judgment of His Lordship Honourable Mr.Justice R.Subramanian, passed on 18.2.2018 in Appl.No.767 and 766 of 2019 respectively in C.S.No.791 of 2014

For Appellant : Mr.P.L. Narayanan

For Respondents : Mr.V. Subramani
for R2 to R4.

सत्यमेव जयते
COMMON JUDGMENT

(Order of the Court was made by R. SURESH KUMAR, J.)

These appeals have been directed against the order passed by the learned Judge in A.Nos.766 and 767 of 2019 in C.S.No.791 of 2014.

2. Before the learned Judge, there is a suit for partition in C.S.No.791 of 2014, wherein, the plaintiffs, at the stage where the evidence was closed and the suit is ripe for arguments, filed applications to reopen and recall the plaintiff side evidence for the specific purpose of

marking a document dated 19.5.2014, under which, the 1st defendant in the suit, who was the father of the plaintiffs and the defendants 3 to 6, cancelled the settlement deed dated 13.12.2012 made in favour of the 3rd and 4th defendants who are the sons of the 1st defendant.

3. The said applications having been heard, was rejected by the learned Single Judge through the impugned order, for the reason that, if at all any cancellation deed is executed, cancelling the earlier settlement deed unilaterally by the settlor, then it will have no impact, as the said document in the eye of law, cannot be accepted, as no unilateral cancellation could be accepted.

4. The relevant portion of the order which is impugned herein by the learned Judge, reads thus;

'2. The main ground on which this application has been filed is that the 1st defendant had cancelled the settlement deeds executed by him on 13.12.2012 by way of separate deed of cancellation dated 19.05.2014 and this deeds of cancellation were not within the knowledge of the plaintiffs and hence, the plaintiff's evidence should be reopened to enable them to mark the deeds of cancellation.

3. It is a fundamental principle of law that a settlement deed once executed and duly registered cannot be unilaterally cancelled by the settlor. Though, it is contended by the plaintiff that the settlement deeds were brought about by fraud, it was for the settlor to have initiated appropriate proceedings for cancellation of the same and unilateral cancellation of a non-testamentary instrument is bad in law.

4. In view of the above, an application to reopen the evidence particularly to mark the invalid documents of cancellation cannot be granted. Hence, this application is dismissed.'

5 Aggrieved over the said order, the present Appeals have been preferred.

6. Heard the learned counsel appearing for the appellant, who would submit that the suit has been filed for partition and during the pendency of the suit, the first defendant/father of the plaintiffs and the defendants 3 to 6 died,

during his lifetime, he made a settlement in favour of his sons viz., the 3rd and 4th defendants. The plaintiffs/appellants are the daughters of deceased 1st defendant.

7. He would further submit that only later on, the appellants/plaintiffs came to know that their father cancelled the settlement deed executed in favour of the 3rd and 4th defendants/sons. Therefore, that became an important document which was omitted to be filed and marked before the trial court since it was not made available to the appellants/plaintiffs at the relevant point of time, which necessitated the plaintiffs /appellants to file the present applications to reopen and recall for marking the said document.

8. Mr.V. Subramani, learned counsel appearing for the 2nd, 3rd and 4th respondents/defendants 2 to 4 would submit that the cancellation deed dated 19.5.2014 under which, the earlier deed of settlement was cancelled by the deceased 1st defendant, does not have any value, therefore taking note of the said factor, the learned Single Judge rejected the applications to reopen and recall. He would also submit that in the partition suit, the evidence was closed and the same was posted for arguments, and since these applications were filed belatedly, this was treated as an attempt to frustrate the proceedings to reach its conclusion early, so, on that ground also, the Learned Single Judge rejected the applications.

9. We have considered the submissions made on both sides and perused the materials available on record.

10. In the impugned order, learned Judge at paragraph 3, as has been quoted above, has only stated that since the unilateral cancellation made by the settlor, would no way helpful for the parties concerned to have the validity, otherwise cancellation of the settlement and in view of the settled principle, there is no meaning in re-opening the evidence for the purpose of marking the said document of cancellation of settlement deed.

11. The learned single Judge, as has been alleged by the learned counsel for the respondents, does not say anything about the belated applications filed by the appellants/plaintiffs for reopen and recall.

12. Be that as it may. In so far as the said reason is concerned with the validity of the cancellation deed dated 19.5.2014 is concerned, of course, there is no quarrel on the

principal that whether he had unilaterally cancelled the settlement deed or settlement made by the settlor will have effect or not . Further in this case, since it is a partition suit between the daughters and sons, as well as the mother, where admittedly, there had been a settlement deed in favour of the sons by the father , subsequently, the said settlement deed has been cancelled, therefore, the veracity and validity of documents can very well be decided by the trial court during trial in the partition suit, hence we are of the view that the document in question will have its own say, however subject to the evidence to be let in, either in support or otherwise, of the said admission by the parties.

13. This aspect can be gone into by the trial court only after permitting the plaintiffs to mark the document i.e, cancellation deed.

14. In view of the above said aspect, we are of the view that the order passed by the learned Judge may be erroneous one, therefore it requires interference from this Court.

15. However, at the same time, we must look into the delay caused, because the plaintiff's side evidence was closed long back and the suit was ripe for arguments. Hence in order to compensate the respondents herein for such delay caused by the appellants, who filed applications for reopen and recall, we want to fix some reasonable cost payable by the appellants to the respondents.

16. In the result, the impugned order of the learned Judge is set aside and the appeals are allowed, of course with a cost of Rs.10,000/- (Rupees ten thousand only) which shall be paid by the appellants to the respondents, within a period of two weeks from the date of receipt of a copy of this order.

सत्यमेव जयते Sd/-

Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar

msr

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras-104

+2ccs to Mr.P.L. Narayanan, Advocate SR.No.21952

+1cc to Mr.V. Subramani, Advocate SR.No.21332

O.S.A.Nos.98 & 99 of 2019

RR(CO)
GMV(11/06/2020)



WEB COPY