



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 10.03.2020

JUDGMENT PRONOUNCED ON : 17.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WEB COPY

S.A.(MD) No.153 of 2006

and

M.P.(MD).No.1 of 2015

Kolammal

... Appellant/Respondent/
Plaintiff

.. Vs ..

1. Subbayan Pillai [Died]

2. Narayanan

3.Chokalingam Pillai [Died]

.. Respondents/Appellants/

Defendants

[Sole appellant and R.2 and R.3, who are already on record, are recorded as LR's. of deceased first respondent vide memo presented in Court as per the Court order dated 02.02.2018 made in S.A.(MD) No.153 of 2006.]

4. Shanthi

5.Shenbagam

... Respondents

[RR 4 and 5 are brought on record as LR's of deceased third respondent vide Court order dated 02.02.2018 made in M.P(MD).Nos.1 to 3 of 2013 in S.A.(MD) No.153 of 2006.]

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, against the Judgment and Decree made in A.S.No.64 of 2002 on the file of Additional District Judge, Kanyakumari at Nagercoil dated 10.01.2003, in reversing the well considered Judgment and Decree made in O.S.No.544 of 1996 on the file of II-Additional District Munsif, Nagercoil, dated 23.04.2002.

For Appellant

: Mr.S.Ramesh

for Mr.V.Raghavachari

For R2, R4 and R5

: Mr.V.Meenakshisundaram

for R.M.Sivakumar

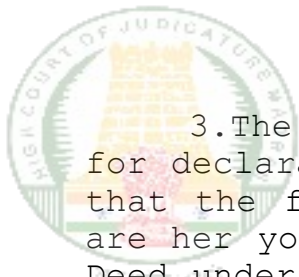
R1 and R3

: Died

JUDGMENT

The plaintiff is the appellant herein.

2. For the sake of convenience, the parties are referred to as plaintiff and defendants.



3.The plaintiff has filed the above suit in O.S.No.544 of 1996 for declaration of title and for permanent injunction on the ground that the first defendant is the father and the defendants 2 and 3 are her younger brothers and the father has executed the Settlement Deed under Ex.A1 dated 05.09.1974 and subsequently under Ex.B2, the first defendant/ father has cancelled the Deed on 26.05.1984, which is an unilateral cancellation of the Settlement Deed. Thereafter, through Ex.B3, he had settled the suit property in favour of the defendants 2 and 3, who are the younger brothers of the plaintiff and the first defendant having executed unconditional Settlement Deed under Ex.A1, cannot be revoked the same and resettled the property in favour of other two sons and hence, sought for declaration of title and for permanent injunction. Further pleaded that after the settlement in favour of the plaintiff, the parents and other two brothers were allowed to live as a tenant in the suit property and remitted the rent viz., money order under Ex.A2 to Ex.A4. Written statement was filed.

4. On the side of the plaintiff, PW.1 and PW.2 were examined. Exs.A1 to A8 were marked. On the side of the defendants, DW.1 was examined and Exs.B1 to B9 were marked.

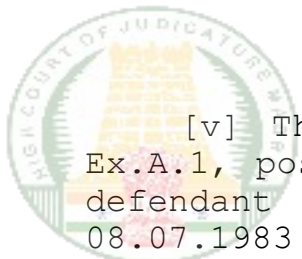
5. The gist of the pleadings and the documents filed therein are as follows:-

[i] The plaintiff is the daughter of the first defendant while the first defendant is the father and defendants 2 and 3 are the sons of the first defendant and brother of the plaintiff.

[ii] The case of the plaintiff, in short, is that under Ex.A.1-Settlement Deed dated 05.09.1974, the suit property was settled by the first defendant/father in her favour and the same is acted upon and relied upon Exs.A.2, A.3 and A.4 money orders sent by the brother to be as a tenant. According to the plaint, the very same property was again settled by the first defendant-father in favour of his sons viz., defendants 2 and 3 under Ex.A.5, dated 05.12.1988 (Ex.A.5 = Ex.B.3) and hence, he filed the suit for declaration of his title and for recovery of possession. Perused the schedule of the property.

[iii] It is a two cents of land with building having Door No.20/8-2013 of the Nagercoil Municipality (Old Door No.6/4-13 in Survey No.1679/3637 re-survey No.24-72 extent two cents in Agatheeswaram Taluk, Vadiyeeswaram village.

[iv] On perusal of Ex.A.1-Settlement Deed executed by the first defendant in favour of the plaintiff, there is no recital or reservation clause reserving the right of revocation in the said document.



[v] The case of the defendant/respondent is that pursuant to Ex.A.1, possession was not handed over in the year 1983, the first defendant father had executed Settlement Deed under Ex.B,1 dated 08.07.1983 settling 93 cents of land in favour of the plaintiff/daughter. Followed by the same, under Ex.B.2, dated 26.05.1984, the first defendant had revoked and cancelled the Ex.A.1-Settlement Deed in favour of the plaintiff. Thereafter, in the year 1988, under Ex.B.3-Settlement Deed, he has settled the suit property in favour of his sons defendants 2 and 3 on 05.12.1984.

6. The trial Court accepted the case of the plaintiff and decreed the suit while the lower Appellate Court has reversed it and hence the Second Appeal.

7.The above second appeal was admitted on the following substantial question of law:-

(i) *Whether the lower appellate Court is right in recognising the deed of cancellation of Ex.A1, when the first defendant had not reserved any right to revoke the document?*

(ii) *Whether an unconditional deed of gift could be impeached in the absence of any allegation as regards fraud and that too, made beyond the period of limitation?*

(iii) *Whether the presumption under Section 90 of the Evidence Act is not available to the document under Ex.A6?*

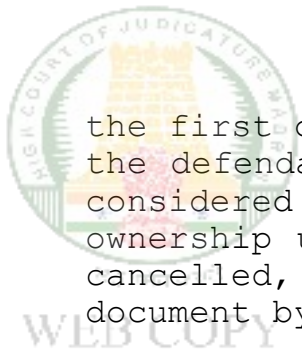
(iv) *Whether the lower appellate Court is right in not properly exercising its jurisdiction under Section 73 of the Evidence Act?*

8. Heard the learned counsel on either side on the substantial question of law No.1. The same being,

"Whether the lower Appellate Court is right in recognising the deed of cancellation of Ex.A1, when the first defendant had not reserved any right to revoke the document?"

9. I had an occasion to consider the very same question in S.A.No.1303 of 1996 dated 21.08.2009 *Saroja Bai Ammal Vs. Suguna Bai Ammal*. After considering the decision of the Hon'ble Supreme Court, unilateral revocation of Settlement Deed executed in favour of the plaintiff is impermissible in law and hence, the first substantial question of law is answered in favour of the plaintiff.

10. Since Ex.B.2-Settlement Deed, dated 26.05.1984 is a unilateral revocation, the same is invalid in law. Consequently,



the first defendant has no right to settle the property in favour of the defendants 2 and 3 under Ex.B.3 and hence, this Court is of the considered view that the defendants 2 and 3 cannot claim right or ownership under Ex.B.3. The Settlement Deed once executed cannot be cancelled, as the power to revoke had not been reserved in the said document by the Donor.

11. Further, the case as projected by the first defendant for execution of Ex.A.1 cannot be accepted in view of his subsequent conduct. Exs.A.2 to A.4 are money orders and they have not been disputed by the defendants. The first defendant had also admitted that he had not raised any objection in the written statement. The money orders had been dispatched soon after the execution of Ex.A.1. There is nothing to disbelieve the said document particularly in view of the fact that it had come into existence long prior to the dispute between the parties. The lower Appellate Court had failed to note that no notice had been issued to the defendants complaining that the document under Ex.A.1 is a sham document or that the plaintiff had been well provided. On the other hand, the case pleaded by the defendant is unnatural, if really the first defendant wanted to revoke the Gift Deed with the consent of the plaintiff or treated the document under Ex.A.1 as sham, nothing prevented him from taking her signature while the second deed of settlement had been executed under Ex.A.7 on 08.07.1983 in respect of 93 cents of land.

12. Though the respondent/defendant resisted the claim on the ground that after execution of Ex.A.1, possession was not handed over to the plaintiff and hence, Ex.A.1-Settlement Deed is not acted upon. I am unable to uphold the said contention for more than one reason, in view of Exs.A.2, A.3, A.4 and A.6. As observed earlier, Exs.A.2 to A.4 are the money orders sent by the defendant and the same was not denied in the written statement. The document under Ex.A.1 had been acted upon and the property had been mortgaged under Ex.A.6 on 13.03.1975. The execution of document under Ex.A.6 is more than 30 years old as on the date of examination of P.W.1 and the presumption under Section 90 of the Evidence Act should be drawn.

13. It remains to be stated that no suit had been instituted within the period of limitation seeking for cancellation of the document on any permissible ground and as such, the document under Ex.A.1 is binding upon the plaintiff.

14. Yet another point is that the first defendant had not sought for any relief of declaration that the gift deed is void or a sham one, within the period of limitation and as such the gift deed executed by him under Ex.A.1 is binding upon him. The first defendant has no right to execute the document under Ex.B.3 in favour of defendants 2 and 3, since on that date, the first



defendant did not have any right in and over the suit property. The averments made in the plaint in O.S.No.65 of 1989 clearly establishes the gift made in favour of the plaintiff. The only contention of the defendants was possession had not been handed over. D.W.1 who is the third plaintiff that suit had admitted its execution. This taken into consideration along with the case pleaded by the plaintiff would clearly establish that the first plaintiff herein had been accommodated soon after he had sold the property at Perumal Koil Street and thus, in view of the above said documentary evidence, which clearly demonstrate that pursuant to Ex.A.1-Settlement Deed, possession was handed over to the appellant/plaintiff and hence, this contention of the respondent/defendant stands negatived and the substantial question of Law Nos.2 and 3 are answered in affirmation in favour of the appellant/defendant.

15. Furthermore, during the course of the argument, the learned counsel for the respondent drawn my attention to Exs.B.4, B.5 and B.6. Admittedly, it is a suit for injunction and there is no issues in connection with the validity of the two Settlement Deeds and one Cancellation Deed which is the subject matter of these suit and hence, the same shall not operate as a res judicata.

16. In view of the discussion in respect of substantial question of law Nos.1 to 3, I find that the substantial question of law No.4 does not arise for consideration on facts.

17. Accordingly, this Court holds that all the substantial questions of law Nos.1 to 3 are answered in affirmative. The Settlement Deed-.Ex.A.1 executed by the first defendant in favour of the plaintiff/appellant is valid and acted upon and the revocation of the Settlement Deed Ex.B.2 is not valid in law. Consequently, Ex.B.3 has no force, since the donor has no title to convey the said property in favour of the defendants 2 and 3 and consequently, the plaintiff is entitled for relief of declaration and recovery of possession. Time for delivery of possession is two months.

18. In the result,

[i] The Second Appeal is allowed and the Judgment and decree passed by the Lower Appellate Court are hereby set aside and the Judgment and Decree made in O.S.No.544 of 1996 are confirmed.

[ii] However, there shall be no order as to costs. Consequently, connected M.P.(MD).No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To:

1. The Additional District Judge,
Kanyakumari at Nagercoil.
2. The Second Additional District Munsif,
Nagercoil.

COPY TO

The Section Officer, (2 COPIES)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.V. RAGHAVACHARI, Advocate (SR-14268[F]dated
17/08/2020)

+1 CC to MR.R. MURUGAN, Advocate (SR-14269[F] dated 17/08/2020)

Judgment made in
S.A. (MD) No.153 of 2006
17.08.2020

VB (09.09.2020) 6P 7C