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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.07.2021

Date of Verdict : 22.07.2021

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

A.S.No.357 of 2016  
and  
C.M.P.No.8020 of 2016

R.Selvam ... Appellant/2<sup>nd</sup> Respondent  
Vs.

1. R.Mani
2. V.Lakshmi
3. R.Prabath
4. Kuppayee
5. M.Balaji
6. S.Nathiya

... Respondents/defendants

PRAYER: This Appeal Suit filed under Section 96 of the Civil Procedure Code, to set aside the decree and judgment made in O.S.No.93 of 2014 on the file of the III Additional District Judge, Salem dated 11.12.2015.

For Appellant : Mr.C.Ravichandran for  
Mr.S.B.Viswanathan

For Respondents : Mr.S.Siva Sankar (for R-1)  
: Notice Served (No Appearance)  
(for R-2 to R-6)

#### J U D G M E N T

This Appeal Suit is directed against the judgment and decree passed in O.S.No.93 of 2014 dated 11.12.2015 on the file of the learned III Additional District Judge, Salem.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Trial Court.

3. The suit is filed for declaration and permanent injunction in respect of the suit property. The case of the plaintiff is that the suit property belonged to the first



defendant as per the preliminary decree passed in O.S.No.18 of 2010 dated 08.12.2011 on the file of the Fast Track Court No.2, Salem. The first defendant filed suit against her brothers and the suit property was allotted in her favour. Thereafter, the first defendant had executed a registered gift settlement deed in favour of the plaintiff on 08.03.2012. From the date of the gift settlement deed, the plaintiff had taken possession of the suit property and he is in possession and enjoyment of the same. In the meanwhile, under the influence of defendants 2 to 4, the first defendant executed a registered cancellation deed dated 03.07.2012 unilaterally. On the same day, the first defendant executed another gift settlement deed in favour of the plaintiff and the defendants 2 to 4. The said cancellation deed and the subsequent gift settlement deed executed by the first defendant are void-ab-initio. Once, the first defendant had lost her title to the suit property, after execution of registered settlement deed in favour of the plaintiff, she has no title over the property. On the strength of the settlement deed executed in favour of the defendants 2 to 4, they created encumbrance by execution of agreement for sale with the defendants 5 and 6. Hence, the suit for declaration and permanent injunction.

4. Resisting the same, the defendants filed a written statement stating that the suit property originally belonged to the first defendant as per the preliminary decree passed in O.S.No.18 of 2010. The first defendant was allotted the suit property and on compulsion, the first defendant executed the alleged gift deed in favour of the plaintiff, that too without the knowledge of the defendant 1. After coming to know about the settlement deed, which was obtained fraudulently by the plaintiff, the first defendant had executed a cancellation deed and also another settlement deed dated 03.07.2012. When that being so, without challenging the cancellation of settlement deed and another settlement deed dated 03.07.2012, the suit filed challenging the subsequent agreement for sale, is not maintainable and liable to be dismissed.

5. On completion of pleadings of the both sides, the Trial Court framed the following issues:-

- "(i) Whether the plaintiff is entitled to the relief of declaration over the suit property?
- (ii) Whether the plaintiff is entitled to the relief of permanent injunction?
- (iii) to what other relief?"

6. On the side of the plaintiff, he was examined as P.W.1 and the documents were marked as Ex.A.1 to Ex.A.6. On the side of the defendants, D.W.1 was examined and no documents were marked.



7. On a perusal of the oral and documentary evidence, the Court below decreed the suit in favour of the plaintiff. Aggrieved by the same, the appellant/second defendant alone preferred this Appeal Suit.

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8. The learned counsel for appellant/second defendant submitted that Ex.A.1 was obtained by the plaintiff by misrepresentation and he played fraud, that too without knowledge of the first defendant. Thereafter, it was not acted upon and the first defendant rightly cancelled the gift deed by cancellation deed and the same was duly registered. The plaintiff had executed the alleged settlement deed by undue influence by fraud and as such, the plaintiff did not approach the Court with clean hands, which amounts to abuse of process of law. In fact, the plaintiff failed to challenge the cancellation deed and also failed to examine D.W.1. Therefore, the suit ought not to have decreed in favour of the plaintiff. He further submitted that if one of the phase of the document relating to the nature of the transaction covered by the document appears to be either unconscionable or unnatural one, the burden of proving that the transaction was not induced by undue influence was considered uniformly to rest with the beneficiary under the document. Here the plaintiff failed to prove that the settlement deed was executed without any influence and fraud. In support of his contentions, the learned counsel for the appellant/second defendant relied upon the judgments reported in (2004) 9 SCC 468 (Krishna Mohan Kul -vs- Pratima Maity), 2008 (2) CTC 433 (Suguna -vs- Vinod G.Nehemiah), 1996-2-L.W.600 (Dharman & 6 others -vs- Marimuthu), CDJ2014 MHC 545 (P.Venkata Raja Rao -vs- R.N.Krishnaveni & Others), (1994) 1 SCC 1 (S.P.Chengalvaraya Naidu -vs- Jagannath) and (2015) 1 SCC 705 (Zarina Siddiqui -vs- Ramalingam).

9. Per contra, the learned counsel for the first respondent/plaintiff contented that the plaintiff claimed the suit property under the registered settlement deed. Once, the document is registered, the presumption is in favour of the beneficiary. Therefore, the plaintiff need not prove the same, once it got registered. In this regard, the learned counsel for the first respondent/plaintiff relied upon the judgment reported in (2019) 2 SCC 727 (Jamil Begum -vs- Shami Mohd), in which it has been held as follows:-

"27. Insofar as the plea that the documents are vitiated by undue influence, as rightly contented by the learned Senior Counsel for the appellant, the plaintiff averments are vague. It is alleged by Respondent 1-plaintiff that Wali Mohd had illicit relationship with appellant Jamila Begum and that he was mentally infirm on the date of the alleged sale



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deed and that the sale deed was obtained by taking undue advantage of his infirmity and illicit relationship.

28. Insofar as the plea of undue influence, merely because the parties are related to each other or merely because the executant was old or of weak character, no presumption of undue influence can arise. The Court must scrutinise the pleadings to find out that such plea has been made out before examining whether undue influence was exercised or not.

29. While considering the aspect of plea of undue influence and onus probandi, in Subhas Chandr Das Mushib v. Ganga Prasad Das mushib AIR 1967 SC 878, it was held as follows: (AIR p.880, paras 4 & 7)

"4. Under Section 16(1) of the Contract Act a contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. This shows that the court trying a case of undue influence must consider two things to start with, namely, (1) are the relations between the donor and the donee such that the donee is in a position to dominate the will of the donor, and (2) has the donee used that position to obtain an unfair advantage over the donor?

7. The three stages for consideration of a case of undue influence were expounded in Raghunath Prasad Sahu v. Sarju Prasad Sahu (1923 SCC OnLine PC 62 in the following words:

"In the first place the relations between the parties to each other must be such that one is in a position to dominate the will of the other. Once that position is substantiated the second stage has been reached viz., the issue whether the contract has been induced by undue influence. Upon the determination of this issue a third point emerges, which is that of the onus probandi. If the transaction appears to be unconscionable, then the burden of proving that the contract was not induced by undue influence is to lie upon the person who was in a position to dominate the will of the other.

Error is almost sure to arise if the order of these propositions be changed. The unconscionableness of the bargain is not the first thing to be considered. The first thing to be considered is the relations of these parties. Were they such as to put one in a position to dominate



the will of the other?"

He further submitted that the defendants did not even whisper about the misrepresentation or fraud committed by the plaintiff on execution of the gift deed in his favour. In fact, the defendants failed to examine D.W.1, who executed the settlement deed in favour of the plaintiff and thereafter, she cancelled the settlement deed by cancellation deed. When the defendants failed to prove that the plaintiff obtained the settlement deed on fraud, the settlement deed executed in favour of the plaintiff has become valid one and the trial Court rightly decreed the suit in favour of the plaintiff. Therefore, he prayed for the dismissal of the Appeal Suit.

10. Heard both sides.

11. The plaintiff and the defendants 2 to 4 are the children of the first defendant. The suit property originally belonged to the first defendant by way of preliminary decree passed in O.S.No.18 of 2010 dated 08.12.2011 on the file of the Fast Track Court No.2, Salem. In the preliminary decree, the first defendant was allotted the suit property. The first defendant executed the settlement deed in favour of the plaintiff on 08.03.2012 and the same was duly registered, which was marked as Ex.A-1.

12. On a perusal of Ex.A.1, there is specific recital that the first defendant has no right to revoke the settlement deed and even if she does so, it is not legally valid. Thereafter, unilaterally she executed the cancellation deed and thereby, cancelled the settlement deed executed in favour of the plaintiff by the cancellation deed dated 03.07.2012. On the same day, the first defendant executed settlement deed in respect of the suit property in favour of the plaintiff and the defendants 2 to 4. On the strength of the settlement deed, the 4<sup>th</sup> defendant executed an agreement for sale in favour of the 5<sup>th</sup> defendant in respect of her 1/4<sup>th</sup> share. Likewise, the 2<sup>nd</sup> defendant also executed another agreement for sale in favour of the sixth defendant in respect of her 1/4<sup>th</sup> share in the suit property.

13. It is curious to note that the entire issues are revolving around the first defendant. Even then, the other defendants failed to examine the first defendant to support their case whether Ex.A-1 was obtained on compulsion, misrepresentation or by fraud or undue influence. Though the defendants stated in their written statement that Ex.A-1 was executed in favour of the plaintiff by fraud, misrepresentation or undue influence, the defendants miserably failed to prove the same. As rightly pointed out by the learned counsel for the plaintiff, once the property settled by the registered



settlement deed in favour of the plaintiff, the first defendant had lost her right title over the suit property. Therefore, she cannot unilaterally cancel the settlement deed by execution of cancellation deed. Therefore, the judgments relied upon by the learned counsel for the appellant/second defendant are not helpful to the case on hand.

14. As stated supra, on a perusal of Ex.A-1 settlement deed, there is a specific recital that the first defendant as no power to revoke the gift deed and even if she cancelled the deed, the said cancellation would not be valid. When no right has been reserved by the first defendant to cancel the settlement deed, the Court below rightly declared the title in respect of the suit property in favour of the plaintiff. If at all the defendants 2 to 4 have grievance over the settlement deed executed in favour of the plaintiff, they ought to have challenged the settlement deed executed in favour of the plaintiff in the manner known to law. Therefore, the Court below rightly held that the cancellation deed is non-est in law. That apart, no material evidence was produced by the defendants to substantiate their contentions as averred in their written statement. Except the first defendant, no one was examined on their behalf to strengthen the execution of cancellation deed. It is settled law that in settlement, once the settlee accepts the transfer, it is presumed that the said document has been acted upon irrespective of the fact whether the settlee has obtained possession immediately or not.

15. The Hon'ble Supreme Court of India in the judgment reported in (2019) 2 SCC 727 (Jamil Begum -vs- Shami Mohd), held that there is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the case of hand, the defendants failed to rebut the said presumption by oral or material evidence. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below.

16. Accordingly, this Appeal Suit is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar(Commercial cases)

//True Copy//

Sub Assistant Registrar



1. The III Additional District Judge, Salem.

2. The Section Officer,  
V.R.Section, High Court of Madras.

+1 cc to Mr.S.Sivankar, Advocate Sr.NO.35049

+2 ccs to Mr.S.B.Viswanathan, Advocate Sr.NO. 34864,32712

A.S.No.357 of 2016

SVII(CO)

A.SK(25.11.2021)

22.07.2021