

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.02.2021

Pronounced on : 17 .02.2021

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Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.809 of 2009

1. Tmt. Karuppathal,
2. Tmt. S.Lakshmi, ... Appellants/Plaintiffs
/versus/

1. P.Ponnusamy, (deceased),
2. P.Palanisamy,
3. Tmt.R.Rathnampal,
4. Tmt.R.Kavitha,
5. Tmt.R.Savitha,
6. A.Nataraj,
7. Karunnaiammal,
8. Yasoda Devi,
9. Suresh Kumar, ... Respondents/Defendants

RR 7 to 9 brought on record as LR's of the Deceased 1st respondent vide order of Court dated 13.02.2017 by RSMJ made in C.M.P.Nos.995 to 997 of 2017 in A.S.No.809 of 2009.

Prayer: First Appeal is filed under Section 96 of the Code of Civil Procedure, 1908 against the decree and judgment dated 26.12.2008 in O.S.No.423 of 2006, on the file of the Additional District Court, Fast Track Court No.V, Coimbatore at Tiruppur.

For Appellants : Mr.K.S.Karthik Raja

For R2 to R5, R7 to R9 : Mr.K.Govi Ganesan

For R6 : No Appearance

J U D G M E N T

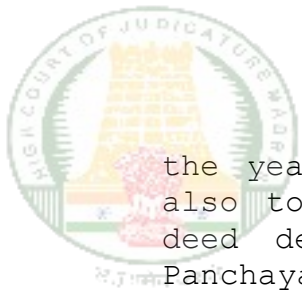
The suit filed for partition by the daughters of Late.Palanisamy Gounder, against the sons of Palanisamy Gounder was dismissed by the Trial Court upholding the validity of the release deed Ex.A.3, executed by the plaintiffs. Aggrieved by the said judgment, the appeal is preferred by the plaintiffs.



2. By virtue of a partition deed (Ex.A.1) dated 18.06.1965 entered between Palanisamy Gounder and his brother Subbaiah Gounder, the land measuring 13.34 acres at Chittambalam Village, Palladam Taluk, was allotted to the share of Late.Palanisamy Gounder. The said Palanisamy Gounder had 2 daughters and 3 sons. One of his son by name Rathinasamy predeceased him, on 01.08.1988 leaving behind his wife and 2 daughters. On 23.02.1991, Palanisamy Gounder died leaving behind him his wife, two daughters, two sons and the legal heirs of his predeceased son Rathinasamy. Within six months wife of Palanisamy died. The legal heirs of Palanisamy Gounder and Subbaiah Gounder, jointly sold 0.91 cents of land from out of 13.34 acres to one Kandasamy on 12.07.2006. On the same day, the daughters of Palanisamy, who are the plaintiffs in the suit under appeal relinquished their 2/5th share in the property of their father Palanisamy and executed a release deed on receipt of Rs.2,32,060/- each in favour of defendants 1 to 5, who are their two brothers and the legal heirs of their deceased brother. The sale deed and the release deed were registered at Sub-Registrar Office, Palladam on 13.07.2006.

3. Alleging that, the release deed dated 12.07.2006 was obtained dishonestly by misleading them and no money was received as consideration for relinquishing the right. The plaintiffs, later cancelled the release deed on 17.08.2006 and got the cancellation deed registered. After issuing notice seeking partition, suit filed claiming 2/5th shares. The 6th defendant was arrayed as a party since, the house in the suit property was sold to the 6th defendant on 03.04.2006 by the defendants 1 to 5.

4. The defendants, in their written statement contended that, the suit property, in fact is the ancestral property of their family. Palanisamy got it under the partition deed dated 18.04.1965. Thereafter, jointly enjoyed by him and his 3 sons as joint family property. The plaintiffs got married 35 years ago. They both are well settled and living separately with their respective family. They never in joint possession of the suit property. They were given enough Sridhana. In the year 1987, there was a oral family arrangement, wherein, the properties were divided into three lots and the 3 sons of Palanisamy Gounder got one share each. The sons were asked to pay Rs.1,000/- to the parents for their maintenance. Accordingly, Palanisamy and his wife were paid Rs.3,000/- per month till their lifetime. When the defendants 1 to 5 made arrangement to sell 0.91 cents of land to Kandasamy, since there was no documentary evidence for the family arrangement held in



the year 1987, the buyer for his safety wanted the plaintiffs also to sign the sale deed. The plaintiffs to join the sale deed demanded future customary seers. In the presence of Panchayathars, compromise was arrived. Accordingly, 0.91 cents of land sold jointly and for the remaining land, the plaintiffs received Rs.2,32,060/- each and executed the relinquishment deed. The alleged cancellation deed dated 17.08.2006 is void and non est in law. After voluntarily executing the release deed, receiving proper and valid consideration, the plaintiffs are not legally entitled to cancel the same. The plaintiffs never had any share in the suit property which is ancestral property, more so, after the execution of the release deed receiving Rs.2,32,060/- each.

5. Based on the pleadings, the trial court framed the following issues:-

(i). Whether the plaintiffs are entitled to the preliminary decree for 1/5 share each in the suit properties?

(ii). Whether the family arrangement placed by the defendants 1 to 5 is true?

(iii). Whether the release deed dated 12.07.2006 is not true and valid as alleged by the plaintiffs?

(iv). To what relief?

6. The 1st plaintiff and one Mr. Mayilsamy were examined as P.W-1 and P.W-2. Three witnesses were examined on behalf of the defendants. Both sides relied 10 documents each and same were marked as Ex.A-1 to Ex.A-10 and Ex.B-1 to Ex.B-10.

7. The Trial Court dismissed the suit. It held that in Ex.A-1 partition deed dated 18.06.1965, the property is described as ancestral property of Palanisamy Gounder and Subbaiah Gounder. Sale deed Ex.A-7 dated 03.04.2006 jointly executed by Defendants 1 to 3 to one A. Nataraj to an extent of 2850 sq.ft of land and building in 1194½ sq.ft held by Palanisamy Gounder and Subbaiah Gounder as per the partition deed Ex.A-1. Thereafter, 0.91 cents of land sold to Kandasamy under Ex.A-2 on 12.07.2006. On the same date, release deed Ex.A-3 was executed. In Ex.A-7, Ex.A-2 and Ex.A-3 there is no reference about the oral family arrangement of the year 1987 mentioned in the written statement. Hence, disbelieved the oral family arrangement pleaded by the defendants. However, held the release deed is a valid document and duly proved through the attesting witness D.W-3. Also P.W-2, the witness for the



plaintiffs does not lend any credence to disprove the registered document Ex.A-3. Having admitted the thumb impression and the signature found in Ex.A-3, the oral evidence contrary to the documentary evidence not sufficient to hold the document non est in the eye of law.

Point for determination:-

Whether the Trial Court finding about the validity of the release deed to dismiss the partition suit is sustainable under law and facts?

8. It is the contention of the plaintiffs that the release deed was obtained by fraudulent misrepresentation, as if, it is part of the sale deed executed on 12.07.2006 in favour of Kandasamy. It is also averred that on that day, the plaintiffs were criminally coaxed to sign the documents. In the cancellation deed Ex.A-4 dated 17.08.2006, the recital says that the plaintiffs were made to affix thumb impression and signature without explaining to them about the nature of the document. Without paying any amount, they were made to execute the deed. Even the share in the sale consideration for the property sold under Ex.A-2, was not paid in full. They came to know about the execution of release deed only when they applied for encumbrance certificate.

9. The defendants have examined D.W-2 the attesting witness, to prove the valid execution of the release deed and passing of consideration. The plaintiffs own witness P.W-2 admits that, the sale deed and release deed were prepared by the document writer on the instruction of 1st defendant in the presence of the plaintiffs and other defendants. They were prepared simultaneously. He saw the 1st plaintiff affixing her thumb impression and the 2nd plaintiff her signature and passing of consideration.

10. The plaintiffs, while admitting the execution of sale deed Ex.A-2, refute the release deed. The recital in the release deed refers the execution of sale deed Ex.A-2 in respect of 0.91 cents and about the receipt of Rs.2,32,060/- each by the plaintiffs 1 and 2, as consideration for relinquishing their right in the remaining property, left by their father.

11. Two reasons are mentioned in Ex.A-4 for the cancellation of the release deed Ex.A-3. First, it was obtained by fraud and misrepresentation. They came to know about it, when they applied for encumbrance certificate. Second, the plaintiffs were not paid the full amount agreed by the defendants 1 to 5. These two reasons found in the deed of cancellation



conspicuously not mentioned in the plaint. Further, for the first reason, the plaintiffs have not mentioned the date of their application for E.C (encumbrance certificate) or evidence to show they applied for E.C (encumbrance certificate). For the second reason (i.e.,) short payment of the money agreed, the amount paid and the exact amount unpaid neither pleaded nor proved.

12. By filing the partition suit, the plaintiffs disown their own document namely the release deed Ex.A-4 duly registered and presumed to be an official act performed regularly. If the terms of contract reduced into writing and duly registered is sought to be excluded by oral evidence, the burden is on the plaintiffs to adduce evidence sufficient to exclude the written evidence, as per section 92 of the Evidence Act.

Section 91:-

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of documents.:- When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Section 92:-

92. Exclusion of evidence of oral agreement:- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1):- Any fact may be proved which



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would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law:

13. Section 91 and section 92 proviso (i) of Indian Evidence Act, clearly lay down the rule when a written evidence could be excluded by oral evidence is permissible. In this case, the due execution of release deed Ex.A-3 is proved through the document and through the attesting witness D.W-2. To disprove it, the plaintiffs have not placed sufficient evidence to establish same was executed by misleading them and the consideration mentioned in the release deed not paid to them.

14. It is to be noted that the suit is filed for the relief of partition and permanent injunction from alienating or encumbering the suit property. It is a fact admitted by the plaintiffs even before the release deed, a portion of the suit property was sold to 6th defendant by defendants 1 to 5. Also, the release deed cancelled unilaterally through Ex.A-4, without any notice to the defendants 1 to 5, who are the beneficiaries of the deed on payment of Rs.4,64,120/- to the plaintiffs. Without further relief to declare the sale deed in favour of 6th defendant and the release deed Ex.A.3 as null and void, the suit for partition declaring the right in the suit property is prohibited under Section 34 of the Specific Relief Act.

Section 34 of the Specific Relief Act:

34. Discretion of court as to declaration of status or right:- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.



15. After executing a release deed (Ex.A-3) on 12.07.2006, the plaintiffs had cancelled the said release deed (Ex.A.4) on 17.08.2006 without any notice to the beneficiary of the release deed. Later, without any further relief of declaration in respect of those deeds, the suit for partition filed. When Section 34 of the Specific Relief Act, restrains the Courts from entertaining suits filed for mere declaration as to right when the plaintiffs are able to seek further relief, and same omitted to do so. Therefore, for the reasons stated above, this Court confirms the decree and judgment of the Additional District Court, Fast Track Court No.V, Coimbatore and dismissed the Appeal with costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To,

1.The Additional District Judge,
Fast Track Court No.V,
Coimbatore, Tiruppur.

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

+1cc to Mr.K.S.Karthik Raja, Advocate SR.No.9338

+1cc to Mr.K.Goviganesan, Advocate SR.No.9422

A.S.No.809 of 2009

EV(CO)
GN(23/11/2021)