



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
12.03.2021

Date of Pronouncing Judgment
30.06.2021

WEB COPY

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.699 of 2005
and
C.M.P.Nos.254 of 2014 & 9726 of 2005

P. Sivagnanam .. Appellant/1st Respondent/Plaintiff
Vs.

1.K. Rathinavel ..1st Respondent/ Appellant/2nd Defendant
2.Saraswathi ..2nd Respondent/3rd Respondent/3rd Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 30.07.2004 in A.S.No.52 of 2004 on the file of the Additional District Judge and Fast Track Court No.2, Salem reversing the judgment and decree dated 17.10.2001 in O.S.No.768 of 1993 on the file of the Additional Subordinate Judge, Salem.

For Appellant : Mr.D. Shivakumaran

For Respondents : Mr.P. Jagadeesan, for R1
R2 - No Appearance

J U D G M E N T

The plaintiff is the appellant herein. For the sake of convenience, parties are referred to as per the litigant's status before the trial Court.

2. The second appeal is filed against the reversing judgment of the lower appellate Court, setting aside the preliminary decree for partition granted by the trial Court in favour of the appellant.

3. One Mr.Kantharooopan & Chinnammal are the husband and wife, they have two daughters and one son. One of the daughter is the plaintiff and other daughter is the third defendant. The son is arrayed as 2nd defendant while father is arrayed as first defendant. The said Chinnammal died on 01.08.1993.



4. During the pendency of the second appeal, the first defendant/father died and a memo to that effect has been filed and recorded. Accordingly, now the second appeal is with regard to 1/3rd share and not 1/4th share as claimed in the plaint. The first respondent died, appellant and respondents 2 and 3 are already on record, they are recognised as LR's of the deceased first respondent.

5. The appellant herein filed O.S.No.768/1993 on the file of the Sub Court, Salem against Kantharoopan (the father of the appellant and the respondents herein) and the respondents praying for partition of the suit properties therein into 4 equal shares and for allotment of ¼ share for the appellant / plaintiff.

6. The case of the plaintiff in brief is as follows:-

(i) The case of the appellant as plaintiff in the suit is that the suit properties belonged to Chinnammal, who is the mother of the plaintiff and defendants 2 & 3. She died intestate on 01.08.1993 leaving behind the plaintiff and the defendants as her only legal heirs. The 2nd defendant (the 1st respondent herein) was managing the properties, taking advantage of the old age of the 1st defendant viz., Kantharoopan, the father of the plaintiff and the defendants 2 and 3. The 1st respondent herein tried to grab the properties by creating documents and on 24.09.1993, the plaintiff issued a notice seeking partition and separate possession of the property left by the mother of the plaintiff. The 2nd defendant (1st respondent herein) sent a reply dated 13.10.1993 containing false allegation. Deeds dated 03.05.1993 in respect of item 1 and 2 separately and he denied the existence of the 3rd item.

7. Suit properties are three items:

(a) 1.86 acres in S.No.45/1 of Attayampatti Village previously Salem Taluk and District and Namakkal District;

(b) 0.15.0 hectare (0.37 acres) in New S.No.45/1B; 0.47.0 hectares (1.16 acres) in S.No.47/9 and 0.3.5 hectares (0.82 acres) in S.No.48/1 S.Paaparapatti previously Salem Taluk and District now Namakkal District;

(c) Gold jewellery weighing about 120 sovereigns.

8. Prayer in the suit:

(a) to pass a preliminary decree dividing the suit properties into 4 shares and for allotment of ¼ share to the plaintiff.

(b) directing the 2nd defendant to pay mesne profit @ Rs.25,000/- per annum and render accounts till delivery of possession of the plaintiff's share.



9. The case of the 2nd defendant is as follows:-

(i) The 1st respondent (2nd defendant therein) filed his written statement reiterating his contentions in the reply notice. He also claimed that he made lot of improvements into the suit properties by spending more than Rs.1,20,000/-. Thus, he denied the plaintiff's/appellant's claim for partition and prayed for dismissal of the suit.

(ii) However, subsequently, the 1st respondent/2nd defendant filed an additional written statement stating that Kantharoopan, the father of the appellant as well as respondents instigated his wife Chinnammal on false representation and hence, Chinnammal executed two Cancellation Deeds dated 23.06.1993 cancelling the earlier two settlement deeds dated 03.05.1993 in favour of the 2nd defendant, pleaded in the written statement. The further case of the 2nd respondent is that subsequently, Chinnammal executed two settlement deeds once again on 02.07.1993 in favour of the 2nd respondent and that he is in exclusive possession and enjoyment of the properties as per the 2nd set of settlement deeds dated 02.07.1993, contrary to the claim in the written statement setting up title on the strength of the alleged two settlement deeds dated 03.05.1993.

10. The plaintiff filed a reply statement denying the allegations made in the additional written statement besides reiterating the contentions raised in the plaint.

11. The plaintiff / appellant was examined as P.W.1 and she examined 2 more witnesses on her side. The 2nd defendant examined himself as D.W.1 and examined 3 more witnesses on his side to prove the execution of the so called settlement deeds. On the side of the plaintiff, Exs.A1 to A15 were marked. On the side of the defendants, Exs.B1 to B13 were marked. The notice given to the counsel for the 2nd defendant / defendants 1 and 2 were marked as Exs.C1 to C3.

12. After considering all the materials available on record, the trial Court decreed the suit for partition as prayed for and granted a preliminary decree in favour of the plaintiff for $\frac{1}{4}$ share and relegated the parties to a separate proceedings to work out the remedy regarding the mesne profits.

13. The lower appellate Court has found that Exs.B3 and B4 settlement deed in favour of the 2nd defendant is true and valid and also held that the schedule C property is not available for partition and accordingly, allowed the appeal and dismissed the suit. The above second appeal is admitted on the following substantial questions of law:

(i) When the defendant has neither pleaded nor has he proved the evidence that Exs.B3 and B4 gift settlement



deeds were accepted and acted upon, are the Courts below correct in law in holding that the gift under Exs.B3 and B4 is valid and acted upon?

(ii) When the plaintiff has clearly established that Exs.B3 and B4 gift settlement deeds by Periyathai @ Chinnammal are not voluntary, in the light of the clear admissions by D.W.2 in his cross examination, is the lower appellate Court correct in law in holding that Exs.B3 and B4, the gift deeds in favour of the 2nd defendant are genuine and consequently in holding that the plaintiff is not entitled for partition?

(iii) Is not the judgment and decree of the lower appellate Court perverse due to mis appreciation and non application of its judicial mind over the materials available on record?

14. Heard, the learned counsel for the appellant and the learned counsel for the first respondent.

15. On perusal of the oral and documentary evidence coupled with the submissions made by the respective counsel, the case of the plaintiff is that the plaintiff/appellant has filed the suit in O.S.No.768/1993 on the file of the Additional Subordinate Court, Salem for partition and separate possession of her $\frac{1}{4}$ share of the suit properties and for mesne profits against the defendants. The first defendant being the father of the plaintiff and the 2nd and 3rd defendants are the brother and sister of the plaintiff respectively. The suit properties consist of three items. Items 1 and 2 are the immovable landed properties and third item is the jewellery.

16. The suit properties were the separate properties of Periyathai @ Chinnammal, the mother of the plaintiff and defendants 2 and 3 and wife of the 1st defendant. The said Periyathayi @ Chinnammal died on 01.08.1993. Hence, the plaintiff and the defendants are each entitled to $\frac{1}{4}$ th share in the suit properties.

17. The prayer for partition was resisted by the defendant that his mother Periyathayi @ Chinnammal executed two gift settlement deeds dated 03.05.1993 (Exs.B3 & B4) in respect of item Nos.1 and 2 of the suit properties respectively in favour of the second defendant and the second defendant became the absolute owner as per the said gift settlement deeds. The said gift settlement deeds dated 03.05.1993 are genuine and valid. They have been acted upon from the date of execution. The second defendant took possession of the said properties pursuant to the gift settlement deeds dated 03.05.1993.



18. Further case of the defendant is, at the instigation of the first defendant, the said Chinnammal had executed two registered cancellation deeds dated 23.06.1993 (Exs.B5 and Ex.B6) cancelling the earlier two settlement deeds dated 03.05.1993 executed by her in favour of the second defendant. The second defendant also stated that the alleged cancellation deeds Exs.B5 & B6 would not create any right. Further, the above said cancellation deeds were duly cancelled by executing two cancellation deeds dated 02.07.1993 (Exs.B7 & B8).

19. The settlement deeds dated 03.05.1993 Ex.B3 & Ex.B4 and cancellation deeds dated 02.07.1993 Exs.B7 & B8 were not executed voluntarily by Periyathayi @ Chinnammal. It was also contended that the jewels were with the mother before her death and the second defendant had taken away the same. The trial Court has held that C schedule property is not available and accordingly, dismissed the suit in respect of jewels. In respect of the A and B schedule properties, the trial Court held that settlement deeds Exs.B3 and B4 were marked and the said finding has been specifically vacated and set aside by the lower appellate Court, for the reasons recorded therein and also held that Exs.B3 and B4 are voluntarily executed by the mother Periyathai @ Chinnammal and further held that the cancellation deeds Exs.B5 & B6 and further cancellation deeds Exs.B7 & B8 are not genuine. The above substantial question of law framed on those findings. The core issue that has to be gone into second appeal is whether Exs.B3 & B4 settlement deed executed by mother Periyathayi @ Chinnammal in favour of the 2nd defendant is true, valid and genuine. Being executed by her out of three Will and sound state of mind.

20. The plaintiff contended that the second defendant forcefully taken away his mother and got the settlement deeds Ex.B3 and Ex.B4 executed in his favour and they were not voluntarily executed by the mother Chinnammal. In order to prove the validity of Ex.B3 and Ex.B4 the second defendant has examined the scribe one Thangaparameswaran (D.W.2) who was the scribe of the said documents apart from one Periyasamy (D.W.3) who is the attester of Ex.B3 and Ex.B4. Both of them categorically deposed that the said Periyathai @ Chinnammal has executed the said document voluntarily by affixing her thump impression. Based on the evidence of D.W.2 and D.W.3 the lower appellate Court has come to the conclusion that the said document was voluntarily executed by the said Periyathayi @ Chinnammal. The lower appellate Court categorically held that the plaintiff has not let in any evidence to prove her false story that the second defendant had forcibly took her mother and got the gift deed executed in his favour as there is absolutely no evidence to prove the said story.



21. In the cancellation deeds Exs.B5 to B8, the said Periyathayi @ Chinnammal affixed her thump impression. In any event, the deceased Periyathayi @ Chinnammal herself affirmed the execution of Ex.B3 and Ex.B4 through the recital found in Ex.B5 to Ex.B8. Taking note of all these aspects, the lower appellate Court categorically held that the settlement deeds Ex.B3 and Ex.B4 are valid and acted upon. Accordingly, dismissed the suit. Further, the Periyathayi @ Chinnammal personally appeared before the Registrar and put her LTI while registration. The said documents were executed as per procedure by affixing her LTI in the last page of the documents and also before the Registrar at the time of execution.

22. The lower appellate Court also had carefully perused the recitals in Ex.B5 and Ex.B6, the cancellation deeds, wherein the said Periyathayi @ Chinnammal averred that since the second defendant failed to act as per the terms of the settlement deeds and she has not reposed confidence on her and hence she was cancelling them. It is pertinent to note that the said Periyathayi @ Chinnammal had not stated in the cancellation deeds Ex.B5 & Ex.B6 that she was forcibly taken to the Registrar Office and was made to execute the settlement deeds. On perusal of recitals in Ex.B3 & Ex.B4 settlement deeds, I find that there is no condition stipulated in Ex.B3 & Ex.B4. Hence, it is meaningless to allege that the second defendant has not fulfilled the conditions in Ex.B3 & Ex.B4 and citing so, the same was cancelled by Chinnammal and hence, I find that the Periyathayi @ Chinnammal has voluntarily executed Exs.B3 and B4 settlement deeds in favour of his only son and the finding rendered by the lower appellate Court on proper appreciation of the evidence does not require any interference at this second appeal stage.

23. On the point of possession, a perusal of the recitals in the settlement deeds (Exs.B3 & B4) would clearly prove that the possession of the properties were given to the 2nd defendant on the date of the said documents itself.

24. The second defendant had produced valid documentary evidence Ex.B9 to Ex.B31 to prove his possession of the suit property. The patta and other revenue records changed in the name of the second defendant. It is an admitted fact that the second defendant is in possession of the entire item Nos. 1 & 2 properties. In fact, Ex.B9, the lease deed was executed by Periyathayi @ Chinnammal as earlier as on 18.04.1984 in favour of the second defendant for the purpose of running a petrol bunk. Apart from that, the original documents of the suit properties are with the second defendant. The recital in the documents Ex.B3, Ex.B4, Ex.B7 and Ex.B8 will categorically prove that the second defendant had taken possession of the property



pursuant to the settlement deeds and he is in possession and enjoyment of the property.

25. The said Chinnammal herself clearly stated in the cancellation deeds dated 02.07.1993 that the second defendant had taken possession of the properties even on 03.05.1993 pursuant to the settlement deeds Ex.B3 & Ex.B4 and also patta has been effected in respect of the suit properties in favour of the second defendant. Hence, the said Chinnammal have no right to cancel the settlement deeds dated 03.05.1993.

26. I had an occasion to consider the legal position as to whether there can be any unilateral revocation of settlement deed by the executrix. Following, the decision of the Hon'ble Supreme Court in the judgment reported in 2017 (1) CTC 414 (SC) - [Satya Pal Anand Vs. State of Madhya Pradesh], I have held that unilateral revocation of settlement deed is impermissible in law in S.A.No.1303 of 1996 dated 21.08.2019 [Saroja Bai Ammal Vs. Suguna Bai Ammal].

27. As per Section 126 of Transfer of Property Act, a gift deed validly executed cannot be revoked unilaterally by the executor. In any event, the said section clearly stipulates that no such revocation could be done by the executor and that too without prior notice. It is well settled law that a settlement deed once executed cannot be revoked or cancelled by the executor unilaterally. Settlement deeds Ex.B3 & Ex.B4 are valid. The lower appellate Court has found that the settlement deeds Ex.B3 and Ex.B4 were validly executed by Periyathayi @ Chinnammal on the basis of valid evidences. Once a settlement deed is executed and acted upon, the settlor has no right or power to cancel the said settlement deeds. The second defendant become the absolute owner of the item Nos.1 & 2 of suit properties and the plaintiff is not entitled to get any share in the property and accordingly, the lower appellate Court has rightly dismissed the suit.

28. In view of the discussion in the preceding paragraphs, both the substantial questions of law are answered in negation against the appellant and the judgment and decree passed by the lower appellate Court is hereby confirmed and the second appeal is devoid of merits. Consequently, the suit in O.S.No.768 of 1993, for partition, stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar



AT

To

1.The Additional District Judge and Fast Track Court No.2,
Salem.

2.The Additional Subordinate Judge,
Salem.

+lcc to Mr.P.Jagadeesan, Advocate SR.No. 30444

+lcc to Mr.D.Shivakumaran, Advocate SR.No. 30300

S.A.No.699 of 2005 and
C.M.P.Nos.254 of 2014 & 9726 of 2005

PMK (CO)

A.SK(22.09.2021)