



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.1040 of 2021

1.Sucila Bai Ammal,
W/o.Late A.Sankara Rao Naidu,
No.44/33.18cm, Veerapandia Nagar,
First Street, Choolaimedu,
Chennai 600 094.

2.L.Murali,
S/o.Lakshmipathy
8/96, Vanniyar Street,
Choolaimedu,
Chennai 600 094.

3.S.Meenasri
D/o.Lakshmipathy,
8/96, Vanniyar Street,
Choolaimedu,
Chennai 600 094.

4.J.Bharathy,
W/o.Jayakumar,
24/1, Vanniyar 2nd Lane,
Choolaimedu,
Chennai 600 094.

5.C.Baskari,
W/o.P.A.Chikkikrishnan,
40/47, Bharathipuram,
Shenoy Nagar,
Chennai 600 030.

6.R.Padmini,
W/o.P.Rajendran,
No.5, Sulochana Nagar,
Moulivakkam,
Chennai 600 116.



7.V.Padmavathy,
W/o.Venkat Rao,
Dr.Ambedkar Street,
South Park Road,
Padikuppam Road,
Chennai 600 040.

8.R.Parimala,
W/o.Raaji,
No.9, Bharathi Street,
Gandhi Road,
Velachery,
Chennai 600 042.

... Appellants/Appellants/Difendants

.Vs.

1.S.Balaji,
S/o.Late A.Sankara Rao Naidu

2.S.Balachandran,
S/o.Late A.Sankara Rao Naidu
Represented by his Power Agent
S.Balaji
Both are residing at No.44/3,
Veerapandia Nagar,
First Street, Choolaimedu,
Chennai 600 094

3.The Sub-Registrar,
Sub-Registrar Office,
Kodambakkam,
Chennai 600 024.

... Respondents/Respondents/Plaintiffs

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree passed by the learned II Additional City Civil Court, Chennai dated 11.01.2021 in A.S.No.359 of 2018 in confirming the Judgment and Decree of XV Assistant Judge, City Civil Court, Chennai dated 19.04.2018 in O.S.No.4649 of 2016.

For Appellants : Mr.S.Thiruvengadam

J U D G M E N T

The Second Appeal is directed against the Judgment of the learned II Additional Judge, City Civil Court, Chennai, dated



11.01.2021 in A.S.No.359 of 2018, confirming the Judgment and decree of learned XV Assistant Judge, City Civil Court, Chennai dated 19.04.2018 in O.S.No.4649 of 2019.

2.Respondents 1 and 2 filed a Suit against the Appellants and the 3rd Respondent for the relief that declaring the cancellation of settlement deed dated 13.05.2014, bearing Doc. No.1777 of 2014 on the file of S.R.O., Kodambakkam as null and void and not binding on the Plaintiffs; declaring the settlement deed dated 13.05.2014, bearing Doc. No.1778 of 2014 on the file of S.R.O., Kodambakkam as null and void and not binding on the Plaintiffs; for permanent injunction restraining the Defendants 1 to 8, their men or their agents from alienating the suit property and for costs.

3.The case of Respondents 1 and 2 is that 1st Appellant/1st Defendant is their Mother. Defendants 2 and 3 are the nephew and niece. Defendants 4 to 8 are the sisters of the Plaintiffs. Plaintiffs' father Sankara Rao Naidu died on 22.06.2014. He purchased the property in old survey Nos.128/1, 128/2 & 128/3 and new survey No.27, Block No.10 situated at Puliyur village to an extent of 1 ground 1510 sq. ft. by a sale deed dated 30.04.1969. Out of natural love and affection, Sankara Rao Naidu settled the suit property in favour of the Plaintiffs on 07.10.2008. Through a registered settlement deed Sankara Rao Naidu had already executed a Will on 28.05.1991 in favour of the Plaintiffs. In the year 2000-2001, at the request of Sankara Rao Naidu, 1st Plaintiff sold his apartment and invested the amount, besides his savings and pledged jewels of this wife for the construction of building in the suit property, after demolishing the existing structure. After the death of Sankara Rao Naidu, the 1st Defendant was living with Plaintiffs. Without knowledge of Plaintiffs, Defendants 2 to 8 managed to take Sankara Rao Naidu to S.R.O, Kodambakkam and made him to execute cancellation of settlement deed on 13.05.2014. This cancellation of settlement deed executed by Sankara Rao Naidu is illegal. Sankara Rao Naidu executed another settlement deed dated 13.05.2014 in favour of the Plaintiffs and Defendants 2 to 8. Both the deeds came into existence due to misrepresentation and fraud committed by Defendants 2 to 8. Therefore, the Suit was filed for the reliefs said above.

4.Defendants 1 to 8 filed written statement. Defendants 1 to 8 admitted the relationship between the parties, but denied the execution of settlement deed in favour of Plaintiffs by Sankara Rao Naidu. It is claimed that building was constructed by Sankara Rao Naidu. Plaintiffs coerced and represented to



Sankara Rao Naidu that they would take care of him and 1st Defendant and satisfy their every need including medical and other expenses and requested Sankara Rao Naidu to settle the suit property in favour them. Sankara Rao Naidu was hesitant for accepting the said proposal, but on continuous assurance and promises of the Plaintiffs, he executed a settlement deed in favour of the Plaintiff retaining life interest. Therefore, it cannot be considered as a settlement deed. The averments of the 1st Plaintiff that he has constructed a building in the suit property by selling his property, using his savings and pledging his wife's jewels are denied. After the registration of the settlement deed, the Plaintiffs totally neglected to maintain Sankara Rao Naidu and 1st Defendant. Therefore, he executed cancellation of settlement deed on 13.05.2014, which was registered as Doc. No.1777 of 2014 before the S.R.O., Kodambakkam. Then Sankara Rao Naidu had executed a settlement deed as Doc. No.1778 of 2014 in favour of Plaintiffs and Defendants 2 to 8, giving equal share to all of them. The settlement deed dated 07.10.2008 had come into existence due to coercion and misrepresentation of Plaintiffs. Therefore, it was subsequently cancelled. The suit has no merits and liable to be dismissed.

5. On the basis of this pleadings, the trial Court framed the following issues:

- (i) Whether the Plaintiffs are entitled to the relief of declaration that the cancellation of the settlement deed dated 13.05.2014 is null and void?
- (ii) Whether the Plaintiffs are entitled to the relief of declaration that the settlement deed dated 13.05.2014 is null and void?
- (iii) Whether the settlement deed dated 07.10.2008 was obtained by coercion and misrepresentation?
- (iv) Whether the settlement deed dated 07.10.2008 is not acted upon?
- (v) Whether the settlement deed dated 07.10.2008 is a Will?
- (vi) To what other reliefs, the plaintiffs are entitled to?

6. During the trial, PW1 was examined and Ex.A1 to A6 were marked on the side of the Plaintiffs and DW1 to 2 were examined and no documents was marked on the side of the Defendants.

7. On considering the oral and documentary evidence, the learned trial Judge found that Ex.A2 document is a settlement deed and not Will. Therefore, unilateral cancellation of



8. Agitated against the judgment of the trial Court, Plaintiff preferred Appeal in A.S.No.359 of 2018. The learned Appellate Judge has considered the oral and documentary evidence, submissions of the learned counsel for the parties, judgment of the trial Court and found that no ground was made out for reversing the judgment of the trial Court and confirmed the judgment of the trial Court and dismissed the Appeal. Therefore the Appellants have come up with the Second Appeal.

9. Learned counsel for the Appellant submitted that settlement deed was executed by Sankara Rao Naidu believing that Plaintiffs and his sons would take care of himself and his wife/1st Appellant. However, Plaintiffs have not taken care of the wellbeing of Sankara Rao Naidu and 1st Appellant. Life interest has been reserved for Sankara Rao Naidu in the settlement and only after his death, the Plaintiffs would have absolute interest. Technically the settlement deed cannot be construed as creating right in presenti and therefore, can be construed only as a Will. When there is non-compliance of condition that Plaintiffs should maintain Sankara Rao Naidu and 1st Appellant, Sankara Rao Naidu has right to cancel the settlement deed. That was what had been done in this case. Sankara Rao Naidu has also executed a settlement deed on the same day in Doc. No.1778 of 2014, allotting the properties equally among the Plaintiffs and Defendants 2 to 8. He did justice by giving his property to all the children. Therefore, cancellation of settlement deed in Doc.No.1777 of 2014 and execution of settlement deed in Doc. No.1778 of 2014 are perfect in law. However, the Courts below on wrong appreciation of evidence and application of law dismissed the Suit. Therefore, he prayed for setting aside the judgment of the trial Court and allowing of the Second Appeal.

10. Considered the submissions of the learned counsel for the Appellant and perused the records. Parties are referred in the order in which they were referred before the trial Court for easy understanding.

11. There is no dispute with regard to the relationship between the parties. It is also not disputed that suit property was purchased by Sankara Rao Naidu and the settlement deed in favour of the Plaintiffs was executed on 7.10.2008. It is the specific case of the Plaintiffs that after execution of the



settlement deed, the existing structure in the suit property was demolished and present building was constructed by 1st Plaintiff by spending his savings, selling his apartment and pledging his wife's jewel. Learned 1st Appellant Judge extracted a portion of evidence of DW1. In the evidence of DW1, which was extracted in the judgment of the first Appellate Court, DW1 clearly admitted that house in the suit property was constructed by the first Plaintiff 10 years before. She is living in that house. It is also her evidence that 2nd Plaintiff only procured all the essential items available in the house. 2nd Plaintiff invested a sum of Rs.1,00,000/- in the year 2004 in the name of her husband, so that he would get monthly interest of Rs.750/- per month. She very clearly admitted that 2nd Plaintiff had taken care of her and her husband Sankara Rao Naidu. Thus, it is clear from the admission of DW1 that the building in the suit property was constructed with the fund provided by the 1st Plaintiff and 2nd Plaintiff has taken care of Sankara Rao Naidu and 1st Defendant. Therefore, the claim that the settlement deed was cancelled by Sankara Rao Naidu for the reason that Plaintiffs have not maintained Sankara Rao Naidu and 1st Defendant properly falls to the ground.

12. There is one more issue raised as to whether Ex.A2 deed is a settlement deed or Will. Both the Courts have gone through this issue. The learned trial Judge had elaborately discussed this issue, referring to judgments, especially, the judgment reported in 1996 (9) SCC 388 in the case of Namburi Basava Subramanyam Vs. Alapathi Hymavathi and concluded that Ex.A2 is a settlement deed. In the judgment it was observed that when a right, title and interest in the property is created in presenti or interest therein intended to be transferred only on the death of settlor, it would be a settlement. Merely because right is conferred, after the death of settlor, it cannot be said that the document is a Will.

13. With regard to submissions of the Defendants that Plaintiffs have not taken care of Sankara Rao Naidu and 1st Appellant, it was found on evidence that Plaintiffs have taken good care of Sankara Rao Naidu and 1st Appellant. Even assuming that Plaintiff had not taken care of Sankara Rao Naidu and 1st Appellant. It is open to them to move the Court for seeking maintenance. It is not open to Sankara Rao Naidu to cancel the settlement deed, executed in favour of the Plaintiffs unilaterally. Both the Courts have concurrently found that Ex.A2 settlement deed is irrevocable settlement and unilateral cancellation of settlement is void. In this view of the matter, both the Courts below decided that Plaintiffs are entitled for



the relief of declaration that cancellation of settlement deed dated 13.05.2014 bearing Doc. No.1777 of 2014 as null and void and settlement deed dated 13.05.2014 bearing Doc. No.1778 of 2014 registered at S.R.O, Kodambakkam as null and void and not binding on the Plaintiff and accordingly ordered.

14.For the reasons stated, this Court finds no reason to interfere with the judgment of the Court below. Both the Courts have considered all the relevant issues on the basis of oral and documentary evidence and applied the correct law. There is no substantial question(s) of law involved in the Second Appeal. Therefore, this Court confirms the judgment of the learned II Additional City Civil Court, Chennai dated 11.01.2021 in A.S.No.359 of 2018, confirming the Judgment and Decree of the learned XV Assistant Judge, City Civil Court, Chennai dated 19.04.2018 in O.S.No.4649 of 2016.

15.Accordingly, the Second Appeal is dismissed. However, there is no order as to costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

sai

To

The II Additional Judge,
City Civil Court,
Chennai.

S.A.No.1040 of 2021

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