



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.820 of 2014 and

M.P. (MD)No.1 of 2014

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1. Guru.Muniyandi ... 1st Appellant/1st Appellant/
2nd Defendant

2. Sudha Ananthi ... 2nd Appellant/2nd Appellant/
4th Defendant

Vs.

1. G.R.Meenakshi (deceased) ... 1st Respondent/1st Respondent/
Plaintiff

2. G.R.Subramanian ... 2nd Respondent/2nd Respondent/
1st Defendant

3. G.R.Krishnamoorthy ... 3rd Respondent/3rd Respondent/
3rd Defendant

4. K.Alagumathi ... 4th Respondent/4th Respondent/
5th Defendant

5. Kaliyammal

6. Pushpa

7. Vijayalakshmi ... Respondents 5 to 7

(R-5 to R-7 are impleaded vide order
dated 14.12.2016 in
C.M.P. (MD)Nos.5481 to 5483 of 2016
in SA (MD)No.820/2014)

Prayer: Second appeal filed under Section 100 of C.P.C., to call for the records and set aside the Judgment and Decree of the Sub Judge, Devakottai in A.S.No.27 of 2013 dated 19.02.2014 by confirming the Decree and Judgment of the Principal District Munsif cum Judicial Magistrate, Karaikudi in O.S.No.166 of 2011 dated 13.06.2013 by allowing this second appeal.

For Appellant	: Mr.A.Haja Mohideen
For R-2 to R-4	: Mr.Ananth C.Rajesh
For R-5 to R-7	: Mr.S.Srinivasa Raghavan



J U D G M E N T

Defendants 2 and 4 in O.S.No.166 of 2011 on the file of the District Munsif, Karaikudi, are the appellants in this second appeal. The said suit was instituted by one Guru Meenakshi. The said Guru Meenakshi was the wife of Gurusamy. They were blessed with six children, namely, three sons and three daughters. Guru Meenakshi received Ex.A.4 notice dated 31.03.2011 from her sons, namely, Guru Muniyandi and Guru Krishnamoorthy. Ex.A.4 notice informed Guru Meenakshi that on 27.10.2000, a family arrangement was entered into and in the said family arrangement, Guru Meenakshi and Gurusamy figured as first party while the three sons were shown as second, third and fourth parties. The properties belonging to the joint family were divided among the four parties and the exact division was reflected in schedules 'A' to 'D'. The said two sons called upon their mother, namely, the plaintiff not to act contrary to the terms of the family arrangement. To the said Ex.A.4 notice, Guru Meenakshi sent her reply dated 08.04.2011(Ex.A.5). In Ex.A.5, Guru Meenakshi challenged the genuineness of the family arrangement dated 27.10.2000 projected by her sons Guru Muniyandi and Guru Krishnamoorthy. That was followed by the institution of O.S.No.166 of 2011. After the exchange of these notices, the second defendant executed a settlement deed dated 10.05.2011(document No.1963 of 2011) in favour of the fourth defendant in which 50% share in the suit schedule has been conveyed. Likewise the third defendant had conveyed the other 50% share in the suit schedule in favour of his wife/fifth defendant vide settlement deed dated 10.05.2011 (document No.1964 of 2011). Therefore, Guru Meenakshi filed O.S.No.166 of 2011 in which she sought declaration that the suit schedule property is her exclusive property and sought permanent injunction restraining the respondents from interfering with her possession of the property. She also sought declaration that the settlement deeds dated 10.05.2011 executed by the second and third defendants in favour of the fourth and fifth defendants will not bind her. The second defendant filed the written statement and the other contesting defendants adopted the same. The first defendant remained ex-parte. The plaintiff examined herself as P.W.1 and marked Ex.A.1 to Ex.A.8. Defendants 2,4 and 5 examined themselves as defendants 1 to 3 and marked Ex.B.1 to Ex.19. The learned trial Judge by Judgment and Decree dated 13.06.2013, substantially decreed the suit and it was declared that the suit schedule property exclusively belongs to the plaintiff. It was further declared that the impugned settlement deeds were not valid and binding on her. Since it was held that there was no cause of action, the relief of permanent injunction was denied.



2. Questioning the same, the aggrieved defendants filed A.S.No.27 of 2013 before the Sub Court, Devakottai. Vide Judgment and Decree dated 19.02.2014, the appeal was dismissed. Challenging the same, the second appeal came to be filed.

3. Though the second appeal is of the year 2014, till date it has not been admitted and no substantial question of law has been framed. Notice was issued and thereafter the respondents entered appearance. The matter was even referred for mediation. But no settlement could be arrived at. In the meanwhile, the plaintiff Guru Meenakshi passed away on 17.10.2015 and thereafter, respondents 5 to 7 were brought on record.

4. It was also noted that vide Ex.B.14 dated 24.05.2011, the suit property had been settled by the plaintiff in favour of one of her daughters, namely, Kala @ Kaliyammal/fifth respondent herein.

5. The learned counsel appearing for the appellants submitted that the suit property was only one of the items in Ex.A.3 family arrangement dated 27.10.2000. He would point out that the suit was filed some 11 years after the said family arrangement was executed. According to him, during the intervening years, it was already acted upon. He would contend that the suit schedule property was not an exclusive property of the plaintiff. In support of his contention, he would draw my attention to the sale agreement dated 01.11.1995(Ex.B.1). It can be seen therefrom that it was only Thiru.Gurusamy, husband of the plaintiff who was a party to the document. That would clearly show that only for the purpose of Income Tax, the name of the mother was shown in the sale deed dated 22.01.1996(Ex.A.1). He submitted that the Courts below have completely ignored the legal effect of Ex.B.1. He reiterated all the contentions set out in the memorandum of grounds and called upon this Court to admit the second appeal by framing the substantial question of law.

6. Per contra the learned counsel appearing for the contesting respondents would submit that the impugned Judgments do not call for any interference. He would submit that the Courts below have correctly applied the principles of law and that therefore, he wanted this Court to dismiss the second appeal.

7. I carefully considered the rival contentions and went through the evidence on record.

8. The contest between the parties turns on the validity of Ex.A.3 family arrangement dated 27.10.2000. The appellants herein claim their rights only in terms of the said family arrangement. According to them, the plaintiff, namely Guru Meenakshi was a



willing party to the family arrangement and that on the ill advice of her daughters, she has done a somersault. As rightly pointed out by the learned counsel appearing for the contesting respondents, Guru Meenakshi was an illiterate woman. In Ex.A.3 she had affixed only her thumb impression. It is true that the thumb impression of Guru Meenakshi is not a forgery. The stand of Guru Meenakshi was that she was induced to affix her thumb impression on some representation and that she did not know the contents of Ex.A.3.

9. A mere look at the deposition of D.W.2 Sudha Anandhi would show that Guru Meenakshi would rarely venture out of the house. Ex.A.3 is also not a registered document. When the plea of *non est factum* is put forth, the burden to show that the document in question was voluntarily executed falls entirely on the person who relies on the same. The appellants herein rely on Ex.A.3. Therefore, it is entirely their burden to show that Guru Meenakshi/plaintiff after being appraised of the the contents of Ex.A.3 voluntarily affixed her thumb impression. Neither D.W.2 nor D.W.3 are parties to Ex.A.3. It was only D.W.1 who was party to Ex.A.3.

10. I went through the deposition of D.W.1 Muniyandi. Muniyandi has nowhere deposed that her mother after being appraised of the contents of Ex.A.3, with full knowledge, had affixed her thumb impression. There were three attesting witnesses, namely, Shanmugam Ambalam, Renganathan Ambalam and Posalan. None of the attesting witnesses were examined. Therefore, the Courts below applying the settled precedents rightly held that the contesting defendants have not at all discharged the burden cast on them.

11. That apart, the suit schedule property stood in the name of Guru Meenakshi. Ex.A.1 is the sale deed standing in her name. It is true that Ex.B.1, the sale agreement stood in the name of Gurusamy, husband of Guru Meenakshi. Once the sale agreement had culminated into a sale, it is only the sale deed that will be taken note of and the earlier agreements will have to be ignored. The Courts below have rightly held that as per the provisions of the Benami Transactions(Prohibition) Act, 1988, if a person out of love purchases a property in the name of wife for her benefit, the property will be construed as the absolute property of the wife.

12. Thus, looked at from any angle, I do not see any substantial question of law arising for consideration in this second appeal. The Courts below have correctly appreciated the facts and applied the relevant principles of law.



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13. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

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Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Sub Judge,
Devakottai.
2. The Principal District Munsif cum
Judicial Magistrate, Karaikudi.
3. The Record Keeper, V.R.Section-2 copies
Madurai Bench of Madras High Court, Madurai.

+2 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-17196[F] dated 23/04/2021)

+1 CC to Mr.ANANTH C.RAJESH, Advocate (SR-17206[F] dated 23/04/2021)

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