IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2022

PRONOUNCED ON : 07.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.NO.1064 OF 2012

Swarnam ... Appellant/Plaintiff

.Vs.

1. A.A.Sivagami Ammal

2. A.Prabhakaran

3. Kalyani

4. Jikki

5. Anuradha ... Respondents/Defendants

PRAYER:-

This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree dated 21.02.2012, made in O.S.No.7849 of 2010, by the Additional District Judge, (Fast Track Court-II) Chennai.

For Appellan+t : Mr.V.Anand

For Respondents : Mr.K.Shanmugakani
For R1

Mr.P.L.Narayanan
For R2

Mr.R.Karunakaran
For R3

Mr.R.Kamaraj for R4

No appearance for R5

JUDGEMENT

This Appeal Suit has been filed, by the Plaintiff, against the judgement and decree, dated, 21.02.2012, made in OS.No.7849 of 2010, by the Additional District (Fast Track Court-II) Chennai.

2. For the sake of convenience, the parties are referred to as per the rankings assigned before the trial court.

3. The case of the Plaintiff, as set out, in the plaint is that the plaintiff and the defendants 2 to 5 are the children of the first defendant and Arunachala Nadar who died intestate on 20.10.2000. The said Arunachala Nadar had purchased the properties in Item Nos.1 and 2 in his name and item No.3 in the name of 1st defendant. The first defendant's father Murugaiya Nadar purchased leasehold rights of 4th item of suit schedule property from H.H The Prince of Arcot Endowments, Amir Mahal, Chennai and her parents died. In the year 2007, major part of lands were sold by the first defendant for a sum of Rs.3,75,000/- which stands in suit schedule No.V (a). The 40 sovereigns of gold jewels of the plaintiff's grand mother is with first defendant and the same has been shown as suit V (b) schedule property. Items 1 to 4 consists of four shops, three houses and a godown. On the request of the first defendant, the plaintiff went to the Sub-Registrar's Office along with defendants 1 and 2 and signed all the documents without knowing the contents. The plaintiff understand that the defendants 3 to 5 were also made to sign believing them to be the partition deeds. Since they did not give any copies of the documents to the plaintiff, her husband requested for the same and at last, the defendants 1 and 2 gave xerox copies of the documents which happened to be the release deed and settlement deed in favour of the second defendant instead of partition deed. In the release deed it has been mentioned that as if the plaintiff and the defendants 3 to 5 received a sum of Rs.1 lakh each in lieu of their shares. The properties worth above one Crore has been released would go to show the evil intention of the defendants 1 and 2 and even the alleged amount of Rs.1 lakh to each daughters has not been paid. The settlement deed executed by the first defendant in favour of 2nd defendant is not valid and not binding on the plaintiff and the defendants 3 to 5. The item No.4 of the suit property under document No.1714/06 has no legal force. Since Triplicane Sub Registrar Office has not jurisdiction, the office returned the same on 26.03.2007 with an instruction to approach Mylapore Sub-Registrar Office. Through the release deed and the settlement deed, the 2nd defendant has been given a excess share of 2850

sq.ft against the meager share of 115 sq.ft land's lease hold right with 70 years old building to the plaintiff and each of the other daughters. On questioning the same, they replied that it is mentioned so only for the purpose of stamp duty and till date they were not paid even the said sum of Rs.1 lakh. Under these circumstances, the three documents were not valid in law as they are tainted with fraud, misrepresentation, undue influence, coercion. A notice dated 05.12.2008 was issued calling upon the defendants 1 to 5 for her $1/6^{th}$ share of the properties or Rs.31,19,166/- by demand draft towards her share. On 19.02.2009 the defendants 1 and 2 came to an amicable settlement with the 3^{rd} defendant and subsequently they gave Rs.1 lakh each instead of actual claim. On the death of Arunachala Nadar, the plaintiff and the defendants are each entitled to $1/6^{th}$ share of the suit property. The defendants are entitled to effect partition. Hence the suit.

4. The case of the defendants, as set out in the written statement filed by the defendants 1 and 2 are as follows:

> The suit is liable to be rejected since it is not maintainable and not properly valued. The plaintiff having transferred her share in the suit schedule 1 to 3, cannot seek partition. She cannot value the suit for partition as a co-owner in joint possession. Item Nos. 3 and 4 absolutely belongs to the first defendant but she is not in possession of 40 sovereigns of jewels. The relationship between the parties is admitted. The plaintiff suddenly became avaricious in money and filed the suit forgetting about the wealth she received at the time of her marriage. The suit is vexatious. The plaintiff and the defendants 3 to 5 were provided with sufficient wealth. Considering the contribution made by the 2^{nd} defendant towards the family and for the marriage of his sisters, they had voluntarily executed release deed in favour of the 2^{nd} defendant and the first defendant executed settlement deed in favour of the 2^{nd} defendant. The plaintiff and the defendants 3 to 5 had full knowledge about the documents at the time of signing them. There was no coercion, undue influence or cheating in execution of release deed and settlement deed. The long delay itself would go to prove the unbelievable nature of plaintiff's case. For notice issued by the plaintiff, suitable reply was given. There is no divisible property available to effect partition. Hence, the suit is liable to be dismissed.

5. On the pleadings of the parties, issues were framed by the Trial Court as follows:

> "1. Whether the plaintiff is entitled for the declaration that the release deed and settlement deed dated 15.11.2006 are null and void and not valid in law and not binding on the plaintiff?
>
> 2. Whether the plaintiff is entitled for 1/6 share in suit movable and immovable property?
>
> 3.To what other relief?"

The issues were reframed as follows:

> "1. Whether the release deed and settlement deed dated 05.11.2006 came into existence by use of force, coercion, undue influence, etc.,?
>
> 2. Whether the suit 3rd item of property is the joint family property?
>
> 3. Whether the plaintiff is entitled for partition in respect of schedule 5(a) and 5 (b)?
>
> 4. Whether the suit has been properly valued for the purpose of court fees?
>
> 5. Whether the plaintiff is entitled decree for partition of 1/6th share in the suit properties?
>
> 6. To what other reliefs, the plaintiff is entitled?"

6. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A14 were marked and PW1 to PW5 were examined. On the side of the Defendants, no exhibit was marked and DW1 was examined. The Trial Court had dismissed the suit. Aggrieved against the same, this Appeal Suit has been filed by the Plaintiff.

7. The learned counsel for the appellant has submitted that the release deed dated 15.11.2006 is a fraudulent document. She has affixed the signature in the document under the influence of her brother and mother. It was obtained by undue influence and coercion. He further submitted that it deprived the valuable rights of the appellant. The appellant has been disadvantaged and deprived on account of an unequal partition. Consideration of

Rs.1 lakh has not passed on to the appellant and the value of the share allotted to the appellant is absolutely disproportionate to the value of the properties usurped from her. The burden of proof lies on the respondents 1 and 2. But they failed to prove the case. The right of ownership of superstructure was transferable only with the permission of H.H The Prince of Arcot Endowments. The lower court has come to the wrong conclusion and dismissed the suit. Hence, he prays to allow the appeal.

8. The learned counsel for the 2nd respondent has submitted that the appellant and the respondents 3 to 5 has executed the document. The appellant has not established that only due to undue influence and coercion, the document was executed. In this case, the lower court considering all the aspects, has passed a correct judgment. Hence, he prays for dismissal of the appeal.

9. The learned counsel for the 3rd respondent has submitted that she has signed the document without knowing the contents. He further submitted that she has not received Rs.1 lakh. The learned counsel for the 4th respondent has submitted that the parties to the suit has not entered into the witness box. So, their case has to be rejected. In this case, the burden of proof lies on the respondents 1 and 2. Further, he submitted that the 4th respondent has not received Rs.1 lakh. So, a contract without consideration is void. The respondents 1 and 2 have fraudulently obtained the signature of 4th respondent.

10. Without considering all the above aspects, the lower court has passed an erroneous order.

11. This Court heard the submissions of the learned counsel on either side.

12. In support of his contention, the learned counsel for the appellant has relied on the following citations:

(i) AIR 1968 SC 956 – Ningawwa Vs. Byrappa & 3 others and'

(ii) AIR 1964 SC 538 - Badat & Co. Vs. East India Trading Co.,

13. In support of his contention, the learned counsel for the 2nd respondent has relied on the following citation.

(1999) 8 SCC 396 - Balraj Taneja and Another Vs. Sunil Madan and Another.

14. On perusal of the materials available on record, it is seen that the burden of proof lies on the 2nd defendant regarding the execution of sale deed in respect of lands in the village at free of cost. It is an admitted fact that the 1st defendant is the mother of the plaintiff and defendants 2 to 5. The suit is filed for a declaration that the release deed dated 15.11.2006 executed by the plaintiff and others in favour of the 2nd defendant in Doc.No.1712 of 06 is null and void and prayed for preliminary partition of 1/6th share in the suit schedule 1 to 5 properties by metes and bounds and for costs.

15. In this case, PW1 deposed that her father Arunachala Nadar died intestate on 20.10.2000 leaving behind the plaintiff and the defendants. The suit item Nos. 1 and 2 properties were purchased in the name of her father. The third item was purchased in favour of the 1st defendant. She further submitted that item No.4 was purchased by her maternal grandfather. She further submitted that some of the ancestral properties of her father in the native place was sold and Rs.3,75,000/- was paid to the 1st defendant. Her maternal grandmother left 40 sovereigns of gold jewels to her. The jewels are ancestral properties and she has share in this jewels. After the demise of Arunachala Nadar, the defendants and herself are entitled to equal shares in the abovesaid properties. He further submitted that on 15.11.2006, she came down to Chennai and went to Sub-Registrar Office, Triplicane, along with defendants 1 and 2 and they signed the documents placed before her without going through the contents. Further, it is stated that the defendants 3 to 5 and herself were also not informed about the content of the documents and they were made to sign believing them to be a partition deed. She demanded the copies of those documents and defendants 1 and 2 hesitated to give the same. On 11.09.2008, the defendants 1 and 2 gave the xerox copies of the documents and she realised that she was cheated by the defendants 1 and 2 and those documents happens to be the release deed and settlement deed which were executed in favour of the 2nd defendant. Instead of partition deed, the release deed had been fraudulently obtained by undue influence from the female heirs suppressing the true facts. He further submitted that even the mentioned amount of Rs.1 lakh also not paid to her and the said release deed is not legally valid.

16. Though Item No.3 stood in the name of the 1st defendant, it was purchased by Arunachala Nadar in the name of the

1st defendant who had no independent income to purchase any property in her name. Item No.3 was also settled in favour of the 2nd defendant and it was not informed to her .

17. In respect of item No.4, the property was sham and nominal, documents were executed in favour of the female legal heirs. Instead of registering the documents in Sub-Registrar Office, Mylapore, they registered the same in Sub-Registrar Office, Triplicane, which does not have jurisdiction and hence, they have been returned. Therefore, she stated that she is entitled to 1/6th share in the suit schedule property.

18. In this case, the 1st defendant deposed that item No.3 is the absolute property of her mother and she has purchased the same from her own fund. Item No.4 property is also her mother's absolute property and she has settled it in favour of his sisters. He further submitted that he released his claim in the ancestral property in favour of his paternal grandfather and not received any consideration for the same. The jewelleries are the absolute property of his mother. He further submitted that his sisters along with his mother has voluntarily executed Ex.A4 release deed in his favour. All his sisters are well educated and they are employed and independent. They are not supposed to do any act without applying their mind and they never sign any document without reading the contents. The defendants 3 to 5, on their own volition with full knowledge released their share in schedule Nos.1 and 2 and executed Ex.A4 in his favour. There was no coercion, undue influence and cheating in the execution of A4. The plaintiff is making false claim to the suit properties. He further submitted that the schedule properties Nos.1 to 4 are settled and concluded. The plaintiff has chosen to file a vexatious suit. In respect of item No.4, they could have easily sort out within the family itself. In this case, the 3rd item property stands in the name of the 1st defendant A.Sivagami Ammal under Ex.A3.

19. A perusal of Ex.A3 reveals that the consideration amount was paid by the purchaser. In this case, DW1 stated that his mother was the only child of wealthy parents and she was in possession of individual assets and funds and the movable and immovable assets held by her mother are her absolute properties. Ex.A4 reveals that the schedule Item No.3 of her mother are the absolute property of the 1st defendant and she has got every right to enjoy the same. Since it is the absolute properties of her mother, it cannot be questioned by the plaintiff.

20. It is alleged that in respect of item No.V (a), a sum of Rs.3,75,000/- have been received by the defendants 1 and 2 as sale proceeds of the ancestral properties in the village. In respect of the same, the plaintiff has not produced any document to establish the said sale consideration received by the defendants 1 and 2. She has got every right to proceed against the person who had purchased it. The plaintiff alleged that regarding item No.V (b), 40 sovereigns of gold jewels are with the 1st defendant. This is the property of her maternal grand mother and hence, she has got right in the property. But the existence of jewels are not admitted. If there are any jewels as admitted by the plaintiff, she cannot claim during the life time of the 1st defendant.

21. As per the document, item No.3 stands in the name of A.Sivagami Ammal. The property purchased under Ex.A3 prima facie belongs to her. The plaintiff who are the sisters are not parties to Ex.A5. The plaintiff stated that as requested by her mother and brother, she has affixed her signature in the release deed. They were not even allowed to go through the documents. Under the influence of her brother and mother, she has affixed her signature.

22. A perusal of Ex.A4 reveals that the document was a registered one. In this case, the plaintiff and her sisters/ defendants 3 to 5 are well educated and well versed with the worldly affairs. A perusal of the first page of Ex.A4 reveals that from the very first line in bold letters of the document is

" பாகபாத்தியதை அக்கு விடுதலை எனும் ரிலீஸ் பத்திரம் "

23. The execution may plead ignorance about the recitals in the documents but they cannot plead ignorance about the reading of the documents which is in bold letters. The first plaintiff and DW2 are educated people. Hence, the statement stating that without knowing the contents, they signed the documents, is not an acceptable one. The statement stating that it was obtained by undue influence, coercion and misrepresentation, is not proved by the plaintiff. It is the case of plaintiff that item No.4 settlement deed was executed by the 1st defendant in favour of the plaintiff and her sisters viz., defendants 3 to 5. Instead of registering it in Sub-Registrar Office, Mylapore, it was registered in Sub-Registrar Office, Triplicane, which has no jurisdiction.

24. It is an absolute property of the mother of the plaintiff. Hence, the mother of the plaintiff is the owner of the property but the mother of the plaintiff has not voluntarily come forward to execute and register the settlement deed in favour of the plaintiff and defendants 3 to 5. This court cannot compel her mother to execute the settlement deed in favour of the plaintiff. The plaintiff cannot claim any share in the said item of the property. The lower court considering the oral and documentary evidence has come to the right conclusion and dismissed the suit.

25. In view of the above, this case do not warrant any interference of this court. Hence, this appeal is liable to be dismissed.

26. In the result, the Appeal Suit is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gv

To

The Additional District Judge,
(Fast Track Court-II),
Chennai.

Copy To:-

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

+2ccs to Mr.V.Anand, Advocate, S.R.No.33273

A.S.NO.1064 OF 2012

PA(CO)
PBS/05/07/2022