



A.S.No.910 of 2012

THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on	Delivered on
16~03~2022	17~06~2022

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

A.S.No.910 of 2012

1. Udayathammal (deceased)
W/o Natesa Pathar
 2. Ravichandran
S/o Natesa Pathar ...Defendants 1 & 2/Appellants 1 & 2
 3. N.Selvaraj
S/o Natesa Pather
 4. N.Ramalingam
S/o Natesa Pather
 5. Malliga
D/o Natesa Pather
 6. Vasanthi
D/o Natesa Pather
 7. Rajendran
S/o Natesa Pather ... Nil/Appellants 3 to 7
[Appellants 3 to 7 Lrs of deceased/1st
Defendant
- Vs.
- G.N.Thiyagarajan ... Plaintiff/ Respondent



A.S.No.910 of 2012

Appeal Suit is filed under Section 96 of the Civil Procedure Code to set aside the Judgment and Decree dated 18.01.2012 made in O.S.No.12 of 2010 on the file of the District Judge, Nagapattinam and thus allow the Appeal.

For Appellants : M/s. G. Sumithra

For Respondents : M/s. Srinath Sridevan

JUDGMENT

This appeal is filed to set aside the decree and judgment dated 18.01.2012 passed by the learned District Judge, Nagapattinam in O.S.No.12 of 2010.

2. The brief facts leading to the filing of the appeal suit is as follows:

2.a. The Plaintiff and 2nd Defendant are sons of 1st Defendant. The suit property is self-acquired property of 1st Defendant. The 2nd Defendant, who is the son of 1st defendant never took any interest over the welfare of the 1st Defendant. As the plaintiff has looked after his mother, the 1st Defendant executed the settlement deed in favour of the plaintiff and handed over the possession of the property to him. Pursuant



A.S.No.910 of 2012

to such settlement deed, the Plaintiff has been regularly paying house tax, electricity service connection charges, water tax and drainage tax to the Municipality. While so, the 2nd defendant slowly instigated the 1st defendant/mother and goaded her to cancel the settlement executed in favour of the plaintiff. According to the plaintiff, the 1st defendant is not competent or empowered to cancel the settlement deed executed in his favour. The 1st Defendant has given a clear undertaking in the settlement deed that she will not cancel the settlement deed at any point of time. Unless there is any in-built clause in the document itself to cancel or otherwise, the first defendant is not competent to cancel the settlement deed. Pointing out the above a legal notice was sent to the District Registrar, Mayiladuthurai intimating that any such document, if presented, need not be registered, but there was no reply. According to the plaintiff, the second defendant is trying to create another settlement deed or some other document to deprive the right of the plaintiff. While so, the plaintiff came to know that the first defendant was made to cancel the settlement deed executed in his favour.

2.b. According to the plaintiff, after the cancellation of



A.S.No.910 of 2012

Settlement Deed, the 2nd Defendant often intimidating the plaintiff to vacate the portion of the property in his occupation for which the plaintiff has expressed his inability. The Plaintiff has filed a suit in O.S.No.215 of 2008 before the District Munsif, Mayiladuthurai against the defendants to restrain them from in any manner interfering with the plaintiff's possession. Pending suit, the plaintiff has filed I.A.No.323 of 2008 in which interim injunction was granted to the Plaintiff on 07.08.2008. Aggrieved by the order of injunction, the second Defendant preferred C.M.A.No.6 of 2008 before the Principal Subordinate Judge, Mayiladuthurai. During the pendency of CMA, the 2nd Defendant with the help of hirelings and henchmen took forcible possession of the suit property. Since the second defendant had taken forcible possession, in spite of order of injunction, the plaintiff was advised to withdraw the suit and to file a comprehensive suit for declaration of title and possession. Accordingly, after withdrawing the earlier suit in O.S. No. 215 of 2008, the plaintiff filed the present suit for declaration of his title and recovery of possession.

3.a In the written statement filed by the 1st Defendant and



A.S.No.910 of 2012

adopted by the 2nd Defendant it was stated that the plaintiff never looked after the comforts of the 1st defendant. In fact, the plaintiff acted in a way detrimental to the interest of the 1st Defendant and welfare of the family. It was also contended that the Settlement Deed dated 30.04.2008 was never executed by the 1st Defendant with her full conscience. The plaintiff played a fraud on the first Defendant and obtained a document purported to be a settlement deed to suit his convenience. It was further contended that the plaintiff played a fraud and obtained the signature of 1st Defendant and she had no intention to settle the property absolutely to the Plaintiff and the same was obtained by false misrepresentation. The settlement deed was never acted upon and possession was not handed over to the plaintiff as alleged.

3.b It is further contended that the legal position portrayed by the plaintiff is not correct. The 1st Defendant has got every right to cancel the settlement deed executed in favour of the plaintiff and accordingly, she cancelled the same. The alleged undertaking in the settlement deed will not bind the 1st defendant from cancelling the settlement deed



executed in favour of the plaintiff. It is incorrect to state that the second defendant with the help of hirelings and henchmen took forcible possession of the suit property. It is contended that the Civil Miscellaneous Appeal preferred by the Plaintiff was dismissed holding that the Plaintiff was not in possession of the suit property. The plaintiff purportedly misled the Court by saying that this defendant took forcible possession of the suit property. It is also contended that the suit is barred by *resjudicata*. The settlement deed was not executed by the first defendant out of her own free will. The settlement was never acted upon. The second defendant is not a necessary party to the suit. The suit is therefore bad for mis-joinder of necessary parties. Hence, the suit is not maintainable and the same is liable to be dismissed with exemplary costs.

4. Based on the pleadings the trial court framed the following issues:

1. *Whether the plaintiff is entitled to declaration as prayed for?*
2. *Whether the plaintiff is entitled to recovery of possession as prayed for?*
3. *Whether the plaintiff is entitled to mesne profits as prayed for?*
4. *Whether the settlement deed dated 30.04.2008 was obtained by*



A.S.No.910 of 2012

fraud, undue influence and never acted upon?

WEB COPY 5. To what relief?

5. Before the Trial Court, on behalf of the plaintiff, P.W.1 to P.W.3 were examined and Exs.A1 to A10 were marked. On behalf of the Defendants, D.W.1 to D.W.5 were examined and Exs.B1 to Ex.B11 were marked.

6. After hearing both the parties, the Trial Court decreed the suit declaring the Plaintiff as absolute owner of the suit property and directed the 2nd Defendant to handover the possession to the Plaintiff within two months from the date of decree. As against the Judgment and Decree of the said suit, the Defendants have preferred the Appeal Suit.

7. The learned counsel appearing for the Appellants/Defendants submitted that as per the evidence the Plaintiff/Respondent was residing separately from the year 1984. Therefore, the question of taking possession on the basis of settlement does not arise. The alleged possession on the basis of the settlement deed is not established. The evidence of the witnesses particularly, D.Ws.1 to



A.S.No.910 of 2012

5 clearly shows that the gift has been obtained fraudulently and also through misrepresentation. The plaintiff has not filed any complaint for the alleged trespass by the 2nd defendant. Though he has filed contempt application, he has withdrawn it with liberty to file fresh suit. The above conduct of the Plaintiff/Respondent clearly shows that the settlement has been misrepresented and settlement has not acted upon and possession also not handed over. Hence, the learned counsel submitted that the plaintiff is not entitled for declaration and possession.

7.a In support of his contention, learned counsel appearing for the Appellant has relied on the following judgments:

1. *Mahinder Kaur vs. Sant Paul Sing* [**AIR 2019 SC 4780**]
2. *Ramesh Chand vs. Suresh Chand & Anr.* [**2011 SCC Online Del 1049**]

8.a. On the other hand, the learned counsel for the Respondent/Plaintiff submitted that admittedly the suit property belongs to the 1st Defendant, mother of the Plaintiff. She settled the property to the Plaintiff under Ex.A.1. The gift has been proved legally. Based on the



A.S.No.910 of 2012

Respondent/Plaintiff that even in the written statement filed by the 1st

Defendant except evasive denial, no particulars as to undue influence and fraud has been pleaded. Hence, now the second defendant cannot contend that settlement deed was obtained by undue influence. It is his further contention that the 1st Defendant was not examined before the trial Court. When the matter was posted for argument, a petition to reopen the case was filed. Thereafter, 1st Defendant was brought to the Court on 21.11.2011 however, she was not examined on that date since, she was not in a position to give evidence. Nearly for a period of one year the 2nd Defendant prevented the 1st Defendant from entering into the box to examine 1st Defendant and disprove the case pleaded by the plaintiff. Hence, the learned counsel submitted that the revocation cannot be valid in law. On the other hand, the plaintiff, on the basis of the settlement deed became owner of the suit property and effected name changes and also took possession of the property. Thereafter, he was forcibly removed from the house by the 2nd Defendant. Therefore, the plaintiff is entitled to declaration of his title and recovery of possession as prayed for.



A.S.No.910 of 2012

9. In support of his contention, the learned counsel for the

respondent-plaintiff relied upon the following judgments:

1. *Shri Ramesh Chand vs. Suresh Chand and Anr. [2011*

SCC Online Del 1049]

2. *J. Kuppuswami Mudali and ors. vs. Mahalingam*

[(1997) 1 MLJ 45]

3. *Asokan vs. Lakshmikutty and Ors [(2007)13 SCC 210]*

4. *Illoth Valappil Ambunhi (D) Lrs. vs. Kunhambu*

Karanavan [2019 SCC Online SCC 1336]

5. *D.V. Loganathan vs. Sub-Registrar and Ors. [2014 (3)*

CTC 113]

6. *D. Mohan vs. Sub-Registrar [(2012) 5 MLJ 169]*

10. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent/plaintiff and perused the materials placed on record.

11. The plaintiff and the 2nd defendant are sons of the 1st defendant. Pending suit, the 1st defendant/mother died and therefore, the appellants 3 to 7 were brought on record. In other words, the appellants 3



A.S.No.910 of 2012

to 7 were not parties to the suit and they were formally impleaded in this appeal on the death of the 1st defendant.

12. According to the plaintiff, the 2nd defendant is his brother. It is stated that the 1st defendant mother was neglected by the 2nd defendant and it is the plaintiff who had taken care of the 1st defendant during the evening of her life. This according to the plaintiff had prompted the 1st defendant to execute the settlement deed dated 30.04.2008 marked as Ex.A1 in his favour. Pursuant to such settlement deed, it is stated that the plaintiff became the owner of the property and effected mutation of the revenue records as also the electricity service connection and paying the taxes and charges to the authorities concerned in his name. However, the 2nd defendant irked by the execution of settlement deed under Ex.A1 instigated and required the 2nd defendant to cancel the settlement deed in favour of the plaintiff and to transfer the property in his favour. According to the plaintiff, on coming to know such an action he had in fact sent a notice to the registering authorities not to entertain any instrument that may be presented for registration at the instance of the



A.S.No.910 of 2012

defendants 1 and 2 but such notice has not been considered. As apprehended by the plaintiff a deed of cancellation dated 24.06.2008 (Ex.A8) was executed by the 2nd defendant canceling the settlement deed under Ex.A1. Above all, on the strength of the Ex.A8, the 2nd defendant along with his Henchmen dispossessed the plaintiff from the suit property. In fact, the plaintiff has filed a suit in O.S.No.215 of 2008 for bare injunction and pending the suit he has obtained an interim injunction. Despite grant of interim injunction, the 2nd defendant forcibly evicted the plaintiff from the suit property. Therefore, the present suit has been filed for the relief of declaration and consequential recovery of possession.

13. The suit was contested by the 2nd defendant claiming that the 1st defendant has got every right to execute the cancellation deed under Ex.A8. When the gift deed under Ex.A1 was canceled by the 1st defendant, the plaintiff can no longer assert any right or interest in the suit property. Therefore, he prayed for dismissal of the suit.

14. The point arise for consideration in this appeal is:



A.S.No.910 of 2012

WEB COPY

1. Whether Ex.A1-gift deed is irrevocable in nature and consequently Ex.A8 cancellation deed is not valid in the eye of law?
2. Whether the 2nd defendant had dispossessed the plaintiff by force and consequently the prayer for recovery of possession is to be granted in favour of the plaintiff?

15. The relationship between the plaintiff, 1st defendant and 2nd defendant is not in dispute. The mother/1st defendant admittedly executed Ex.A8 in favour of the plaintiff, pursuant to which, he also mutated the revenue records and paying taxes in his name. Thus, the settlement deed under Ex.A1 has been acted upon. In this context, the recitals contained under Ex.A1 is to be looked into. In Ex.A1, which is a registered document, it was categorically stated that possession of the property covered under Ex.A1 has been handed over to the plaintiff. In page No.4 of Ex.A1, it was recited,

“இந்த செட்டில்மெண்ட் சொத்தை எக்காரணம்
கொண்டும் ரத்து செய்ய மாட்டேன் என்று உறுதி
கூறுகிறேன்.”



16. Therefore, it is evident that the settlement executed by 1st defendant in favour of the plaintiff is irrevocable in nature. Even otherwise, if the 1st defendant intended to cancel the settlement deed, the plaintiff should have been put on notice or in the cancellation deed under Ex.A1, there must be strong and compelling reasons assigned for cancelling Ex.A1-settlement deed. In this case, there was no notice issued prior to the execution of Ex.A8 nor any strong and compulsory reasons assigned under Ex.A8. Thus, Ex.A8 has partaken the character and unilateral cancellation which is forbidden under law. It is well settled that whenever a settlement or gift deed has been executed and the executor intended to cancel the same, prior notice must be put to the executee about the proposed action to cancel it for some stated reasons. This is more so that pursuant to the settlement deed, the settlee acquires an accrued right over the property settled in his favour. While so, without putting the settlee on notice, an unilateral cancellation of the settlement deed cannot be validated under law. Therefore, the cancellation under Ex.A8 by the 1st defendant is not valid or it will bind the plaintiff in any manner.



A.S.No.910 of 2012

17. Before the trial Court, on behalf of the plaintiff Ex.A1-gift deed was marked. Ex.A3 is the proceeding of the Deputy Tahsildar to show that the plaintiff mutated the revenue record, Ex.A4 is the Adangal, Ex.A5 is the order for change of electricity service connection in the name of plaintiff and Ex.A7 is the notice issued by the plaintiff to the office of the Sub-Registrar. These documents would make it abundantly clear that Ex.A1 was acted upon by the 1st plaintiff and he had derived an accrued right over the property covered under Ex.A1. On the contrary, on behalf of the defendants, Ex.B9-series have been produced to show that it was the 2nd defendant who is paying the property tax to the municipality. Exs. B1 and B2 – ration card were also produced to show that the defendants 1 and 2 are residing in the suit property. There are other documents produced to show that the defendants 1 and 2 are residing in the suit property and therefore, there is no necessity to dispossess the plaintiff through force.

18. On considering the above documents, the trial Court in paragraph No.13 of the judgment categorically held that the documents filed on behalf of the defendants will not in any manner prove that they



A.S.No.910 of 2012

are in possession of the suit property prior to the institution of the suit.

This is more so that in Ex.A1, it was clearly stated by the executor/1st defendant that she had handed over possession of the suit property to the plaintiff. The plaintiff also produced documents to show his possession until he filed the suit in O.S.No.215 of 2008 complaining that he is likely to be dispossessed by the 2nd defendant, who is his brother. In fact, Ex.A10 was produced by the plaintiff to show that prior to institution of the suit in O.S.No.215 of 2008, he was in possession of the suit property. Therefore, the documents filed on behalf of the defendants, to show that they were in possession of the suit property and the plaintiff was not dispossessed, as alleged, cannot be sustained and accordingly the second point framed in this appeal is answered in favour of the plaintiff and against the 2nd defendant.

19. The trial Court in paragraph No.14 of the judgment has narrated the sequence of events that unfolded during the course of trial. In paragraph No.14, the trial Court has given the dates on which the case was posted for examination of the witness. The trial Court found that the 1st defendant/mother was somehow or the other prevented by the 2nd



A.S.No.910 of 2012

defendant from being examined as a witness in the suit. In fact it was specifically recorded that at the fag end of the examination of the witness, the 1st defendant was produced before the trial Court for being examined. However, the 1st defendant could not be examined as she was infirm and fragile and therefore her evidence was not recorded on that particular date. By pointing out the above, the trial Court had drawn an adverse inference against the 2nd defendant in examining the 1st defendant at the earliest point of time to show that she had voluntarily and wholeheartedly executed Ex.A8. This conclusion reached by the trial Court, is legally correct and it does not call for any inference by this Court.

20. The trial Court also referred to various decisions to conclude that Ex.A1 in favour of the plaintiff is irrevocable in nature and in spite of the same, the Ex.A8 has been made to be executed by the 1st defendant. This conclusion of the trial Court merits acceptance. It is well settled that when a settlement or gift has been made as an absolute and irrevocable one without any conditions attached to it, then such a settlement or gift deed cannot be revoked later. In the present case, as



A.S.No.910 of 2012

mentioned above there was a clear recitals in Ex.A1 that the 2nd defendant will not cancel the settlement deed executed in favour of the plaintiff. While so, the subsequent cancellation of Ex.A1, under Ex.A8 cannot be accepted.

21. For all the above reasons, this Court finds no legal infirmity in the judgment and decree passed by the trial Court. Accordingly, the judgment and decree dated 18.01.2012 passed in O.S.No.12 of 2010 on the file of the District Judge, Nagapattinam, stands confirmed. Consequently, the Appeal Suit fails and it is dismissed. Consequently, connected Miscellaneous Petition is closed. No Costs.

17.06.2022

ggs/gbi

Index :Yes/No

Internet :Yes/No

To

The District Judge,
Nagapattinam.



WEB COPY



A.S.No.910 of 2012

S. KANNAMMAL.J.

gbi

Pre delivery judgment made in
A.S.No.910 of 2012

17.06.2022