



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
06.01.2022

Date of Pronouncing Judgment
12.01.2022

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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.832 & 833 of 2013
and
C.M.P.No.9940 of 2018

Lakshmi, F/Age 61 years,
W/o.Subramani,
No.774, 7th Street, Kanalpura,
Neelankarai, Perungudi Post,
Chennai 47.

... Appellant
(in both Appeals)

Vs.

1.Nagappan (Deceased),
S/o.Late Natesa Naicker,
No.2/54, Sivan Koil Street,
Neelankarai, Chennai 600 047.

2.Ganesamoorthi, Aged 53 years,
S/o.Late Natesa Naicker,
Vadakadumpadi Village,
Thirukalukundram Taluk,
Kanchipuram District.

3.G.Hamsa,
W/o.Nagappan,
17, Vaithiyalingam Salai, 2nd Cross Street,
Neelankarai, Chennai 600 047.

4.N.Gokulakrishnan,
S/o.Nagappan,
17, Vaithiyalingam Salai, 2nd Cross Street,
Neelankarai, Chennai 600 047.

5.N.Sankari,
D/o.Nagappan, W/o.Jagadeesan,
Sengazhaniaiman Koil Street,
Neelankarai, Chennai 600 047.



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6.J.Mythili,
D/o.Nagappan, W/o.Jagadeesan,
Veeerapuram Village,
Thirukazhukundaram Taluk.

7.N.Muthukumran,
S/o.Nagappan,
17, Vaithiyalingam Salai, 2nd Cross Street,
Neelankarai, Chennai 600 047.

... Respondents
(in both Appeals)

(R3 to R7 brought on record as LR's of the
deceased R1 vide order of Court dated 09.11.2017
made in C.M.P.Nos.13436 to 13438 of 2017 and CMP Nos.13433 to
13435 of 2017 in S.A.No.833 of 2013 and S.A.No.132 of 2013)

Prayer in S.A.No.832 of 2013: Second Appeal filed under Section
100 of C.P.C., against the Judgment and Decree dated 29th day of
July, 2009 made in A.S.No.92 of 2008 on the file of the
Principal Sub Judge, Chengalpattu, confirming the Judgment and
Decree dated 26.08.2008 made in O.S.No.77 of 2002 on the file of
the District Munsif cum Judicial Magistrate, Thirukazhukundaram.

Prayer in S.A.No.833 of 2013: Second Appeal filed under Section
100 of C.P.C., against the Judgment and Decree dated 29th day of
July, 2009 made in A.S.No.93 of 2008 on the file of the
Principal Sub Judge, Chengalpattu, confirming the Judgment and
Decree dated 26.08.2008 made in O.S.No.115 of 2003 on the file
of the District Munsif cum Judicial Magistrate,
Thirukazhukundaram.

For Appellant : Ms.Nilaphar
for M/s.C.S.Sreenedhi
(in both Appeals)

For Respondents : Mr.J.R.K.Bhavanantham (For R2)
Mr.K.P.Gopalakrishnan (For R3 to R7)
(in both Appeals)

C O M M O N J U D G M E N T

The parties are referred to according to their litigant's
status in S.A.No.832 of 2013.

2.The defeated Defendant is the Appellant in S.A.No.832 of
2013. She is the Plaintiff and Appellant in S.A.No.833 of 2013.



3.S.A.No.832 of 2013:

The first Respondent in S.A.No.832 of 2013 viz., Nagappan filed O.S.No.77 of 2002 before the District Munsif cum Judicial Magistrate, Thirukazhukundram, for the declaration of title and for permanent injunction against his Mother Nagammal. Before Nagammal could file written statement, she died and hence the other legal representatives viz., Lakshmi and Ganesamoorthi were impeladed as legal representatives as per order made in I.A.No.18 of 2004 dated 15.06.2004. Thereafter, the 2nd defendant Lakshmi filed a written statement. The 3rd Defendant Ganesamoorthi is none other than the younger brother of the Plaintiff and also son in law of the 2nd defendant Lakshmi.

4.In S.A.No.832 of 2013, the Defendant/Respondent sought relief of declaration of his title and permanent injunction on the strength of Ex.A1 settlement deed. The suit was decreed. Pending the above suit O.S.No.77 of 2002, the 2nd defendant Lakshmi viz., the sister of the Plaintiff Nagappan filed O.S.No.115 of 2003, for partition and claiming 1/3rd share of the suit property. The suit property in O.S.No.77 of 2002 is also a suit property as part of 'A' schedule property in O.S.No.115 of 2003. Simultaneous trial was conducted and Judgment was pronounced on the same day, however, by separate judgment dated 26.08.2008, whereby suit filed by Nagappan in O.S.No.77 of 2002 was allowed and suit filed by sister Lakshmi in O.S.No.115 of 2003 is allowed partly, excluding the property, covered in O.S.No.77 of 2002 and hence, A.S.Nos.93 & 92 of 2008. By separate judgment both the appeals were dismissed and hence the present Second Appeals.

5.At the time of admission, following substantial questions of laws were framed:

S.A.No.832 of 2013

Whether the Courts below were right in decreeing the suit without advertting to the oral and documentary evidence adduced in its true and proper perspective?

S.A.No.833 of 2013

1.Whether the Courts below were right in excluding the extent of 50 cents covered under Ex.B1 from the purview of the Partition Decree when in fact the 1st Defendant had not discharged his burden of proving that the Settlement Deed was not obtained by fraudulent misrepresentation?



2. Whether the Courts below were right in concluding that the Settlement Deed covered under Ex.B1 is true and valid when the Settlor was holding only undivided share and not specific share?

6. Heard Ms. Nilaphar, learned counsel for M/s. C.S. Sreedhi, learned counsel for the Appellant and Mr. J.R.K. Bhavanantham, learned counsel for R2 and Mr. K.P. Gopalakrishnan, learned counsel for R3 to R7.

7. In S.A.No.832 of 2013 (O.S.No.77 of 2002), the brother Nagappan seeks relief of declaration of title based the settlement deed executed by the original first Defendant (Mother) under Ex.A1 dated 03.10.1997. It is said to have been cancelled under Ex.A3 on 30.07.1999. In the written statement filed by the Appellant/Defendant, a specific plea was raised that the property was purchased jointly by the Father and Mother, under Ex.B1 and therefore, after the death of the Father, Mother alone cannot execute the settlement deed in his favour, consequently also prayed that in the partition suit 50% of the share in the said property has to be given to her. Accordingly, filed Ex.B1.

8. Admitted factual matrix:

(a) Lower appellate Court records reveals that suit item I property (S.A.No.832 of 2013) was jointly purchased by the parents of the parties under Ex.B1. The Father and Mother of the claim parties have equal share in item I of the suit property. Father Natesa Naiker died on 28.04.1994, leaving his wife Nagammal (original Defendant in O.S.No.77 of 2002) and the Defendants and the Plaintiffs. The Mother Nagammal had $\frac{1}{2}$ share in the suit item I property by purchase and $\frac{1}{8}^{\text{th}}$ share as Widow of Natesa Naicker and hence, she had $\frac{5}{8}^{\text{th}}$ share in the item I of the suit property, at the time of death of her husband, Natesa Naiker.

(b) Mother Nagammal executed a settlement deed dated under Ex.A1 on 03.10.1997 in favour of the Plaintiff Nagappan in O.S.No.77 of 2002. By virtue of the said settlement deed, the said Nagappan has exercised his act of ownership by mortgaging his property by raising loan under Ex.A2, which goes to show that Ex.A1(in O.S.No.77 of 2002) is accepted and acted upon and possession was delivered. As per the recital in Ex.A1 settlement deed, the settlor has no right of revocation, revoking the settlement unilaterally. As per Ex.A3 cancellation deed dated 30.07.1999, the Mother said to have cancelled the



said document. As per the recitals, it is stated to be, earlier Ex.A1 settlement deed was made on misrepresentation and hence, she cancelled it under Ex.A3.

(c) Mother Nagammal died, after filing suit in O.S.No.77 of 2002, wherein she is arrayed as a sole Defendant. After death of Nagammal, Lakshmi and another son was brought on record. Lakshmi, who was a 1st defendant in O.S.No.77 of 2002 filed O.S.No.115 of 2003 seeking partition as stated supra.

9.After perusing Ex.A1 settlement deed, I find that there is no recital regarding power of revocation by the settlor. I have the occasion to consider the similar situation as to whether there can be a unilateral revocation of settlement deed, which was answered in negation in the case of Saroja Bai Ammal Vs. Suguna Bai Ammal (Died) & others [S.A.No.1303 of 1996 dated 21.08.2019] reported in CDJ 2019 MHC 4401 and therefore, in the absence of any power or any right being reserved for revocation of settlement deed, the settlor cannot revoke the settlement deed Ex.A1, unilaterally and hence Ex.A3 revocation of settlement is not legally acceptable. A similar finding arrived at by both the Courts below does not suffer from any irregularity or illegality, warranting interference under Section 100 of CPC.

10.The next point for consideration is whether the said plea of misrepresentation has taken by the original first Defendant has been proved in the manner known to law. O.S.No.77 of 2002 was filed on 02.08.2002. The Mother Nagammal died on 24.06.2003, without filing written statement, daughter Lakshmi who is the appellant in these Second Appeal alone filed a written statement. The another brother who has married the daughter of Lakshmi has not chosen to contest the case.

11.Be that as it may, learned counsel for the Appellant could rely on the legal notice issued by the original Defendant, wherein it is avered that due to misrepresentation, the son has obtained Ex.A1, settlement deed and hence it has been cancelled. It remains to be stated that it was not conveyed or communicated to the parties, after issuance of Ex.A 4, notice by way of reply dated 12.11.1999 is said to have been issued. None in connection with the that document were examined. On the contrary, PW2 Neelakandan, attesor of Ex.A1 settlement deed, could depose about the attestation of the document and also execution of the document by the Mother Nagammal on 03.10.1997 and hence, I find that in the absence of any positive evidence to demonstrate the alleged factum of misrepresentation by the



Defendant/Appellant, both the Courts below has correctly come to the conclusion that Ex.A1 is valid in law and Ex.A3 cancellation of settlement deed is unsustainable in law and therefore, the Decree and Judgment in O.S.No.77 of 2002 as confirmed in A.S.No.92 of 2008 does not warrant any interference, consequently S.A.No.832 of 2013 shall stand dismissed.

12.S.A.No.833 of 2013:

Before the trial Court, the first Respondent herein has filed written statement stating that partition has already been taken place under Ex.B2 and therefore, prayed for dismissal of the partition suit. Both the Courts below have rightly come to the conclusion that the property was purchased by the Father and Mother jointly, under Ex.A1 (O.S.No.115 of 2003) on 15.05.1979 and therefore, in respect of the Mother's share, the deed executed by her under Ex.B2 (in O.S.No.115 of 2003) document be invalid, since, in respect of the 50% share of the Father, after his death, she as wife is entitled to get share in the suit property. Such a finding rendered by the trial Court is just and proper and does not warrant any interference. The trial Court has rightly appreciated the evidence on record and rightly come to the conclusion that except 50 cents of land in Item I of property [ie., covered under Ex.B1 settlement deed (O.S.No.115 of 2003)], in all other property, she is entitled for 1/3rd share and accordingly passed a preliminary decree. This Appeal is filed with regard to disallowed portion alone, for the land covered under the said settlement deed. For the reasons stated supra, the cancellation deed, Ex.A3 in the connected suit is held to be unsustainable in law.

13.In view of the finding rendered in the above Second Appeal, I do not find any merits in this case. Accordingly, the preliminary decree passed by the learned trial Judge in O.S.No.115 of 2003 is just and proper, does not warrant any interference.

14.In view of the discussion in the preceding paragraphs, all the substantial questions of law arises for consideration shall stand negatived. The Second Appeal 832 of 2013 stand dismissed, confirming the Judgment and Decree dated 29th day of July, 2009 made in A.S.No.92 of 2008 by the learned Principal Sub Judge, Chengalpattu, confirming the Judgment and Decree dated 26.08.2008 made in O.S.No.77 of 2002 by the learned District Munsif cum Judicial Magistrate, Thirukazhukundaram.



Second Appeal 833 of 2013 stand dismissed, confirming the Judgment and Decree dated 29th day of July, 2009 made in A.S.No.93 of 2008 by the learned Principal Sub Judge, Chengalpattu, confirming the Judgment and Decree dated 26.08.2008 made in O.S.No.115 of 2003 by the learned District Munsif cum Judicial Magistrate, Thirukazhukundaram. No costs. Consequently, connected Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

sai

To

1.The Principal Sub Judge,
Chengalpattu.

2.The District Munsif cum Judicial Magistrate,
Thirukazhukundaram.

Copy to

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

+2cc to M/s.C.S.Sreenedhi, Advocate Sr.2878 and 2877

S.A.Nos.832 & 833 of 2013
and
C.M.P.No.9940 of 2018

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srg 07/03/2022