



C.S.No.724 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 02.11.2022

Judgment Pronounced on : 15.11.2022

CORAM : JUSTICE N.SESHASAYEE

C.S.No.724 of 2016

R.Raghupathy

.... Plaintiff

Vs

1.Sankar Thiyagarajan

2.Leela Soundararajan

.... Defendants

[2nd defendant impleaded as per order dated 27.04.2018 in
Appln.No.3777/2018 and order dated 26.06.2018]

3.Kalpana Raja

4.Shobana

5.Sri Ram

[Defendants 3 to 5 are brought on record as legal heirs of the deceased second defendant as per order dated 6.8.2021 in A.No.2687 of 2021 and time extended as per order dated 2.11.2022 in C.S.No.724 of 2016]

Prayer : Civil Suit filed under Order VII Rule 1 of O.S.Rules r/w Order VII Rule 1 of CPC., praying to pass a decree and judgment :

- a) a preliminary decree for partition of the suit mentioned property by dividing the same into two equal shares and to allot one such half share in favour of the plaintiff by metes and bounds;
- b) to declare the settlement deed dated 22.11.2006 with respect to the suit schedule mentioned property executed by Rajalakshmi Ammal in favour



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of Prema Thiagarajan registered as Document No.2737/2006 on the file of the Sub-Registrar, Ashok Nagar, Chennai as null and void.

- c) to declare the settlement deed dated 09.04.2013 with respect to the suit schedule mentioned property executed by Prema Thiagarajan in favour of the first defendant Mr.Sankar Thiagarajan registered as Document No.980/2013 on the file of the Sub Registrar, Ashok Nagar, Chennai as null and void.
- d) to grant permanent injunction restraining the defendants, his men, agents, servants, representatives, assigns or any person claiming through him from in any manner alienating, encumbering and dealing the suit schedule mentioned property morefully described in the schedule hereunder;
- e) to direct the defendants to pay the costs of the suit to the plaintiff; and
- f) to pass such further or other order or orders as this Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Dr.C.Ravichandran
for Mr.V.C.Selvasekaran

For Defendants : Mr.Prasanna Venkat
for M/s.APR Associates for D1
Mr.M.Santhanaraman [D2 to D4]

JUDGMENT

The suit is laid for declaration that certain settlement deeds, to which reference



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would be made later, are null and void and for partition of plaintiff's half share in the suit property and also for some allied relief of injunction.

2. The plaint allegation may be stated as follows :

- The suit property, as described in the plaint is a site measuring 1,273 sq.ft. with a residential building. It originally belonged to a certain Kunjammal.
- Kunjammal was married to one Krishnamoorthi, but she had no issues out of the said matrimony. She however had her sister Rajalakshmi. On 12.09.2006, Kunjammal executed a settlement deed in favour of Rajalakshmi, retaining to herself life estate in the suit property. And Kunjammal died on 09.11.2011.
- Rajalakshmi had two children. They are : (a) the plaintiff herein; and (b) one Prema Thiagarajan. The defendant is the son of Prema Thiagarajan. In other words, the dispute is one between the maternal uncle and his nephew.
- While so, Rajalakshmi died on 06.11.2015, whereas Prema Thiagarajan predeceased her mother on 29.10.2015. In between, the plaintiff was physically indisposed and even had one of his finger in his



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left leg amputated. He was literally confined to bed.

- While so, the first defendant came with some rowdy elements, and took forcible possession of the property. Aggrieved by the same, on 23.11.2015, the plaintiff issued a suit notice to the first defendant claiming his half share in the suit property. This was replied to by the defendant vide reply notice dated 10.12.2015. The reply notice (not produced) disclosed:

(a) that soon after the property was settled by Kunjammal in favour of her sister Rajalakshmi, the latter had executed a registered settlement deed in favour of plaintiff's sister Prema Thiagarajan. This settlement deed is dated 22.09.2006.

(b) on the strength of this settlement deed (dated 22.09.2006), on 09.04.2013, Prema Thiagarajan had settled the suit property in favour of the first defendant.

- The settlement deed dated 22.09.2006 which Rajalakshmi was stated to have executed in favour of Prema Thiagarajan and the settlement deed dated 09.04.2013 which Prema Thiagarajan had executed in favour of



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her son Sankar Thiagarajan were fabricated.

- Indeed Rajalakshmi had no right to execute a settlement deed dated 22.09.2006, essentially because on that date she did not have absolute right over the property as Kunjammal had retained life interest over the property and that she was very much alive on that date when Rajalakshmi was purported to have executed the settlement deed dated 22.09.2006.

On this pleadings, the suit is laid for declaration that the settlement deed dated 22.09.2006 executed by Rajalakshmi in favour of Prema Thiagarajan, and the settlement deed dated 09.04.2013 executed by Prema Thiagarajan in favour of her son, the first defendant are null and void and for a decree for partition of plaintiff's half share in the suit property.

3.1 The first defendant have filed his written statement through his Power of Attorney wherein it is alleged :

- That the two settlement deeds impugned in the plaint are valid and were executed with full knowledge of the plaintiff.
- Contrary to the claim of the plaintiff that he had taken care of his mother



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Rajalakshmi, it was his mother Prema Thiagarajan who actually took care of Rajalakshmi. Indeed, just to care her mother Rajalakshmi, and Kunjammal, Prema Thiagarajan left for India from the U.S.A sometime in 2008.

- The allegation of the plaintiff that this defendant had forcibly trespassed into the suit property on 05.12.2015 was false, as this defendant came down to India from the U.S.A. for a brief period between 29.10.2015 to 27.11.2015 to participate in the funeral of his mother Prema Thiagarajan, and on 27.11.2015 he had already left for the U.S.A. and he was not present on 05.12.2015 to trespass into the suit property as alleged.
- The plaintiff had sent emails to the defendant on 02.11.2015 and 10.11.2015, to which responsible reply was sent.
- So far as the allegation that the property would vest in Rajalakshmi absolutely only upon the demise of Kunjammal is both a mistake and misconception in law. As stated earlier, the settlement deed in favour of Prema Thiagarajan was valid. Indeed even Kunjammal had retained two holographic Wills dated 12.07.2006 and 22.05.2011, wherein she has clearly indicated her wish that the property should go to Prema



Thiyagarajan.

- This defendant had sold the property to the second defendant vide sale deed dated on 17.08.2017.

3.2. Adopting the line of contention of the first defendant, the second defendant had contended that she purchased the property after due verification of the title.

4.1 On the above said pleadings, the following issues are framed :

- Whether the plaintiff is entitled for a decree for partition of the suit mentioned property by dividing the same into two equal shares and to allot one such $\frac{1}{2}$ share in favour of the plaintiff by metes and bounds?*
- Whether the plaintiff has made out a case for declaration of the settlement deed dated 22.11.2006 registered as document No.2737/2006 and the settlement deed 09.04.2013 registered as document No.980/2013 as null and void?*
- Whether prayer for declaration as made in Para 19(b) and (c) is barred by limitation?*
- Is not the second defendant an innocent purchaser of the suit scheduled property for valuable consideration?*



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v. *Is not the first defendant absolute owner of the suit schedule property and as such is not the sale deed executed by him in favour of the second defendant legally valid?*

vi. *For what relief the parties are entitled to?*

4.2. During trial, on the side of the plaintiff, the plaintiff has deposed himself as PW1 and has produced as many as 10 documents namely Exs.P1 to P10 were marked whereas for the defendants, the first defendant was examined as DW1 and has marked only on document namely Ext.D1. Significantly, the plaintiff has not produced the copy of the suit notice dated 23-11-2015 or the reply notice dated 10-12-2015 which finds reference in the plaint.

[**NOTE:** Atleast in two places the body of the plaint states the date of first settlement deed was on 22.11.2006, whereas in another place it says that a second settlement deed was executed on the tenth day of first settlement deed so executed. A perusal of Ex.P2 states the date of settlement deed executed in favour of Prema Thiagarajan by Rajalakshmi is only 22.09.2006].



5. The learned counsel for the plaintiff essentially contended that :

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- (a) Kunjammal was not adequately educated to know the consequences of what she is doing. And the plaintiff has consistently disputed that the alleged settlement deeds executed vide Ext.P2 and Ext.P3 were void as they were fabricated. However, the response to the same is evasive and not pointed, which is contrary to the dictum in ***Jaspal Kaur Cheema and Another v. Industrial Trade Links and Others*** [(2017) 8 SCC 592].
- (b) Due execution does not imply mechanical act of signing the document, but an intelligent appreciation of the contents of the document and signing it in token of acceptance. Hence, Ext.P2, settlement deed executed by Rajalakshmi does not fit in with the legal requirements as has been held in ***Dhannulal and Others v. Ganeshram and Another*** [(2015) 12 SCC 301]. The plaintiff has alleged positively that both Kunjammal and Rajalakshmi were inadequately educated and were gullible. This he had averred in his proof affidavit, but there is no cross-examination on this aspect and hence, it must be deemed to be admitted. Indeed, he had further alleged that Rajalakshmi was coerced into



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executing Ext.P2 settlement deed and P.W.1 had even deposed that it was not executed with her free Will. They were not pointedly denied in the written statement, nor is there any pointed cross-examination on this aspect, when P.W.1 was in the witness box.

- (c) This apart, the settlement deed was not proved in the manner contemplated in law. Atleast one attesting witness was alive, but he was not examined to prove the genuineness of execution of Ext.P2 settlement deed. Reliance was to *Valliammal v. Sokkammal* [2012 (4) CTC 639]; *Tamilkodi v. N.Kalaimani* [2015 SCC OnLine Mad 9789] and *K.Laxmanan v. Thekkayil Padmini and Others* [(2009) 1 SCC 354].
- (d) To support his contention, the first defendant had relied on two alleged Wills of Kunjammal dated 12.07.2006 and 22.05.2011. But none of them were produced before the Court and hence, adverse inference is required to be drawn. Reliance was to the ratio in *Gopal, Krishnaji Ketkar vs Mahomed Haji Latif & Ors* [AIR 1968 SC 1413].
- (e) According to the defendant if only Rajalakshmi had executed Ext.P2, settlement deed on 22.09.2006, there would not be a need for Kunjammal to execute a second alleged Will dated 22.05.2011. This



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itself clouds the genuineness of Ext.P2 with considerable suspicion.

- (f) Given the relationship between Rajalakshmi and Prema Thiagarajan, the mother and the daughter, and given the fact that even according to first defendant, Prema Thiagarajan has been caring Rajalakshmi, it provided an ideal circumstances for Prema Thiagarajan to influence Rajalakshmi unduly. This would imply that Ext.P2 settlement deed is bad in law. Reliance was placed on ***Joseph John Peter Sandy vs. Veronica Thomas Rajkumar & Another*** [CDJ 2013 SC 189] and ***Krishna Mohan Kul alias Nani Charan Kul and another vs. Pratima Maity and Others*** [(2004) 9 SCC 468].
- (g) So far as the alienation in favour of the second defendant by the first defendant is concerned, it is a *pendente lite* transfer and it cannot bind the plaintiff.

6. Per contra, the counsel for the first defendant submitted :

- i. The foundation for the suit is ill-conceived in law as the plaintiff has over confused himself as to what the vested right and what the contingent right is? More reserving the life interest by the settlor in a



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property settled will not defer vesting of right in favour of the settlee.

The property indeed will vest immediately, if the document is a settlement deed and not a Will. Reliance was placed on the judgements in *P.K.Mohan Ram vs. B.N.Ananthachary and Others* [(2010) 4 SCC 61]; *Usha Subbarao vs. B.N.Vishveswaraiah and others* [(1996) 5 SCC 201] and *Smt.Rukhmanbai vs. Shivram and others* [(1981) 4 SCC 282] and *P.Somasundaram vs. K.Rajammal* [1974 SCC OnLine Mad 250: AIR 1976 Mad 295 : (1976) 2 Mad LJ 444].

- ii. It is wrong to say that plaint contentions were specifically denied. Indeed, the first defendant had contended that Ext.P2 and Ext.P3 were validly executed and that the plaintiff had no doubt about it. Here the expression 'specific' as appears in Order VIII Rule 5 only implies the denial and not an ambiguous or vague as has been held in *Govindaraju (died) & others v. Rathinammal and 6 others* [2004-2-L.W.701].
- iii. So far as non-examination of witness is concerned, the plaintiff has not come out with a clear case; he makes a statement that Will is fabricated and also pleads undue influence which he has not pleaded in the plaint. The plea of undue influence and fabrication of settlement deed cannot



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co-exist, and the very fact that he has opted to bring in undue influence as the second line of attack during trial itself indicates that he has given up his case on fabrication of Ext.P2. Reliance was placed on *Navaneetham Ammal & others v. Baby Ammal & others* [2013-2-L.W.446].

- iv. The plaintiff has to rely on his case and prove the cause of action that he has brought before the Court and cannot lean on the perceived weakness of the defendant's case. Reliance was to the ratio in *P.Thangavelu v. R.Dhanalakshmi Ammal and other* [1995-L.W.708]

The learned counsel for the first defendant also placed reliance on *Bishundeo Narain and Another v. Seogeni Rai and Jagernath* [1951 SCR 548 : AIR 1951 SC 280] and *Soraban Bewa & others v. Jinnath Bibi & others* [2003 SCC OnLine Cal 386 : (2003) 4 CHN 449 : (2004) 1 ICC 273 (Cal) (DB)].

7.1 This Court finds the plaintiff on a very slippery wicket. He comes out with few alternative pleas impugning Ext.P2. They are :

- (a) first he would contend that Rajalakshmi had no right in her to execute



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Ext.P2, settlement deed in favour of Prema Thiagarajan, since her settlor Kunjammal had reserved to herself the life estate and that Kunjammal was alive on the date of Ext.P2;

- (b) that Ext.P2 and Ext.P3 were fabricated;
- (c) that Ext.P2 was executed under duress; and
- (d) that it was executed due to undue influence.

7.2. Of the core alternative and inconsistent pleas, the plea on coercion was more audible in the plaint than in the one founded on undue influence. That appears as a rear graft given and essentially during trial. While the plaintiff is entitled to raise alternative and inconsistent pleas, he is put to election during trial. Here he pressed all the buttons available to him simultaneously. This itself is a principal undoing. Now if he says Ext.P2 settlement deed was executed under coercion or undue influence, then it defeats his defence of plea on fabrication. This implies there is no need to prove Ext.P2 settlement deed by examining any of the attesting witness. Secondly, coercion and undue influence cannot operate simultaneously as the former is the consequence of actual physical force employed on the executor of the document, whereas undue influence operates very subtly in influencing the mind of the executor of the document into executing the



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document. Hence the plea of duress and undue influence kill each other.

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7.3 At any rate, Rajalakshmi who had executed Ext.P2 was alive for next nine years and she did not chose to challenge Ext.P2. But the foundation for the plaintiff's case is that Rajalakshmi did not have the authority to execute Ext.P2 settlement deed, since Kunjammal had reserved to herself the life interest in the property. As very rightly pleaded and contended by the first defendant, reserving life estate does not prevent vesting of title on the property, but only defers enjoyment of the property pursuant to such vesting. Here the plaintiff has got his law thoroughly misconceived. When it is found that Rajalakshmi had the right to execute Ext.P2, the plaintiff creates a situation for himself to wriggle out of the situation of his own creation, and there is very little left for this Court but to non-suit the plaintiff.

8. In conclusion, this Court does not find merit in the suit and it stands dismissed.

No costs.

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Index : Yes / No



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Speaking order / Non-speaking order

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APPENDIX

WEB COPY I. Witnesses :

<i>Plaintiffs :</i>	
PW1	R.Raghupathy (Plaintiff)
<i>Defendants :</i>	
DW1	Sankar Thiagarajan (1st defendant)

II. Exhibits :

<i>Plaintiffs :</i>		
Ex.P1	12092006	Settlement Deed executed in favour of N.Rajalakshmi by N.Kunjammal
Ex.P2	22092006	Settlement Deed executed in favour of Prema Thiagarajan by Rajalakshmi
Ex.P3	09042013	Settlement Deed executed in favour of Sankar Thiagarajan
Ex.P4	12082016	Death Certificate of N.Rajalakshmi
Ex.P5	26112016	Death Certificate of Prema Thiagarajan
Ex.P6	23012016	Encumbrance Certificate for the period 01.01.2005 to 22.01.2016
Ex-P7	11112015	Email sent by Raghupathy (plaintiff)
Ex-P8	13112015	Email sent by Sankar Thiagarajan (first defendant) to Raghupathy (plaintiff)
Ex-P9	13112005	Email sent by Raghupathy (plaintiff) to Sankar Thiagarajan (first defendant)
Ex-P10	14112015	Email sent by Raghupathy (plaintiff) to Sankar Thiagarajan (first defendant)
<i>Defendants :</i>		
Ex.D1	24012016	Email sent by Raghupathy (plaintiff) to Sankar Thiagarajan (first defendant)

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Pre-delivery Judgement in
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