



A.S.No.352 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 14.10.2022

Judgment Pronounced on : **02.11.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.352 of 2014
and M.P.No.1 of 2014

1. Subramani
2. Sasi

.. Appellants

Versus

1. Arun
2. Periyasami
3. Chinnammal
4. Senthil

.. Respondents

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code to set aside the judgment and decree, dated 10.12.2013 made in O.S.No.158 of 2010 on the file of the learned Principal District Judge, Namakkal.

For Appellant : Mr.R.Krishna Prasad

For Respondents : Mr.M.Ganesh, for RR-1 to 3
R4 - Given up



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JUDGMENT

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A. The Appeal Suit :

The third and fourth defendants in O.S.No.158 of 2010 are the appellants herein, feeling aggrieved by the judgment and decree in O.S.No.158 of 2010 on the file of the learned Principal District Judge, Namakkal, dated 10.12.2013, in and by which, the prayer of the plaintiffs, for partition and separate possession of 1/4th share in the suit property and for permanent injunction restraining the third defendant from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property, was decreed. For the sake of convenience, the parties are referred to as per their array in the Original Suit itself.

B. The Complaint :

2. The plaintiff is the son of *Periyasamy* and *Chinnammal*, the first and second defendants in the suit. The fourth defendant, *Sasi*, is the daughter of the first and second defendants. The fifth defendant, *Senthil*, is the son of the first and second defendants. The third defendant, *Subramani*, is the husband of the fourth defendant, *Sasi*. While so, on 17.08.1994, through partition, certain ancestral properties came to the share of the first



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plaintiff which were agricultural lands in Muthugapatti village. On 20.06.2001, the plaintiff, the defendants 1, 2, 4 and 5 jointly sold the same for a sale consideration of Rs.2,30,000/- and out of the said sale proceeds, the suit property was purchased in the name of the first and second defendants on 02.07.2001. The suit property was enjoyed as the joint family property. One year before the filing of the suit, by obtaining bank loan, a house was built in the suit property. The loan was repaid only by the plaintiff and the fifth defendant. The plaintiff is residing at Coimbatore and carrying on his business and has been visiting his parents and is living in the suit property.

3. While so, the fourth defendant, being the daughter, was married to the third defendant, who was working at Saudi at that point of time. The fourth defendant was married with all the stridhana and the other articles, according to the status of the parties in the year 1999. While so, in the year 2004, the third defendant promised employment for the plaintiff in abroad and for that purpose, obtained Rs.4,00,000/- from the plaintiff. After obtaining such amount, work permit and visa, sent by the third defendant to the plaintiff, was found to be bogus. However, considering the relationship



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with the third defendant, the plaintiff did not take any action. In the year 2006, the third defendant promised that he himself will again get employment and visa at his expense and he wanted to obtain bank loan for the said purposes and therefore, in the guise of loan documents, made the first and second defendants to execute a document on 17.03.2006. Even thereafter, in the year 2009, the third defendant only supplied bogus work permit.

4. The third defendant returned from Saudi finally in the year 2009 and thereafter, did not go abroad for employment and was coming home in drunken state and started torturing the fourth defendant. When the third defendant was confronted by the plaintiff and the other defendants, the third defendant replied that he will behave only in such a manner and stated that the house is in his name and directed the plaintiff and the other persons to get out of the house. Only thereafter, the plaintiff was shocked to verify that the third defendant has created a settlement deed on 17.03.2006. Thereafter, the fourth defendant had further created a settlement deed in favour of the third defendant on 31.08.2007. Therefore, since the third defendant has



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created bogus documents, the plaintiff is constrained to file the suit for partition and permanent injunction.

C. The Written Statements :

5. The first defendant in the suit namely, the father of the plaintiff, filed a written statement, whereunder, he admitted the case of the plaintiff and also stated that upon knowing about the bogus settlement deed, they also executed a document of cancellation of the settlement deed on 13.09.2010 which was also duly registered. The second defendant adopted the written statement filed by the first defendant.

6. The third defendant filed a separate written statement. The third defendant denied that the property was purchased out of the joint family nucleus. The third defendant denied the averments about arranging visa and giving bogus work permit. The third defendant denied that he was coming home in an inebriated condition and harassing the fourth defendant. The joint family properties were sold in the year 2001 and the amounts have been divided between the parties at that point of time itself. The suit properties are the self-acquired properties of the first and second defendants.

On 17.03.2006, they settled the suit property in favour of their only



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daughter, the fourth defendant. As a matter of fact, the fifth defendant stood as attesting witness to the settlement deed. Pursuant to the settlement deed in favour of the fourth defendant, she had executed another settlement deed in favour of the third defendant on 31.08.2007. Therefore, the third defendant is the absolute owner of the property. The third defendant is in possession of the property. He is residing in the property along with his wife and children. There is no right for the plaintiff or others in the suit property.

D. The Issues :

7. On the strength of the said pleadings, the Trial Court framed the following issues:-

(i) Whether the plaintiff is entitled to 1/4th share in the suit properties?

(ii) Whether the plaintiff is entitled to permanent injunction?

(iii) Whether the properties are separate properties of the defendants 1 and 2?

(iv) Whether the settlement deed dated 17.3.2006 executed by the defendants 1 and 2 in favour of the 4th defendant is valid?

(v) To what relief if any the plaintiff is entitled to?



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E. The Evidence :

8. On the said issues, the plaintiff examined himself as P.W.1 and **Exs.A-1** and **A-12** were marked. The first defendant examined himself as D.W.1. The third defendant examined himself as D.W.3. One *S.Ramasamy* and one *K.Ramasamy* were also examined as D.Ws.4 and 5. On behalf of the defendants, **Exs.B-1** to **B-13** were marked.

F. The Findings of the Trial Court :

9. After framing of the above said issues, the Trial Court proceeded to hear the parties and by a judgment, dated 10.12.2013, the Trial Court found that the evidence of the attesting witness was not an acceptable one. The Trial Court took into consideration that when the defendants 1 and 2 have two sons and one daughter, there was no occasion for them to execute settlement deed in favour of the daughter alone. The Trial Court found that the suit property was purchased with the sale consideration obtained from the sale of ancestral property to one *Kaliammal* as per **Exs.A-2** and **A-3** and therefore the defendants 1 and 2 did not even have any right to execute the settlement deed which was also canceled. The Trial Court answered all the



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issues in favour of the plaintiff and held that the suit properties are liable for partition and decreed the suit filed by the plaintiff. Aggrieved by the same, the fourth defendant, daughter and her husband, the third defendant have filed the present appeal.

G. The Submissions :

10. Heard *Mr.R.Krishna Prasad*, learned Counsel appearing on behalf of the appellants and *Mr.M.Ganesh*, learned Counsel appearing on behalf of the respondents 1 to 3.

11. *Mr.R.Krishna Prasad*, the learned Counsel appearing on behalf of the appellants, taking this Court through the pleadings and the evidence on record, would submit that it would be clear from **Ex.A-2** sale deed itself that the sum of Rs.2,30,000/- which was obtained as sale consideration was mentioned as for the essential expenses, education and maintenance expenses of the family. The suit property is purchased vide **Ex.A-3**, in the name of the second defendant also. The sale consideration was only a sum of Rs.90,000/-. Therefore, it would be clear that the averments in the plaint, as if the sale consideration of Rs.2,30,000/- under the **Ex.A-2** was utilised



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for purchasing the suit property, cannot be correct. Therefore, when the sale deed stands in the name of the defendants 1 and 2 and when the defendants 1 and 2 have duly executed a settlement deed on 17.03.2006. The settlement deed was also acted upon by the fourth defendant by further executing another settlement deed in favour of her husband, the third defendant. The original settlement deed was also attested by the plaintiff as well as the fifth defendant. Therefore, there was no question of any unilateral cancellation of the settlement deed thereafter.

12. The learned Counsel relied upon the judgment of the Hon'ble Supreme Court of India in ***Makhan Singh (Dead) by LRs. Vs. Kulwant Singh***¹, morefully relying upon paragraph Nos.8 and 9 for the proposition that ordinarily, the property, in the name of the first and second defendants, should be deemed to be their property and it is for the persons, who assert that nucleus of the joint family income was available and that the property had been purchased from the said nucleus, to prove the same. The learned Counsel relied upon a judgment of this Court in ***S.Ganesan Vs. Bharathirajan***², morefully relying upon paragraph No.7 for the proposition

1 (2007) 10 SCC 602

2 2009 (5) CTC 558



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that the settlement deed once executed cannot be unilaterally cancelled. For the proposition that non-transfer of the revenue records is immaterial once the gift deed is proved, the learned Counsel would rely upon a judgment of this Court in ***K.A.Shanmugam and Anr. Vs. Tamilarasi and Ors.***³, more specifically relying upon paragraph No.24. The learned Counsel would rely upon a judgment of this Court in ***Arukkani (Died) and Ors. Vs. Subramaniam***⁴, more specifically relying upon paragraph Nos.13 and 17 that unless the right to cancel the settlement deed is reserved in the deed itself, the settlement cannot be unilaterally canceled.

13. Per contra, *Mr.M.Ganesh*, learned Counsel appearing on behalf of the respondents 1 to 3, would submit that in this case, it can be seen that a total sum of Rs.2,30,000/- was obtained as consideration by selling the joint family properties to one *Kaliammal*. The very fact that the plaintiff, the defendants 1, 2, 4 and 5 all jointly executed the sale deed would itself prove the property, which was sold, was joint family property. ***Ex.A-2*** sale deed itself clearly states that the property sold was ancestral in nature. The date of sale was 20.06.2001. Immediately thereof, the suit property was

³ 2011 (6) CTC 42

⁴ (2007) 3 MLJ 845



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purchased in the name of the first and second defendants on 02.07.2001 vide **Ex.A-3**. Therefore, the plaintiff has clearly and categorically proved that the property was purchased out of the joint family nucleus. Once the property was purchased out of the joint family nucleus, the first and second defendants had no right, title whatsoever to execute the settlement deed in favour of the third defendant. Therefore, the same was also rightly canceled. Thus, the property, being the joint family property, is liable for partition and the plaintiff, the defendants 1, 4 and 5 are entitled to 1/4th share each and the Trial Court has rightly decreed the suit

14. In support of his contentions, the learned Counsel relied upon the judgment of this Court in **Kanna Gounder and Anr. Vs. Arjuna Gounder**⁵, more specifically relying upon paragraph No.13 that a coparcener cannot gift a property without the consent of the other coparceners. The learned Counsel would further rely upon the judgment of this Court in **Shanmugaiah and Anr. Vs. Thirumalayandi @ Thirumalai Pandaram and 5 Ors.**⁶, morefully relying upon paragraph Nos.7 and 8 to contend that the settlement deed is *per se* void. For the same proposition, the learned

⁵ 2003-1-L.W. 408

⁶ 2004 (3) CTC 92



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Counsel would also rely upon a judgment of this Court in ***Subramanian Vs. Kosalai Ammal (Deceased) and Ors.***⁷, more specifically relying upon paragraph No.16.3 that the execution of settlement deed in respect of ancestral properties by an individual coparcener is a void document and there is not even necessity to make a prayer in respect thereof.

H. The Discussion & Findings :

15. I have considered the rival submissions made on either side and perused the material records of the case. Upon consideration of the arguments on either side and perusing the material records of this case, the following questions arise for consideration in this case:-

(i) Whether the fourth defendant and thereafter the third defendant are the absolute owners of the property by virtue of Exs.A-4 and A-5 settlement deeds and thus the property not being available for partition?

(ii) Whether the cancellation of Exs.A-4 and A-5 vide Ex.B-10 cancellation deed is valid?

(iii) To what reliefs the parties are entitled to?

I. Question No.1 :

⁷ 2014 (3) CTC 820



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16. In order to answer the question No.1, the core issue to be determined is as to whether the suit property is the self-acquired property of the first and second defendants or whether it is purchased out of the joint family nucleus. There is no iota of doubt that the property sold by the parties jointly on 20.06.2001 vide **Ex.A-2** is a joint family property. It is seen that the parties have totally received a consideration of Rs.2,30,000/-. Immediately thereof, on 02.07.2001, vide **Ex.A-3**, the suit property was purchased from one *Chinnusamy* for a total sale consideration of Rs.90,000/-. Therefore, on the face of it, it is clear that the property is purchased only from the joint family nucleus. The first and second defendants, in whose name the property lies, have admitted that the property was purchased only from and out of the joint family funds. The first defendant also examined himself as D.W.1. On behalf of the defendants 3 and 4, both the plaintiff and the first defendant were also cross-examined. But, however, nothing to the contra could be elicited. Therefore, on a perusal of **Exs.A-2** and **A-3** and the oral evidence of P.W.1 and D.W.1, it is clear that the suit property was purchased from and out of the joint family nucleus and therefore, the defendants 1 and 2 had no right or title



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whatsoever to execute the settlement deed in favour of the fourth defendant, their daughter. Hence I answer the Question No.1 accordingly.

J. Question No.2 :

17. As far as the validity of the unilateral cancellation deed is concerned, it is no longer res integra as the Full Bench of this Court in *Sasikala and Ors. Vs. Revenue Divisional Officer-cum-Sub Collector, Devakottai, Sivagangai District and Ors.*⁸ has held that such unilateral cancellation deeds are invalid. But in this case, the same was superfluous and the very settlement deed in *Ex.A-4* itself is a void document. The ratio of the judgments, relied upon by the learned Counsel for the respondents cited supra, that such settlement deeds are void, squarely apply to the facts and circumstances of this case. Therefore, once it is held that the settlement deed is *void ab initio*, the question as to whether the cancellation deed was valid or not becomes immaterial. Hence, I answer the question No.2 accordingly.

K. Answers to the Issues :

⁸ (2022) 7 MLJ 1



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18. In view of thereof, I answer the issue No.1, framed in the Original Suit, that the plaintiff is entitled to 1/4th share in the suit properties. I answer the issue No.2, in the Original Suit, that the plaintiff is entitled for permanent injunction. I answer the issue No.3, in the Original Suit, that the properties are only separate properties of the first and second defendants. I answer the issue No.4, in the Original Suit, that the settlement deed, dated 17.03.2006, executed by the defendants 1 and 2 in favour of the fourth defendant, as void. I answer the issue No.5, in the Original Suit, that the plaintiff is entitled to the decree as decreed by the Trial Court.

L. The Decree and the Question No.3 :

19. In the result,

(i) This Appeal Suit in A.S.No.352 of 2014 shall stand dismissed;

(ii) The judgment and decree of the learned Principal District Judge, Namakkal in O.S.No.158 of 2010 shall stand confirmed;

(iii) In view of a judgment of the Hon'ble Supreme Court of India ***Kattukandi Edathil Krishnan Vs. Kattukandi Edathil Valsan***⁹, the Original Suit in O.S.No.158 of 2010 is posted for further hearing on 25.11.2022;

⁹ 2022 SCC OnLine SC 737



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(iv) It is made clear that no further notice will be served on the parties. The Trial Court shall further proceed with the Final Decree proceedings irrespective of whether the Final Decree application is filed by the parties or not;

(v) There shall be no order as to costs;

Consequently, connected miscellaneous petition is closed.

02.11.2022

Index : yes
Speaking order
grs

To

The Principal District Judge,
Namakkal.



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D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery Judgment in

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