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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:26.08.2021

PRONOUNCED ON:11.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

SA.Nos.91 and 114 of 2017

(Through Video Conferencing)

S.Gnanabarnam

...Appellant/Plaintiff in SA.91 of 2017 /
Respondent/Plaintiff in SA.114 of 2017

Vs

1.A.Josephin

...Ist Respondent/Ist Defendant in S.A.No.91 of 2017
...Ist Appellant/Ist Defendant in S.A.No.114 of 2017

2.A.Francis

...2nd Respondent/2nd Defendant in -SA.91 of 2017 and
2nd Appellant in SA.114 of 2017

Prayer:- These Second Appeals have been filed, under Section 100 of CPC, against the judgement and decree, dated 11.08.2016 passed in AS.Nos.135 of 2014 and 398 of 2013, by the VII Additional Judge, City Civil Court, Chennai, confirming the judgement and decree, dated 24.07.2013 made in OS.No.1204 of 2009, by the IV Assistant Judge, City Civil Court, Chennai.

For Appellant :Mr.G.Arulmurugan-SA.91 of 2017
and for
Respondent in S.A No.114 of 2017

For Appellant :Mr.M.Balasubramanian-SA.114 of 2017
and for
the Respondent in S.A.No.91 of 2017

JUDGEMENT

1.These Second Appeals have been filed, against the judgement and decree, dated 11.08.2016, passed in AS.Nos.135 of 2014 and 398 of 2013, by the VII Additional Judge, City Civil Court,



Chennai, confirming the judgement and decree, dated 24.07.2013 made in OS.No.1204 of 2009 by the IV Assistant Judge, City Civil Court, Chennai. For the sake of convenience, the parties herein after referred to as they were arrayed in the suit.

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- 2.The suit was filed for declaration that the Plaintiff is the foster daughter of one Anthony Doss and his wife, the 1st Defendant and that the settlement dated, 13.09.1984, executed in favour of the 1st Defendant and the sale deed, dated 07.02.2005, executed by the 1st Defendant in favour of the 2nd Defendant are null and void.
- 3.The case of the Plaintiff, as set out, in the plaint is that the Plaintiff is the biological 4th daughter of one Arputha Mary, who is none other than the sister of the 1st Defendant. Since, the 1st Defendant and her husband Anthony Doss had no issues, they had brought up the Plaintiff, as their own daughter and they performed the marriage of the Plaintiff, with one Shankar on 16.01.1987. The Plaintiff and her family had been taking care of Anthony Doss, who was suffering from mental illness. Originally the A-Schedule property belonged to Anthony Doss. On 13.09.1984, when the said Anthony Doss was sick and bedridden, the Defendants took him to the concerned registration authority and by coercion, got the settlement deed registered in favour of the 1st Defendant in respect of the A-Schedule property. Anthony Doss died on 5.11.1980. The Plaintiff and her husband re-constructed a house in suit property, by spending a huge money. Only on 12.6.2006, on receipt of notice in OS.No.7461 of 2006, she came to know about the registered settlement deed, dated 13.9.1984 executed in favour of the 1st Defendant in respect of the A-Schedule property. Thereafter, the 1st Defendant had executed a sale deed, 07.02.2005 in favour of the 1st Defendant in respect of the B-Schedule property. In such circumstances, the suit has been filed, seeking the reliefs, as stated above.
- 4.The case of the Defendants, as set out in the written statement, is that the A-Schedule property belonged to Anthony Doss, who died on 05.11.1988, leaving behind him the 1st Defendant as his legal heir. By virtue of the settlement deed, dated 13.09.1984, by succession, the 1st Defendant became the absolute owner of the suit property. Without taking adoption, the Plaintiff, biological daughter of Anthony Mary, was taken care of by the 1st Defendant, in view of her poverty and a huge money was spent towards the marriage of the Plaintiff on 16.01.1987. The said Anthony Doss, who was, by profession, a



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Teacher has not suffered from any mental illness as alleged. After the demise of Anthony Doss, the 1st Defendant had sold out a portion of the ground floor and 50% of the undivided share of the land (schedule mentioned "B" property) in favour of the 2nd Defendant under the registered sale deed, dated 07.02.2005 and thereafter, had executed another registered sale deed, dated 11.5.2009 in favour of the 2nd Defendant in respect of the remaining undivided share of the land and first floor premises and thereby, the 2nd Defendant became the absolute owner of the entire suit properties. The Plaintiff never put up any construction in the suit property and is occupying the First Floor of the suit schedule property, at the mercy of the 1st Defendant. The 1st Defendant had filed a separate suit in OS.No.7461 of 2006 for recovery of possession of the first floor occupied by the Plaintiff herein and the said suit was dismissed and an appeal was filed as against the same in AS.No.621 of 2008. There was no undue influence or coercion played by the Defendants as alleged. The 2nd Defendant permitted the 1st Defendant to reside in the Ground Floor. After completion of the First Floor premises with the 1st Defendant's money from M/s.Mambalam Kasi Viswanathan Cooperative Building Society, the 1st Defendant permitted the Plaintiff to reside in the First Floor. In order to grab the property, the Plaintiff and her husband are acting against them. The Plaintiff's husband had remitted the loan repayment bills in his name and collected the receipts for the same. The Plaintiff is in unlawful possession of the suit property. The relief of declaration is untenable and barred by limitation. In such circumstances, the suit is liable to be dismissed.

5. On the pleadings of the parties, issues were framed by the Trial Court. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A20 were marked and PW.1 was examined. On the side of the Defendants, Ex.B1 to Ex.B2 were marked. By the impugned judgement and decree of the Trial Court, the suit was decreed in part, thereby declaring that the Plaintiff is the foster daughter of Anthony Doss and the suit stood dismissed in respect of the other reliefs. As against the same, the above first appeals were filed by the Plaintiff and the Defendants respectively. The lower appellate court had dismissed the first appeals, by the impugned judgement, confirming the judgement and decree of the Trial Court. Hence, these Second Appeals have been filed by the Plaintiff and the Defendants respectively.

6. These Second Appeals were admitted, on the following substantial questions of law:-



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(a) Whether the lower appellate court was right in holding that since the evidence of two independent witnesses in the other suit has not been separately marked in this suit, the same cannot be taken to support the case of the Appellant ignoring the fact that the judgement in that suit has been marked as Ex.A17 in this suit, which clearly deals with the two independent witnesses?

(b) Whether the lower appellate court was right applying Sections 91 and 92 of the Indian Evidence Act and holding that the claim of the Appellant cannot be accepted for declaring the settlement deed as null and void?

(c) Whether the courts below are right in decreeing the suit stating that the Plaintiff is a daughter of the 1st Appellant and her husband and in the appeal as foster daughter, without considering the categorical admission made by the Plaintiff as PW.1?

(d) Whether the first appellate court is right in not rendering any finding on the manipulation of prayer 'C' in the plaint in spite of production of certified copy of the fair order dated, 15.11.2010 passed in IA.No.16746 of 2010 in OS.No.1204 of 2009 wherein the amendment of prayer 'C' is negatived after contest?

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

8.The learned counsel for the Appellant/ Plaintiff has submitted that the courts below, having held that the Plaintiff is the foster daughter of the 1st Defendant and Anthony Doss, ought to have decreed the suit in its entirety, when the Plaintiff has proved her case that Ex.A1 settlement deed was execute by coercion, when Anthony Doss was mentally sick, as per the evidence of the witnesses, Subramni and Ravi in O.S. No.7461 of 2006 and as per the judgement made in the said suit, Ex.A17. The learned counsel would further submit that the lower appellate court erred in not applying Sections 91 and 92 of the Evidence Act and that the alleged sale deed created by the Defendants without any consideration is void and that the Defendants did not dispute the evidence let in by the Plaintiff, by letting in contra evidence on their side and that when the SLP.No.17190 of 2013 filed as against the the judgement and decree made in SA.No.415 of 2015, based on which, the Trial Court had dismissed the present suit, is pending, the courts below ought to have considered the case on its own



independent merits and for such reasons, the learned counsel would pray for decreeing the suit in its entirety.

9. The learned counsel for the Respondents/ Defendants would submit that the courts below erred in granting a decree that the Plaintiff is a foster daughter of the 1st Defendant and her husband and that there is no pleadings in the plaint with regard to the date, month and year of the alleged adoption and also no documents produced to that effect and that the Plaintiff took a stand in OS.No.7621 of 2009 that she is the adopted daughter, whereas in the present suit, she has introduced a new plea of foster daughter. The learned counsel would further submit that the courts below ought to have considered the vital aspect that in AS.No.621 of 2008 and SA.No.415 of 2012, it was held that the respondent/plaintiff is not an adopted daughter and that in the earlier suit for recovery of possession, recovery of possession was ordered and SLP filed as against the same is pending and that except the statement of PW.1, no independent elderly person of the family was examined to prove the factum of alleged foster daughter in the above suit and that the first appellate court failed to consider the manipulation of records viz. deleting "the date 20.03.1994 to 07.02.2005" and hence, the Plaintiff is not entitled to any relief and for such reasons, he would pray for dismissal of the suit in its entirety.

10. This Court considered the rival submissions of the learned counsel on either side and also perused the materials available on record.

11. The facts of the case need not be gone in detail once again. The Plaintiff had sought to declare that she is the foster daughter of one Anthony Doss and his wife, the 1st Defendant and that Ex.A1, the settlement dated, 13.09.1984 is null and void, on the grounds that she was brought up by the 1st Defendant and her husband as their own daughter and that Ex.A1 was executed by coercion and consequently, Ex.A19, sale deed, dated 07.02.2005, is also void.

12. Ex.A17 is the judgement and decree made in the earlier suit in OS.No.7461 of 2006 filed by the 1st Defendant against the Plaintiff and her husband, seeking recovery of possession and the said suit was dismissed and in the first appeal, it was reversed and in SA.No.415 of 2012, the judgement and decree of the lower appellate court was confirmed and the Plaintiff had also given an undertaking to vacate and hand over vacant possession of the property and in the said earlier proceedings,



Ex.A1 was held to be valid. It is stated by the Plaintiff that the Plaintiff had preferred SLP.No.32113 of 2013, before the Honourable Supreme Court.

13.The lower appellate court did not take into consideration the evidence of the two independent witnesses, DW.3 and DW.4 in OS.No.7461 of 2006, since it had felt that there was no details as to when the said Anthony Doss suffered mental illness and the period of illness, since the deposition of the said witnesses were not marked as documents and even in the first appeal, the Plaintiff did not take any steps to mark the same and the Plaintiff did not produce any documents to prove the illness of the Anthony Doss. Hence, this Court is also of the view that the courts below were right in coming to the conclusion that the evidence of the said two independent witnesses cannot be taken into consideration. Accordingly, substantial question of law (a) is answered.

14.In this case, the Plaintiff is admittedly not a biological daughter and a stranger to Ex.A1, settlement deed. The Plaintiff has also admitted the execution of Ex.A1, but contended that it was obtained by fraud or coercion.

15.As per Sections 91 and 92 of the Evidence Act, once the execution of a document is admitted, any oral evidence to prove the contrary cannot be accepted. Section 91 of the Act provides that when the terms of a contract or of any other disposition of property have been reduced to the form of a document, no evidence shall be given in proof of the terms of such contract or other disposition of property, except the document itself. Section 92 of the Act provides that when the terms of any such contract or other disposition of property have been proved according to Section 91, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to or subtracting therefrom. All that the Court is required to do is to satisfy itself that the question raised in the suit can be determined without evidence.

16.Section 102(b) of the Act, speaks about when there is execution of a document is admitted, but pleaded that it was obtained by fraud, the burden of proof is on the person who took such a plea. If no evidence is given on either side about such fraud, the party, who denied the fraud, would succeed. In this case, as rightly held by the lower appellate court, though the Plaintiff has pleaded that on the date of the execution of Ex.A1, the Executor of the same was suffering from



mental illness, there is no evidence about his mental illness on the date when the settlement deed was executed and that he was not incapable of maturity and understanding capacity to execute Ex.A1 executed in favour of the 1st Defendant and thereupon, the 1st Defendant could not execute Ex.A19 in favour of the 2nd Defendant and the Defendants had also denied the plea of fraud and coercion. Considering the said legal position, the lower appellate court was right in holding that the pleas raised by the Plaintiff against the Ex.A1 and Ex.A19 are barred by Sections 91 and 92 of the Evidence Act. It was held concurrently and rightly held by the both the courts below that the Ex.A1 and Ex.A19 are valid in the eye of law. Accordingly, substantial question of law (b) is answered.

17. On the basis of Ex.A1, invitation card for puberty function, Ex.A3, transfer certificate, Ex.A4, SSLC certificate, Ex.A5 wedding invitation, Ex.A6 marriage certificate, Ex.A7 death certificate of Anthony Doss and the deposition of PW.1 and relying various decisions of the various courts, both the courts below have rightly held that since the said documents are more than thirty years old, they were held to be genuine documents under Section 90 of the Indian Evidence Act and that the Plaintiff was brought up by the 1st Defendant and her husband, as their own daughter and she is their foster daughter. Since this finding was based on documents, the substantial question of law (c) is mere a 'question of fact' and not at all substantial question of law and hence, such a concurrent finding of fact cannot be interfered with.

18. As stated above, she was held to be the foster daughter. Now, the question is as to whether the Plaintiff, being a foster daughter, can question the right of settling the property to any one by his foster father. Even assuming that the Plaintiff was brought by the 1st Defendant and her husband, as their own daughter and on that score, she has become a member of their family, she cannot be equated her as their biological daughter. It is trite that a person can settle his own property to any person by a settlement deed and it cannot be questioned even by his legal heirs. Thus, the Plaintiff is not entitled to question the settlement deed, Ex.A1 executed by the husband of the 1st Defendant in favour of the 1st Defendant and consequently, consideration of Ex.A19, sale deed as to its validity or otherwise, does not arise at all. Accordingly, substantial question of law (d) need not be answered in detail.

19. The Honourable Supreme Court, in a catena of decisions, time and again, pointed out that interference with the concurrent



findings of the courts below by the High Court under Section 100 of CPC must be avoided, unless warranted by compelling reasons. In these cases, in the absence of warranting compelling reasons, the concurrent findings of the courts below cannot be interfered.

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20. In fine, these Second Appeals are dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The VII Additional Judge,
City Civil Court, Chennai.

2. The IV Assistant Judge,
City Civil Court, Chennai.

Copy to

The Section Officer,
VR Section, Madras High Court.

+2cc to Mr. M. Balasubramanian, Advocate Sr. 2156 and 2157

SA.Nos.91 and 114 of 2017

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srg 05/04/2022