



A.S.(MD)No.148 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD)No.148 of 2013

and

M.P.(MD)No.1 of 2013

S.M.Nagoor Gani

... Appellant / Plaintiff

-Vs-

Mohammed Ismail (died)

... 1st Defendant

1.Rahmath

2.N.Jamila Beevi

3.M.Shahul Hameed

4.M.Varusaikani

5.Jinnakani

... Respondents / Defendants 2 to 6

PRAYER: Appeal Suit is filed under Order 41 Rule 1 r/w Section 96 of the Code of Civil Procedure to set aside the decree and judgment made in O.S.No.3 of 2007 dated 29.08.2013 on the file of the learned First Additional District Judge, Tirunelveli.

For Appellant : Mr.T.R.Janarthanan

For R1 to R3 & R5 : Mr.M.P.Senthil



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JUDGMENT

The appellant / plaintiff has filed the suit in O.S.No.3 of 2007 before the First Additional District Judge, Tirunelveli, seeking declaration and permanent injunction, wherein the respondents are the defendants 2 to 6.

2(i). The brief facts of the plaint are as follows:-

The plaintiff's paternal grandfather viz., S.P.Sahul Hameed and his elder brother viz., S.P.Nagoor Gani Rowther had been jointly carrying on business in Ceylon since 1921. The said S.P.Sahul Hameed died in the year 1948 and his brother S.P.Nagoor Gani Rowther died on 26.01.1983, without issues and his wife had predeceased him. After the death of S.P.Nagoor Gani Rowther, his sister viz., Kader Pathumal Beevi filed a suit in O.S.No.34 of 1984 on the file of the learned Subordinate Judge, Tirunelveli, claiming partition and separate possession of half share in the suit properties left by the deceased S.P.Nagoor Gani Rowther. The case of the plaintiff in O.S.No.34 of 1984 was that she being the sister of the deceased S.P.Nagoor Gani Rowther, was entitled to half share in the properties left by him and the 1st defendant in that suit viz., S.P.Nagoor Gani, who was none other than the son of late S.P.Shahul Hameed and nephew of the deceased



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S.P.Nagoor Gani Rowther was entitled to the remaining half share. In O.S.No.34 of 1984, E.S.E.Mohamed Samsudeen was impleaded as the 2nd defendant, on the ground that he was managing the estate of the deceased as Accountant. During the pendency of the suit, on 28.10.1995, the said Kader Pathumai Beevi died. Consequently, her two sons viz., V.Mohamed Ismail, who is the 1st defendant in the present suit and V.Nagoor Gani were impleaded as plaintiffs 2 and 3.

2(ii). In view of the plea raised by the 1st defendant along with the 2nd defendant in the joint written statement that the deceased S.P.Nagoor Gani had made a oral gift of some of his properties to the wife and children of the 1st defendant's brother Mohamed Ali Jinnah, the defendants 3 to 8 were impleaded as parties to the said suit. The plaintiff in the present suit was added as 4th defendant in O.S.No.34 of 1984. Since the 2nd defendant died during the pendency of the said suit, his legal representatives were impleaded as defendants 9 to 15. The defendants 16 and 17 being tenants under the plaintiff herein in respect of some of the items of the suit properties, were added as parties. The 18th defendant was impleaded on the ground that he was a cultivating tenant in respect of some of the suit properties under the plaintiff herein.



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2(iii). During the pendency of the said suit, the 2nd plaintiff had executed two registered release deeds dated 27.04.1994, totally relinquishing his claim and right in the suit properties in favour of the 4th defendant therein / plaintiff herein for a consideration of Rs.50,000/- each total aggregating Rs.1,00,000/-. Thereafter, the plaintiff herein become the absolute owner of the suit properties. After trial in the said suit, the trial Court has held that the two release deeds were not valid in law as much as the said documents had been obtained under coercion. During the pendency of the said suit, the plaintiff herein had filed O.S.No.402 of 1995 on the file of the District Munsif, Valliyoor, seeking permanent injunction against the 1st defendant herein / 2nd plaintiff in O.S.No.34 of 1984. Thereafter, the suit in O.S.No.402 of 1995 was transferred to Subordinate Court, Tirunelveli and renumbered as O.S.No.122 of 1996 and the same was dismissed on 23.03.1997. Being aggrieved by the judgment and decree made in O.S.No.34 of 1984, the defendants 3 to 8 filed A.S.No.237 of 1997 on the file of the learned District Judge, Tirunelveli. The unsuccessful plaintiff in O.S.No.402 of 1995 had also filed A.S.No.28 of 1998. The First Appellate Court dismissed both the appeals. Then, the Second Appeals filed against the said judgment in S.A.Nos.



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1135 and 1134 of 1999 before this Court, were also dismissed. Against which they filed the Special Leave Petitions and the same were also dismissed by the Hon'ble Apex Court.

2(iv). In the meanwhile, the 1st defendant herein has filed I.A.No.286 of 1997 for final decree for partition and the same is still pending. The plaintiff has been in absolute possession and enjoyment of the suit properties in entirety by virtue of the execution and registration of the two release deeds. Taking advantage of the findings of the trial Court in O.S.No.34 of 1984, the 1st defendant had been consistently making illegal and unlawful attempts to divest the plaintiff of the possession and enjoyment of the suit properties. Until the two release deeds are actually set aside through the competent Court of law, both the interest and title created thereby in favour of the plaintiff over the suit properties will continue to subsist under law. Therefore, the suit has to be decreed as prayed for by the plaintiff.

3.The brief facts of the written statement filed by the 1st defendant are as follows:-

This defendant never executed any release deed during the pendency of



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the suit in O.S.No.34 of 1984 on the file of the Sub-Court, Tirunelveli. It is absolutely false to state that this defendant executed two registered release deeds on 27.04.1994, after receiving a consideration of Rs.1,00,000/-. As admitted by the plaintiff, this defendant contended in the previous suits that the two documents were not valid in law, since they had been obtained by the plaintiff under coercion, while he was under the illegal custody of the plaintiff and his men. The trial Court, the First Appellate Court and the Second Appellate Court held that the two release deeds are not valid and the plaintiff has no right over the property, on the basis of the two release deeds. This defendant is not aware of the Special Leave Petitions filed by him before the Hon'ble Supreme Court of India. The plaintiff himself has admitted that the Special Leave Petitions were also dismissed even at the admission stage itself. The said findings of the trial Court and the Appellate Courts regarding the release deeds has become final. It is true that under Section 19 of the Indian Contract Act, the release deeds obtained by the plaintiff under coercion is voidable. But the legal position pleaded in the plaint that until the defendant takes action to set aside the release deed, the documents are valid in law is not legally unsustainable. It is not necessary for this defendant to file a suit for avoiding the two release deeds obtained by the



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plaintiff by coercion. The plea of the plaintiff that the finding in O.S.No.34 of 1984 and in O.S.No.122 of 1996 cannot deprive the plaintiff of his alleged interest over the suit properties until the release deeds are set aside is legally unsustainable. The suit property is in joint possession of the defendants and other co-owners. The suit and the appeals were dismissed holding that the plaintiff is not entitled to any injunction, on the basis of the two invalid documents. Hence, this suit for the same relief is barred by the principle of res-judicata.

4. Based on the above said pleadings, the trial Court has framed the following issues:-

“1. Whether the suit is barred by the principle of Res-Judicata in view of the decrees in O.S.No.34 of 1984 and O.S.No. 122 of 1996?;

2. Whether the Court fee paid by the plaintiff is correct ?;

3. Whether the defendant is liable to set aside the release deeds obtained from him by coercion?;

4. Whether the plaintiff is entitled to the injunction?;

5.To what relief the plaintiff is entitled to?



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5. In order to substantiate the case, during the trial on the side of the plaintiff, he examined himself as P.W.1, three witness were examined as P.Ws.2 to 4 and 6 documents were marked as Exs.A1 to A6. On the side of the defendants, no oral evidence was examined, however, one document was marked as Ex.B.1 during the cross-examination of P.W.1

6. On conclusion of the trial, after hearing the arguments advanced on either side, the trial Court has dismissed the suit with costs. Challenging the same, the plaintiff in the suit has filed the present Appeal Suit before this Court.

7. The learned counsel appearing for the appellant/plaintiff would submit that the appellant is in possession and enjoyment of the suit property, based upon the two registered release deeds dated 27.04.1994, which are Exs.A1 and A2 and also in order to prove the same, the appellant has also marked Ex.A6 series (five in numbers) which are chellans for the amount paid to Kalakad Panchayat Union. Though the respondents stated that Exs.A1 and A2 were obtained by coercion and Exs.A1 and A2 are voidable documents, the respondents have not taken any steps to set aside the documents in accordance with law,



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through the competent Court or they have not cancelled the same before the Registrar. Therefore, the right and interest accrued to the appellant on the strength of such voidable documents viz., Exs.A1 and A2 would continue to subsist under law till they are set aside. Further, he would submit that based on the above said documents, the appellant was in possession. The trial Court failed to consider the legal effect of the voidable documents and also the appellant is in possession of the property, based on the said documents. Since Exs.A1 and A2 being instruments registered in terms of Section 17(1) of the Registration Act, the transaction will continue to remain with its full effect until the respondents set aside the transaction through the competent civil Court. Therefore, the appellant is entitled to continue in possession and enjoyment of the suit properties until Exs.A1 and A2 would be set aside by due process of law. Till now Exs.A1 and A2, the registered release deeds said to have been obtained by coercion were not set aside by due process of law. The trial Court has not framed proper issues and decide the case and without gone into the legal effect of Exs.A1 and A2, simply dismissed the suit on technical ground that the suit is barred by *res judicata*. The possession of the appellant has to be recognised unless the documents / Exs.A1 and A2 set aside by due process of law. Therefore, the appeal has to be allowed



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and the judgment and decree passed by the trial Court has to be set aside.

8. The learned counsel appearing for the respondents 1 to 3 and 5 would submit that though it is true under Section 19 of the Indian Contract Act, the release deeds said to have been obtained by the plaintiff under coercion is voidable. However, the legal position pleaded by the appellant that only the respondents have to take action to set aside the release deeds / Exs.A1 and A2 or valid in law is not only assumption but also it is legally unsustainable. If a suit is filed by a party on the basis of document obtained by coercion, the party affected by the deed can seek to void in his written statement. It is not at all necessary for the defendants to file a suit for cancelling the said release deeds / Exs.A1 and A2 obtained by the appellant by coercion. The appellant has not in lawful possession over the suit properties. All the co-owners are in joint possession of the suit properties, even the suit in O.S.No.34 of 1984, the appellant is one of the plaintiffs in the suit. The suit was filed only for partition claiming that all are in joint possession. The respondents have got only 1/4th share in the suit schedule properties. As such, the appellant is not entitled for declaration or the injunction as prayed for. Therefore, the appellant has filed the suit only based on the release



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deeds / Exs.A1 and A2. The competent Court in the earlier suit in O.S.No.34 of 1984 and in O.S.No.122 of 1996, held that both the Exs.A1 and A2 / release deeds are not valid. Once the validity of the said documents / Exs.A1 and A2 have been already decided by the competent civil Court that the said release deeds have been obtained by coercion, those documents are not valid in the eye of law. Once the competent civil Court declared that the above said two documents are not valid documents, the appellant is not entitled to claim possession through the documents. Further, the validity of documents have been decided between the parties in the earlier suits. Hence, the appellant has filed the present suit in O.S.No.3 of 2007, which is legally not maintainable and the same is barred by *res judicata*. Therefore, the trial Court has rightly dismissed the suit filed by the appellant and even the grounds raised in the appeal is also not legally valid. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

9. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.



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10. Admittedly, the deceased first respondent along with her mother Kader Pathumal Beevi filed a suit in O.S.No.34 of 1984 on the file of the Subordinate Court, Tirunelveli for partition. In the said suit, the appellant herein was arrayed as the defendant. During the pendency of the suit, the deceased first respondent said to have executed a registered release deeds in favour of the appellant herein. The said registered release deeds dated 27.04.1994 were marked as Exs.A1 and A2 in the present suit. The defence of the first respondent herein in the above suit in respect of his share of the properties is the appellant herein obtained two registered release deeds by coercion. Therefore, the trial Court also framed one of the issues that whether the release deeds dated 27.04.1994 were obtained by coercion. The trial Court also after the trial given a finding in respect of the said issue that the said release deeds were obtained by coercion and hence, the same are not valid in the eye of law.

11. In the mean while, the appellant herein also filed yet another suit in O.S.No.402 of 1995 on the file of the Munsif Court, Valliyoor. Subsequently, the same was transferred to Subordinate Court, Tirunelveli and renumbered as O.S.No.122 of 1996 and the said suit was tried along with the above said suit in



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O.S.No.34 of 1984 and both the suits were tried simultaneously and decided on merits and the release deeds were also marked in the above said suits and the issue was decided in favour of the first respondent herein and against the appellant.

12. Challenging the said judgment and decree in O.S.No.34 of 1984, the appellant herein filed an appeal before the District Court, Tirunelveli in A.S.No. 237 of 1997 and against the judgment and decree passed in O.S.No.122 of 1996, he preferred an appeal in A.S.No.28 of 1998 before the District Court, Tirunelveli. Both the appeals were dismissed. As against the said judgments, the appellant herein filed the second appeal before this Court in S.A.No.1134 of 1999 and 1135 of 1999. This Court also after hearing the arguments, dismissed the appeals on merits. Challenging the same, the appellant herein filed the Special Leave Petition before the Hon'ble Supreme Court and the same were also dismissed at the admission stage itself. Therefore, the subject matter of the issue herein was already decided by the competent civil Court in the earlier suit in O.S.No.34 of 1984 and the same went up to the Highest Court of this Country and the issue was decided against the appellant herein. Therefore, the present suit in other way filed



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by the appellant herein is barred by *res judicata* and the right claimed by the appellant is not valid and sustainable and based on the invalid documents, he cannot claim possession. Therefore, the trial Court has rightly appreciated the entire facts and evidence and dismissed the suit.

13. Though the learned counsel for the appellant would submit that the respondents admitted the execution of the above said release deeds / Exs.A1 and A2, but the same are voidable documents, unless the same are set aside by the competent Court, the documents are in force and based on the documents, the possession of the appellant is lawful.

14. It is settled proposition of law that no doubt the respondents have admitted the execution of the release deeds/Exs.A1 and A2, but they have stated that the documents were obtained by coercion. In such circumstances, under Section 19 of the Indian Contract Act, it is voidable documents. The said documents were challenged in the Court of law in the earlier suits and the specific issue was also framed regarding the validity of the documents and both the appellant and the first respondent herein were also parties to the earlier suits and



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the said issue was also finally decided by the competent Court between the parties on merit after trial. The successor cannot re-agitate the same issue. Since the said issue was ended finality by all the forum, now the appellant cannot say that the documents / Exs.A1 and A2 were not set aside by the competent Court. The respondents have not taken steps to set aside the documents. Therefore, the documents are still in force. The said submission of the learned counsel for the appellant is not sustainable under law. Once the competent Court declared that the documents are not valid, the issue was also framed and finally decided, now the documents have no force. Therefore, claiming right by the very same documents is not sustainable and the trial Court has rightly framed the issue that whether the suit is barred by *res judicata* and also answered the same and held that the present suit is barred by *res judicata*.

15. As far as the possession is concerned, as already stated, the two suits in which both the appellant and the respondents were also arrayed as one of the plaintiffs and defendants and even the suit in O.S.No.122 of 1996 was filed by the appellant herein for the very same properties, based on the very same documents/ Exs.A1 and A2. Both the suits were decided against the appellant. No doubt the



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suit in O.S.No.34 of 1984 for partition was filed by the deceased first respondent and his mother. During the pendency of the suit, the said Exs.A1 and A2 alleged to have been executed on 27.04.1994, which means during the pendency of the said suit in O.S.No.34 of 1984, the above said suit was filed for partition. The respondents herein claimed only 1/4th share in the said suit and it is not the suit for declaration, declaring the right of entire property and the respondents executed the release deeds with reference to the entire property. Even the suit was filed for partition claiming 1/4th share by the respondents and also claiming joint possession. Subsequently, the appellant obtained the registered release deeds. Of course, the respondents claimed that it was obtained by coercion and in the earlier suits, the competent civil Court held that both the Exs.A1 and A2 were not valid and the issue went up to the Supreme Court and ended finality. Therefore, the execution of the documents itself during the pendency of the suit and the alleged possession also taken during the pendency of the suit, which means only subject to the outcome of the suit. Once the competent civil Court held that the documents are not valid, naturally the alleged possession is also not lawful. Therefore, the appellant cannot file the subsequent suit viz., the present suit in O.S.No.3 of 2007 and re-agitate the very same issue which are ended



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16. Even though the appellant was in constructive possession based on the said documents, once the documents/Exs.A1 and A2 declared as not valid, he cannot claim possession, based on the said documents. Further, now the final decree proceeding is pending, based on the judgment and decree passed in O.S.No.34 of 1984. Once the issue was decided that the documents/Exs.A1 and A2 are not valid, naturally the appellant is not entitled to share of the first respondent herein.

17. As per the preliminary decree in O.S.No.34 of 1984, the appellant is entitled to 1/4th share and that has got to be divided by metes and bounds in the final decree proceedings. Under such circumstances, claiming of possession by the appellant is also not legally valid and sustainable, even the document Ex.A6 series relied on by the learned counsel for the appellant will not give any legal right to the appellant and Exs.A5 and A7 also subject to the outcome of the suit only. Therefore, the transaction itself was in *lis pendens*, which was during the pendency of the suit and all the transactions during the pendency of the suit,



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naturally subject to the outcome of the suit only. They cannot claim any independent right against the decisions of the Court. Therefore, this Court finds that the appellant has no merit in the appeal and the appeal is devoid of merits and the same is liable to be dismissed.

18. In the result, the Appeal Suit is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

03.08.2022

Index : Yes / No

Internet : Yes / No

akv

To

1.The First Additional District Judge,
Tirunelveli.

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2.The Record Keeper,

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.



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P.VELMURUGAN, J.

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