



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.S.No.307 of 2016
and C.M.P.Nos.6383 & 6384 of 2016
and C.M.P.No.10685 of 2018

1.Kuppu

2.Shanthi @ Dhanalakshmi

3.Anandajothi

4.Kanagavally

5.Thirugnanam

...Appellants

VS.

1.Manickam

2.M.Gnanasegaran

3.M.Dandayudapany

4.Muthu @ Muthaiyasamy

...Respondents



Prayer: Appeal Suit filed under Section 96 of C.P.C. R/W O 41 C.P.C., against the judgment and decree dated 29.02.2016 made in O.S.No.80 of 2014 on the file of the Principal District Judge at Puducherry.

For Appellants : Mr.T.Dhanyakumar

For Respondents : Mr.U.Karunakaran for R1
Mr.K.Annadurai for R2 to R4

J U D G M E N T

The appellants are the defendants 4 to 8, and the first respondent is the plaintiff and respondents 2 to 4 are the defendants 1 to 3 in O.S.No.80 of 2014, on the file of the Principal District Judge at Puducherry.

2.The brief facts of the case is that the plaintiff is the owner of the property, has acquired the same by way of a partition among his brothers. He has been in possession and enjoyment of the suit schedule property and that in further development of the property, he had taken money from his sons who are the defendants 2 & 3, in whose favour he had executed a Mortgage Deed as well as bogium.



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3.The plaintiff intended to settle the property in favour of his wife and after her life time, in favour of his children viz., the defendants 1 to 7 and had requested the defendants 4 to 8 to arrange for such execution. Taking advantage of his age, the defendants 4 to 8, particularly, the eighth defendant had arranged for a settlement. But, instead of executing a Settlement Deed as advised in the name of his wife, they had fraudulently executed a Settlement Deed in favour of the defendants 1 to 7 and by pleading, the defendants 4 to 8 had also handed over the original documents. On coming to know of such fraudulent settlement, he had immediately given a Police complaint and also filed a suit seeking for declaration to declare that the Settlement Deed dated 15.07.2004 as non-est, not valid and not binding on the plaintiff in any manner and to direct the eighth defendant to hand over the original documents in respect of the suit schedule property.

4.The suit had been contested by the defendants 4 to 8 by contending that the plaintiff with full knowledge, had executed the Settlement Deed and had



created mortgage and bogium in favour of his sons and the suit had been filed only at the instance of the defendants 1 to 3, who are the sons.

5.Considering the pleadings, the learned Judge had framed four issues, which are as follows:

1.whether the settlement deed dated 15.07.2004 was obtained from the plaintiff by committing the act of fraud and misrepresentation by the 1st to 7th defendants and will not bind the plaintiff?

2.whether the 8th defendant is liable to hand over all the original documents to the plaintiff?

3.whether the suit is barred by law of limitation?

4.To what relief the plaintiff is entitled to?

6.Before the learned judge the first respondent was examined himself as P.W.1. One Muthukumaran the station house officer, Muthialpet Police Station, Puducherry was examined as P.W.2 and 18 documents were marked as Exs.A1 to A18. The second respondent was examined as D.W.1, the second appellant was examined as D.W.2, the fourth appellant was examined as D.W.3 and one of the



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attestor to the settlement deed dated 15.07.2004, was examined as D.W.4 and marked 7 documents Exs.B1 to B7. The report on non-cognizable offences bearing No.120780, dated 22.07.2014 of Muthialpet P.S., Puducherry is marked as Official Exhibit, Ex.X1.

7.The learned Judge considered the pleadings, oral and documentary evidence had held that the Settlement Deed which was challenged had been executed in a fraudulent manner and the same is not voluntarily executed by the plaintiff and consequently set aside and cancelled the Settlement Deed dated 15.07.2004 and had directed the eighth defendant to handover the original documents to the plaintiff by giving a categorical finding that he is in possession and as a sequel, had directed the Sub Registrar, Puducherry to cancel the necessary registration entries in the registration office in respect of the Settlement Deed.



8.The unsuccessful defendants 4 to 8 have come out with the present appeal challenging the judgment and decree dated 29.02.2016 made in O.S.No.80 of 2014, on the file of the Principal District Judge at Puducherry.

9.Mr.T.Dhanyakumar, learned counsel appearing for the appellants would submit that the suit property originally belongs to the first respondent. The suit property consist of a house of three portions, the money spent for such construction was given by the respondents 2 to 4 are false, and the appellants has also challenged the execution of the mortgage deed and usufructuary mortgage deed executed in favour of the respondents 2 to 4 by the first respondent. The appellants would further submit that they have no role in executing the settlement deed, as alleged by the first respondent and the fifth appellant has no original documents in his custody or possession.



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10.The learned counsel for the appellants would vehemently submit that the Settlement Deed dated 15.07.2004, was executed by the first respondent voluntarily, and the same was registered as Doc.No.3096 of 2004 on the file of the Sub Registrar Office, Puducherry, based on which the appellants and respondents 2 to 4 had also taken possession. The first respondent and their mother is also residing in the same property. He would further submit that the first respondent himself had given the original documents of the suit property to the appellants 2 and 3 herein.

11.He would heavily contend that the suit itself is wholly barred by limitation. He would submit that the documents that are sought to be cancelled were executed in the year 2004 and the suit has been initiated only in the year 2014 that too after 10 years much beyond the period of limitation. Further, he would contend that when he had categorically admitted his signature in the Settlement Deed, he cannot turn around and say that he was not aware of the



contents of the documents. He would further submit that it is axiomatic that whenever the documents are presented for registration, the concerned Sub Registrar orally seeks knowledge of the documents from the executor and only after ascertaining his knowledge of the documents, the Sub Registrar proceeds with the registration.

12.He would further submit that the first respondent has instituted the suit colluding with the respondents 2 to 4, and it is their further case that the first respondent's knowledge about the execution of the settlement deed in favour of the appellants and respondents 2 to 4 is only on 05.06.2014, when the first respondent had obtained the encumbrance certificate is not correct.

13.Countering his arguments Mr.U.Karunakaran, learned counsel for the first respondent submitted that, the suit property was acquired by the first respondent by way of a partition deed dated 03.02.1961, among himself and his



three brothers. The first respondent has been in continuous possession and enjoyment of the same from 1961. The first respondent himself admits that the second respondent has spent a sum of Rs.15 lakhs for construction of the house, and the first respondent along with his wife was residing in one of the portions and the respondents 2 to 4 were residing in other two portions. Each had paid Rs.5 lakhs to the first respondent, and the same was utilised for the marriage of appellants 3 and 4.

14.He would submit that the first respondent, on the advise of appellants 1 to 4, had decided to execute a settlement deed in favour of his wife, for the same he has handed over all the original documents to the fifth appellant, who is the husband of the appellants 1 and 2. The learned counsel would further submit that on 15.07.2004, the first respondent had signed in the Settlement Deed in the Sub Registrar Office, believing the same was settled in favour of his wife.



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15.The learned counsel would submit that the appellants or the respondents 2 to 4 had not taken care of the first respondent and his wife, and the first respondent has no means of livelihood, so he decided to sell the suit property, for which he had obtained encumbrance certificate. On 05.06.2014, when the first respondent had obtained the encumbrance certificate, he came to know that the settlement deed dated 15.07.2004, was not executed in favour of his wife and the same was executed in favour of the appellants 1 to 4 and respondents 2 to 4, which the first respondent has never intended to. The learned counsel would further submit that the Settlement Deed dated 15.07.2004, was obtained by fraud and misrepresentation by the appellants 1 to 4, on the instigation of the fifth appellant. As the appellants were not ready to execute a cancellation deed, the first respondent had filed a suit before the Principal District Judge at Puducherry.

16.Mr.K.Annadurai learned counsel for the respondents 2 to 4 submitted that, the first respondent who is the father of the appellants 1 to 4 and respondents



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2 to 4, had approached the second respondent to construct a house, in the year 2001. The second respondent constructed a house consisting of three portions, by investing a sum of Rs.15 lakhs and the respondents 3 and 4 also gave a sum of Rs. 5 lakhs each to the first respondent. The first respondent and the second respondent jointly lived in one of the portions on the first floor, and the other two portions were occupied by the respondents 3 and 4. When the respondents demanded for the money spent by them for construction of the house, the first respondent has executed a mortgage deed dated 20.06.2002 for Rs.15 lakhs in favour of the second respondent and the usufructuary mortgage bogium dated 15.11.2002, was executed in favour of the respondents 3 and 4 for a sum of Rs.5 lakhs each. He would further submit that it is the first respondent and the appellants 1 to 4 who had colluded to execute the settlement deed dated 15.07.2004, and the document executed will not bind the respondents 2 to 4.



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17. Heard Mr.T.Dhanyakumar, learned counsel appearing for the appellants, Mr.U.Karunakaran, learned counsel for the first respondent and Mr.K.Annadurai learned counsel for the respondents 2 to 4. For easy reference, the parties are addressed as per their rank in the suit.

18. I have considered the submission made by the learned counsel appearing for the respective parties and I have perused the materials available on record.

19. Points for consideration arising in this appeal are:

- (a) whether the execution of Ex.A3/Ex.B7 Settlement Deed of the year 2004 by the plaintiff/1st respondent is voluntary?
- (b) whether the suit is barred by limitation?
- (c) whether the 5th appellant is in possession of the original documents?

Point 1:

- (i) The date of execution of Ex.A3/B7 the Settlement Deed is dated 15.07.2004. The learned Judge had extensively considered the cross-examination



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of the plaintiff who had been examined himself as PW1. He had given a categorical finding that PW1 was very clear of his intention only to execute a Settlement Deed in favour of his wife and not in favour of the defendants 1 to 7. He had also given a specific finding that there was no suggestion on the side of the defendants particularly the defendants 4 to 8 as to PW1 with regard to the contents of the Settlement Deed. The learned Judge has specifically held that a suspicion creates on such execution the attesting witnesses of the said Settlement Deed were from Gudiyatham, where the defendants 4, 5 & 8 are residing.

(ii) It is also pertinent to note that DW4 who was examined on the side of the defendants 4 to 8, in his cross-examination, had admitted that he is a stranger to the family and resides away from Puducherry and is a customer of tea shop run by the eighth defendant and only at his request, he had come to attest as a witness. There is no reasoning assigned by the defendants as to why they had to bring witnesses from Gudiyatham to Puducherry to attest in the Settlement Deed when the same is with the knowledge and willingness of the plaintiff.



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(iii) That apart, it is trite law that a Settlement Deed deemed to be a Settlement Deed would have to be acted in present time. In the present case, even according to the defendants 4 to 8, the Settlement Deed had been executed in the year 2004. The beneficiaries under the Settlement Deed including the defendants 4 to 7 have not acted upon such Settlement Deed. This is evident from Exs.A5 to A9, the Revenue records relating to the property, still stand in the name of the plaintiff. The municipal tax receipts, water consumption charges and even electricity connection stood in the name of the plaintiff and he had been paying the necessary charges. This concludes that even after the alleged Settlement Deed dated 15.07.2004, the plaintiff had continued to be in possession and enjoyment of the property as a rightful owner and that the Settlement Deed had not been acted upon.

(iv) The simple reason for the defendants 4 to 7 in not claiming any right under the Settlement Deed would only show that if they had made a claim based



on the Settlement Deed, the plaintiff would have definitely challenged the same.

This also creates a doubt as to the voluntary execution of the Settlement Deed.

Therefore, in addition to the above reasonings and findings, I do not find any infirmity or illegality in the judgment and reasonings of the Trial Court in coming to a conclusion that the Settlement Deed had not been executed voluntarily.

Point 2:

(i) It is to be noted as stated supra, the Settlement Deed was executed in the year 2004 and has not been acted upon till date.

(ii) Mr. T. Dhanyakumar, learned counsel appearing for the appellants had specifically raised an issue that the suit is barred by limitation. The Court below had specifically dislodged the said contention by holding that the plaintiff had knowledge of execution of such a settlement only in the year 2014, by relying upon Ex.A4 – Encumbrance Certificate and the evidence of PW2 who was the Station House Officer and Ex.X1 produced by PW2 and had held that the suit is within the period of limitation from the date of knowledge of the plaintiff.



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(iii) A Settlement Deed executed will have to be in present time. In the present case, the Settlement Deed has been executed in the year 2004 and had thereafter not been acted upon, as none of the beneficiaries under the Settlement Deed had taken possession of the property or even have mutated the Revenue, Municipal and Other records in their name. The period of limitation of bar begins when his right is sought to be infringed. In the present case, the case of the plaintiff is that he intended to execute a Settlement Deed in favour of his wife but a fraud has been played upon him to see that the Settlement Deed is executed in favour of the defendants 1 to 7. The defendants 1 to 3 also did not have the knowledge of the Settlement Deed.

(iv) Had such Settlement Deed executed only in the name of his wife, the plaintiff would have not come to the Court. Since the Settlement Deed had been executed in favour of the defendants 1 to 7 which were not his wish, the plaintiff had approached this Court and such knowledge had come to him only on



obtaining an Encumbrance Certificate in the year 2014. A specific pleading in the plaintiff has also been made by the plaintiff that his children viz., the defendants 1 to 7 were not taking care of him and his wife and therefore, he had decided to sell the property for their livelihood. This would mean that the appellants herein who are particularly the appellants 1 to 4, who are the daughters of the first respondent/plaintiff, had also not taken care of him.

(v) This Court takes judicial notice of the fact of the law introduced for protecting the Senior Citizens of this country. Section 23 of the Maintenance & Welfare of Parents & Citizens Act, 2007, envisages a cancellation of a Sale Deed executed by the parents in favour of their children if latter had neglected to take care of the former. The enactment had been made to protect the helpless parents who had settled their hard earned properties in favour of their children out of love & affection with the hope that the children would take care of them and that there would be no *inter se* dispute between the children after their death. In such a view



of the position, in my respectful view that there can be no question of limitation pleaded in such cases. Here is also a case where the father and mother had not been taken care by the children, the sons' have got a mortgage and bogium executed in their favour for contributing money to build a house and the daughter has got a Settlement Deed executed without the knowledge of the father.

(vi) For the reasons stated above, I am of the view that the suit is well within the period of limitation and the same will not be barred by law of limitation.

Point 3: The categorical finding given by the Court below that the Settlement Deed and the Will that had been executed by the plaintiff were produced originally by the eighth defendant. This cannot be refuted by the plaintiff. Further, it is also an admitted fact that the eighth defendant was instrumental in execution of Ex.A3/Ex.B7. When that be so, it is axiomatic that he would be in possession of the relevant documents regarding the suit schedule



property. Hence, I find no infirmity in the reasonings and findings given by the Court below.

20. In fine, the Appeal Suit fails and is accordingly dismissed. However, there shall be no order as to costs. Consequently, the connected petitions are closed.

12.07.2023

Index: yes/no

Speaking order: yes/no

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To

The Principal District Judge at Puducherry.



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K.KUMARESH BABU, J.

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