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A.S.No.635 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

A.S.No.635 of 2016

and

C.M.P.No.18335 of 2016

Uma Maheswari

... Appellant

Vs.

Kuppusami

... Respondent

Prayer : Appeal Suit filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 29.04.2016 in O.S.No.126 of 2014 on the file of the I Additional District and Sessions Court, Cuddalore.

For Appellant : Mr.D.Baskar

For Respondent : Mr.P.Muthukumarasamy



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J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The plaintiff in the suit in O.S.No.126 of 2014 on the file of the I Additional District and Sessions Court, Cuddalore, is the appellant in the above appeal. The appellant filed the suit against her own brother for partition of her $\frac{1}{2}$ share in the suit property. The suit property consists of two items.

2.It is the case of the plaintiff that the suit properties originally belonged to the father of the plaintiff and defendant, by name Dhanakodi Asari, and that the property devolved on the plaintiff, defendant and mother of plaintiff, who also died. Even though a few litigations are referred to in the plaint, the specific case of the plaintiff is that she is entitled to $\frac{1}{3}$ share on the date of death of her father. In the plaint, it is stated that the defendant had agreed to pay plaintiff and his mother a sum of Rs.6 Lakhs each for the release of their share in the suit property and that a release deed dated 18.05.2007 was also executed by the plaintiff and her mother in favour of



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the defendant. Having admitted the execution of the release deed, the stand taken by the plaintiff is that the defendant, who promised to pay a sum of Rs.6 Lakhs each, did not pay any amount and that therefore, the document of release is invalid.

3.The defendant remained *ex parte* before the trial Court.

4.The trial Court, after finding that the document Ex.A1-release deed dated 18.05.2007 filed by the plaintiff shows that the plaintiff and her mother had relinquished their right upon receipt of a sum of Rs.2 Lakhs each from the defendant, held that the plaintiff is estopped from letting in any oral evidence contrary to the terms of the document Ex.A1 under Section 92 of the Evidence Act. Therefore, the suit was dismissed.

5.Challenging the judgment and decree of the trial Court dismissing the suit filed by the plaintiff, the above appeal is filed.



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6.Learned counsel appearing for the appellant/plaintiff submitted that the defendant had remained *ex parte* and that therefore, in the absence of any defence, the trial Court ought to have decreed the suit for partition, having regard to the specific plea of the plaintiff. He also submitted that Section 92 of the Evidence Act is not applicable to a case where the plaintiff has specifically pleaded that there is no consideration for the document.

7.This Court is unable to accept the arguments of the learned counsel appearing for the appellant. First of all, the plaintiff has categorically admitted the execution of the release deed by the plaintiff and her mother upon receipt of a sum of Rs.2 Lakhs each. Though the plaintiff disputed the actual receipt of a sum of Rs.2 Lakhs as stated in the document Ex.A1, the trial Court has rightly held that the plaintiff cannot let in any oral evidence to prove her stand which is admittedly in variance with the terms of the document. In the present case, the plaintiff is a party to the release deed which clearly refers to disposition of the property for a valid consideration as stated in the document. It is admitted that Ex.A1-release deed was



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executed by the plaintiff and her mother. When the terms of the release are reduced to form a document and the execution and registration of the same is proved, no oral evidence or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying or adding or subtracting its terms. Though proviso (1) to Section 92 of Evidence Act save the pleading which would invalidate the document, this Court is unable to find any plea which would invalidate the registered release deed whose execution is admitted. Though it is pleaded in the plaint that no consideration was paid under the release deed, the fact that the plaintiff has acknowledged the receipt of a sum of Rs.2 Lakhs towards her share to release the same in favour of the defendant, is admitted. In the plaint, it is stated that, in order to avoid taxation, a formal recital was made as if the releasor had received a sum of Rs.2 Lakhs. The plaintiff stated that the defendant agreed to pay plaintiff the value of her share but did not pay any amount as promised. The document, therefore, cannot be challenged for want of consideration or failure of consideration. The suit is filed in 2014, seven years after the release deed, without a prayer to set aside the document of release. Plaintiff cannot avoid the registered deed of



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conveyance on the grounds alleged in the plaint.

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8.Having regard to the facts admitted and recorded by the trial Court, this Court finds no reason to interfere with the findings of the trial Court. Hence, this appeal is liable to be dismissed for want of merits. Accordingly, **this appeal is dismissed**. However, considering the relationship between the parties, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (A.A.N., J.)
27.01.2023

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Internet : Yes

Index : Yes / No

To

1.The I Additional District and Sessions Judge,
Cuddalore.

2.The Section Officer,
VR Section, High Court,
Chennai.



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and
A.A.NAKKIRAN, J.

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