



SA.Nos.1337 & 1338 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 06.03.2023

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

SA.Nos.1337 & 1338 of 2007

[SA.No.1337 of 2007]

1.Kasturi

2.Sri Ramulu

3.Giri

... Appellants

Vs.

Rajasekar

...Respondent

[SA.No.1338 of 2007]

1.Kasturi

2.Meera

3.Sri Ramulu

4.Anusuya

5.Sujitha



SA.Nos.1337 & 1338 of 2007

6.Giri

7.Hemalatha

8.Damodaran

... Appellants

Vs.

G.Rajasekar

...Respondent

PRAYER in SA.No.1337 of 2007 : Appeal filed under Section 100 of CPC, against the Judgement and Decree made in A.S.No.28 of 2006 on the file of the Subordinate Judge, Gudiyattam, Vellore District dated 28.02.2007 reversing the well considered decree and judgement made in O.S.No.342 of 1995 on the file of the District Munsif, Gudiyattam, Vellore District dated 11.10.2006.

For Appellant : Mr.K.A.Ravindran

For Respondent : M/s. P.Veena Suresh

PRAYER in SA.No.1338 of 2007 : Appeal filed under Section 100 of CPC, against the Judgement and Decree made in A.S.No.27 of 2006 on the file of the Subordinate Judge, Gudiyattam, Vellore District dated 28.02.2007 reversing the well considered decree and judgement made in O.S.No.368 of 1995 on the file of the District Munsif, Gudiyattam, Vellore District dated 11.10.2006.

For Appellant : Mr.K.A.Ravindran

For Respondent : Mrs.A.S.Manisha for Mrs.P.Veena Suresh



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SA.Nos.1337 & 1338 of 2007

COMMON JUDGEMENT

The plaintiffs in a suit OS.No.368 of 1995 on the file of the District Munsif Court, Gudiyattam, are the appellants. The sole respondent is the plaintiff in a suit OS.No.342 of 1995 on the file of the very same Court. Both the suits were presented for declaration of title and for injunction. The short narration of the facts essential for these appeals are:-

2. The property originally belonged to two brothers namely, Dhanancheiya Naidu and Sampath Naidu. Subadrammal, the 1st defendant in the suit OS.No.368 of 1995 was their sister. Out of natural love and affection, the brothers settled the property in favour of the sister by way of a registered settlement deed in Document Number 2956 of 1968 dated 30.07.1968. As per the first part of this document, the settlee/sister was entitled to enjoy the property absolutely and the subsequent clause read that she is entitled to hold the property during her life time and in case there are no issues, it will go back to the legal heirs of Dhanancheiya Naidu.



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3. The said Subadrammal sold the property in favour of the respondent/Rajasekar on 22.02.1991. It is the case of Rajasekar that the defendants/appellants Kasturi, Sridar and Giri sought to dispossess him on 19.04.1995. Therefore, he presented the suit OS.No.342 of 1995 on the file of the District Munsif Court, Gudiyattam. The appellants in both the appeals pleaded that what had been settled in favour of the 1st defendant in OS.No.368 of 1995 on the file of the District Munsif Court, Gudiyattam was only a life estate and therefore Subadrammal is not entitled to sell the property to Rajasekar. They further alleged that the 2nd defendant sought to trespass into the suit property and therefore they came forward with the aforesaid suit.

4. The parties went to trial and the plaintiff, Rajasekar examined himself as PW.1 and one Arangammal as P.W.2. Similarly, the defendants Giri and Muthumanickam examined themselves as D.W.1 and D.W.2. 11 documents were filed on behalf of the plaintiff/respondent and 7 documents were filed on behalf of the defendants/appellants.



5. To complete the narration, it is necessary to point out that during the life time of Subadrammal, she had filed a suit OS.No.275 of 1982 on the file of the District Munsif Court, Tirupattur for declaration of title and for injunction. The suit had been decreed ex parte and therefore, the plaintiff in the suit OS.No.342 of 1995 relied upon the same in order to argue that they are entitled for declaration since their vendor's title had already been declared.

6. The learned Trial Judge framed a common issues in both the suits. The issue that he framed for answering is "*Whether the plaintiffs are entitled for declaration and injunction as prayed for?*"

7. The learned Trial Judge interpreting the document held that what had been given to Subadrammal was only a "life estate" and that she can alienate only that right in the property. Since Rajasekar had purchased only the life estate, he is not entitled for declaration of title. The trial Court dismissed O.S.342/1995 & decreed O.S.368/1995.



8. Feeling aggrieved by the decree, the sole respondent to this appeal, filed A.S.Nos.27 and 28 of 2006 on the file of the Subordinate Judge, Gudiyattam. The lower Appellate Court had framed the following issues:-

1. Whether the settlement deed dated 30.07.1968 in favour of Subadrammal creates only a life estate or full right to her in the suit property?

2. Whether the sale in favour of the Appellant by Subadrammal dated 22.02.1991 is valid and the appellant is entitled to declaration and permanent injunction?

3. Whether the respondents are entitled to declaration and permanent injunction in respect of the suit property?

9. The lower Appellate Court took a view that the word “சர்வ சுதந்திரமாய்” in the settlement deed grants Subadrammal the absolute right and therefore, she is entitled to the property. Consequently, the sale in favour of Rajasekar is valid. Hence, allowed both the appeals. Consequently, OS.No.342 of 1995 was decreed as prayed for and the suit OS.No.368 of 1995 was dismissed. Against this reversing judgment, the present Second



Appeals are presented.

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10. At the time of admission, the following Substantial Questions of law were framed for consideration :-

1. Whether the certified copy of the sale deed has been proved under the provisions of Section 65 of the Evidence Act?

2. Whether the certified copy could prove the execution of the Sale when the secondary evidence is admissible under Section 57(5) of the Registration Act to prove the contents of the document alone?

3. Whether the lower appellate Court is right in granting the relief to the respondent herein when the intention of the settlers is to give life estate to the Settlee?

11. The issue that falls for consideration in the appeal is “*Whether the document conveys absolute title or should be restricted as a life estate in favour of Subadrammal*”. The relevant portion of the document is extracted as follows:-



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SA.Nos.1337 & 1338 of 2007

“இன்று உன் பெயருக்கு செட்டில்மெண்ட் செய்து பட்டா முதலியவையும்
செய்து விட்டோம். இன்று முதல் நீர் சர்வ சுதந்திரத்துடன் ஆண்டு
அனுபவித்துக் கொள்ள வேண்டியது. நீர் சொத்தை யாதொரு வில்லங்கட்கும்
உட்படுத்தாமல் அதில் வரும் மகசூல் நீர் இருக்கிற வரையில் அனுபவித்துக்
கொண்டு வரவேண்டியது, உனக்கு சந்ததி இல்லாவிட்டால் உனக்கு
பிற்பாலத்தில் மேற்படி சொத்து எங்களுக்கே பாத்தியப்பட்டதேயொழிய வேறு
யாருக்கும் சம்பந்தப்பட்டதல்ல”.

12. The very first line conveys that on the date of the settlement deed, the settlors namely, the brothers Dhanancheiya Naidu and Sampath Naidu have settled the property in favour of Subadrammal absolutely. The next line also states that she is entitled to enjoy the property as the absolute owner. Curiously enough, the subsequent clause speaks about restricting the right given in favour of Subadrammal. It is this clause and the subsequent clause which has emboldened the appellants to argue that what has been settled in favour of Subadrammal as absolute property was “ un-settled” and



converted into a life estate.

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13. I am not willing to read the documents the way the appellant wants me to read it. The law relating to deeds and documents is well settled. I would refer to three judgments to substantiate my conclusion:-

i) Ramkishorelal and Another Vs. Kamal Narayan – AIR 1963 SC 890 : 1963 Supp (2) SCR 417.

ii) Kailvelikkal Ambunhi (dead) by Lrs and Ors. Vs. H. Ganesh Bhandary – AIR 1995 (SC) 2491.

3. Uma Devi Nambiar and others Vs. T.C. Sidhan (dead) – (2004) 2 SCC 321.

14. A perusal of the Judgement of the Constitutional Bench reported in *AIR 1963 SC 890* reveals:-

“It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (See Sahebzada Mohd. Kamgar Shah v. Jagdish Chandra.



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Deo Dhabal Deo). It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible. It is only when this is not possible, e.g., where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void.”

15. Similarly, in **Kailvelikkal Ambunhi** case, the Supreme Court was pleased to distinguish between a Will, a settlement deed and a sale deed. In so far as a Will is concerned, where there is an inconsistency between the earlier part and the subsequent part, the subsequent part is to prevail. This is very simple and not far to see because in case of a Will, it is the last wish of the testator which would prevail. In so far as a sale deed, gift deed, settlement deed, or a mortgage deed, the previous clause should always prevail over the later clause because the previous clause vests the title with the person and it is transfer *in praesenti*. What has been given under the document cannot be taken away by the very same document subsequently. If any attempt was made to incorporate such a clause in a later portion of the document, the later clause should be held to be void. Similarly, in the case of



SA.Nos.1337 & 1338 of 2007

Uma Devi Nambiar and others Vs. T.C.Sidhan (dead), following the

previous judgments, the Court held in Para. No.12 as follows:-

“This rule of interpretation can be invoked if different clauses cannot be reconciled. (See Rameshwar Bakhsh Singh v. Balraj Kaur). It is to be noted that rules of interpretation of Will are different from rules which govern interpretation of other documents like sale deed, or a gift deed, or a mortgage deed or, for that matter, any other instrument by which interest in immovable property is created. While in these documents, if there is any inconsistency between the earlier or the subsequent part or specific clauses, inter se contained therein, the earlier part will prevail over the latter as against the rule of interpretation applicable to a Will under which the subsequent part, clause or portion prevails over the earlier part on the principle that in the matter of Will the testator can always change his mind and create another interest in place of the bequest already made in the earlier part or on an earlier occasion. Undoubtedly, it is the last Will which



prevails.”

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16. In the present case, my reading of the document shows that the first clause vests the property absolutely with Subadrammal and the later clause which attempted to take away the right conferred under the previous clause is inconsistent and cannot be harmoniously read with the former. Therefore it has to be treated as void. The property, having vested with Subadrammal, she is entitled to alienate the property to anyone including Rajasekar, the sole respondent to the appeal. In order to substantiate his sale, he has filed a registered copy of the sale deed.

17. It was sought to be argued that a registration copy of a sale deed ought not to have been relied upon. I would refer to Section 57 sub-clause 5 of the Registration Act which reads as follows:-

“All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.”



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18. It is not the case of the appellants that Subadrammal did not execute the document but that Subadrammal was incompetent to execute a document conferring title on the respondent. In any event, the certified copy of the sale deed marked as Ex.A.1 and the parties went to trial on that basis. The entire case revolved on the right of Subadrammal to execute Ex.A.1 and not whether Ex.A.1 was a true and genuine document.

19. I am not going to go into the validity of the suit OS.No.275 of 1982 on the file of the District Munsif Court, Gudiyattam. The reason being in the year 1985 Sampath Naidu died and in the year 1989 Dhanancheiya Naidu died and the decree was passed in 1984.

20. The learned counsel for the respondent sought to argue that she is entitled to take assistance of Order 22 Rule 4(4) of the CPC and since the defendants remained ex parte, she is entitled to the benefit of that Section. It is no doubt true that under Order 22 Rule 4(4) the Court is empowered to dispense with notice or the necessity to bring legal heirs on record of the deceased defendants/respondents in appeal. This is a power vested in the



Court and not at the discretion left with the parties. No steps had been taken to file an application under order 22 rule 4(4) and therefore the argument on the validity of the decree by virtue of order 22 rule 4(4) cannot be countenanced.

21. Be that as it may, a decree for declaration does not create a right in a person but merely declares the right possessed by the party on the date of presentation of the plaint. To put it in other words, a declaratory decree by the Court does not create a right in a person but all that the Court does while granting a decree is recognizing the right of the person. The validity or otherwise of OS.No.275 of 1982 on the file of the District Munsif Court, Gudiyattam does not make a difference to the present case. It is a side act which can be ignored. As already stated, Dhanancheiya Naidu and Sampath Naidu, the owners of the property, had settled the same in favour of Subadrammal on 30.06.1968. By virtue of the document, she had become the owner of the property. I do not find any error or perversity in the judgement of the lower Appellate Court. On the contrary, I concur with the views taken by it that a later clause will not take away the right already conferred by the previous clause in matters of interpretation of settlement



SA.Nos.1337 & 1338 of 2007

deed. I would add that interpretation applies to a sale deed, mortgage deed or gift deed. The law relating to interpretation of the aforesaid documents cannot be applied to Wills.

22. In fine, the substantial questions of law are answered against the appellants and in favour of the respondent. The judgement and decree of the Subordinate Court Judge, Gudiyattam in AS.No.28 of 2006 and A.S.No.27 of 2006 dated 28.02.2007 stand confirmed. The suit in OS.No.342 of 1995 on the file of the District Munsif Court at Gudiyattam shall stand decreed and the suit in OS.No.368 of 1995 on the file of the District Munsif, Gudiyattam shall stand dismissed. Though, I was inclined to impose cost as Subadrammal had died on 25.12.1995 and since Rajasekar has been in possession of the property from 22.02.1991 till date, and since there was a confusion. On the interpretation of the document, I am not imposing any cost. Consequently, the above Second Appeals stand dismissed, with no order as to costs.

06.03.2023

Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No



SA.Nos.1337 & 1338 of 2007

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To

1. The Subordinate Judge, Gudiyattam, Vellore District.
2. The District Munsif, Gudiyattam, Vellore District.



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SA.Nos.1337 & 1338 of 2007

V.LAKSHMINARAYANAN, J,

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SA.Nos.1337 & 1338 of 2007

06.03.2023