



S.A.Nos.255 and 256 of 2006

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.Nos.255 and 256 of 2006

D.Dasarathan ... Appellant/Plaintiff
in S.A.No.255 of 2006 &
... Appellant/Defendant
in S.A.No.256 of 2006

- Vs -

1.D.Shanmugham (Deceased) ... Respondent/Defendant
in S.A.No.255 of 2006 &
...Respondent/Plaintiff
in S.A.No.256 of 2006

2.Mrs.S.Alamelu Ammal
3.Mr.S.Punniakotti
4.Mr.S.Mahadevan
5.Mrs.Moorthi Kamatchi
6.Mrs.Murugan Varalakshmi ... Respondents

[Respondents 2 to 6 brought on
record as Legal Representatives
of the deceased sold respondent vide
Order of Court dated 29.04.2010 in
C.M.P.No.1728, 1729 to 1731 of 2008
in S.A.Nos.255 and 256 of 2006]



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PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree in A.S.Nos.56 and 86 of 1998 dated 20.07.2003 of the Subordinate Judge, Kancheepuram.

For Appellant : Mr.S.Rajapandiyan
For Respondents : Mrs.P.Veena Suresh
for M/s.T.R.Rajaraman

COMMON JUDGMENT

Both the appeals have been filed at the instance of the plaintiff in O.S.No.68 of 1996. The respondent in both the appeals was the defendant in O.S.No.68 of 1996 and the plaintiff in O.S.No.405 of 1996. Both the appellant and the respondents are brothers and children of one Duraisamy Mudaliar and Kannammal. The appellant D.Dasarathan has filed a suit in O.S.No.68 of 1996 for partition. His brother Shanmugham has filed another suit in O.S.No.405 of 1996 for the relief of injunction.

2. The brief facts which gives rise to the instant second appeals.



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(a) The suit property is the house property. The same originally belongs to one Salammal. The plaintiff and the defendant's father Duraisamy Mudaliar as a Manager of the joint family, purchased the suit property on 02.07.1944 for a sum of Rs.500/-. The landed properties in Ariyaperumbakkam Village were also purchased in the name of the mother of the plaintiff and the defendant, namely Kannammal for the benefit of the joint family. Though the properties stand in the name of the parents of the plaintiff and defendant qua Duraisamy Mudaliar and Kannammal, the said properties were treated as joint family properties. While so, the said Duraisamy Mudaliar executed a settlement deed with regard to the suit property in favour of his wife Kannammal on 29.03.1956. According to this plaintiff, the settlement deed is not valid as Duraisamy Mudaliar has no absolute right, since the property is a joint family property.

(b) The plaintiff further submit that, based upon the settlement deed stands in the name of Kannammal, after the demise of Duraisamy Mudaliar, Smt.Kannammal and his one son namely, the defendant



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Shanmugham, jointly executed the mortgage deed in favour of Big Kanchipuram Co-operative Bank Limited with regard to the suit property.

It is the specific submission of the plaintiff that, all along the suit property is treated as joint family property. This plaintiff further submits that since the suit property is a house property, the plaintiff and the defendant advised Kannammal to execute the registered Will instead of partition deed to avoid stamp duty. Therefore, Kannammal executed registered Will on 04.09.1982. As per the above Will, half of the suit property was given to the plaintiff and the remaining half and with other landed properties were given to the defendant. Even though, the Document dated 04.09.1982 is a Will, the intention of Kannammal was to treat the above document as a partition deed only. However, with ulterior motive in order to grab the suit property, on 04.09.1982, while Kannamal was alive and bed-ridden and unconscious, the defendant by committing fraud, obtained a settlement deed on 19.04.1983.

(c) This plaintiff further submits that the said Kannammal was not in a position to understand the execution of the document, therefore, this plaintiff submits that a settlement deed dated 19.04.1983 will not bind



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the plaintiff. Hence, the plaintiff has come forward with the suit for partition.

3. The said suit was resisted by the defendant by contending that the suit property is the absolute property of their father Duraisamy Mudaliar and that the said Duraisamy Mudaliar has executed the settlement deed in favour of his wife Kannammal. As such the property belongs to Kannammal absolutely. Hence, based upon the right conferred with Kannammal, she executed the Will on 04.09.1982 in respect of suit property and other properties. Thereafter, on 19.04.1983, she executed the settlement deed in favour of this defendant in respect of suit property. Therefore, it is the submission of the defendant that their mother Kannammal has got absolute right over the suit property to settle the same in favour of the defendant. Therefore, the suit property is the absolute property of the defendant, in which the plaintiff cannot have any relief for partition.



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4. It appears that after filing of the partition suit, the defendant in O.S.No.68 of 1996 namely Shanmugham filed a suit for injunction in O.S.No.405 of 1996, against his brother Dasarathan, who is the plaintiff in O.S.No.68 of 1996. Wherein, Shanmugham in his plaint has reiterated his contention put-forth in the written statement of O.S.No.68 of 1996. Similarly Dasarathan resisted the injunction suit by reiterating his plaint averment as written statement in other suit in O.S.No.405 of 1996.

5. Both the suits in O.S.Nos.68 of 1996 and 405 of 1996 were taken together and a common judgment was passed on 20.04.1998.

6. Evidence and documents:-

Before the trial Court, in the common trial, the plaintiff has marked 7 documents as Exs.A1 to A7 and on behalf of the defendant, 19 documents were marked as Exs.B1 to B19. On behalf of the plaintiff, one witness was examined as PW1 and on behalf of the defendant two witnesses were examined as DW1 and DW2.



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WEB COPY 7. **Finding of both the Court below:-**

(a) The trial Court after having gone into oral and documentary evidence found that, since the defendant had not given any convincing reason as to why Kannammal has executed the settlement deed in favour of the defendant after bequeathing the property to the plaintiff through Will, and that the defendant Shanmugham has not proved as to the disharmony between the petitioner and her mother Kannammal. Therefore, it was found that the execution of settlement deed in favour of the plaintiff cannot be believed and therefore, the suit property belongs to a joint family consists of plaintiff and the defendant. Hence, decreed the suit for partition and dismissed the suit for permanent injunction.

(b) Aggrieved with the said finding, the defendant in O.S.No.68 of 1996 and the plaintiff in O.S.No.405 of 1996 qua Mr.Shanmugham preferred an appeal in A.S.No.56 of 1998 and A.S.No.86 of 1998. The First Appellate Court by common judgment reversed the finding of the trial Court on 30.07.2003, on the ground that there is no proof as to the joint family and joint family property, and that there are no proof available before the Court alleging fraud, undue influence and coercion.



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Thus, the First Appellate Court believed the settlement deed stands in favour of the defendant, and eventually allowed both the appeals, thereby dismissed the suit for partition and decreed the suit for injunction.

8. At the time of admission of both the second appeal, on 10.03.2006, this Court framed the following common substantial questions of law :

"1. Whether the respondent elected to act upon the Will, Ex.A3 as partition deed is estopped to act upon Ex.A4?

2. Whether the appellate Court can grant permanent injunction when the appellant is in joint possession of the subject property?

3. Whether the Court below failed to consider the maintainability of the suit when there is no specific prayer to grant the relief pertaining to declaration of title, which is in dispute?

4. Whether the appellate Court can reject the admissions of the respondent in Ex.P7?

9. All the substantial questions of law revolves around the nature of



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suit property, qua whether the suit property is a joint family property or absolute property of Kannammal. It is the specific contention of the plaintiff that Duraisamy Mudaliar has purchased the property as a joint family Manager. Therefore, though the property stands in the name of Duraisamy Mudaliar, these plaintiffs are entitled to have share over the same. In order to substantiate such contentions, the plaintiff did not produce any document about the existence of the joint family. Further there are no proof as to contribution of money from the joint family for the purchase of the suit property. To put it in other words, except pleadings, there are no proof available before the Court to show that the suit property is a joint family property, though it stands in the name of Duraisamy Mudaliar. Therefore, the finding of the fact recorded by the First Appellate Court that the suit property is the absolute property of Duraisamy Mudaliar cannot be found faulted. Once the suit property is the absolute property of Duraisamy Mudaliar, the plaintiff and the defendant's father Duraisamy Mudaliar has got absolute right to deal with the property according to his wish.



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10. In our case, Duraisamy Mudaliar, executed a settlement deed Ex.A2, dated 29.03.1956 in favour of his wife Kannammal, mother of the plaintiff and the defendant. Therefore, by virtue of settlement deed stands in the name of Kannammal, the suit property becomes the absolute property of Kannammal. Such finding could be vindicated from the pleadings of the plaintiff in paragraph No.4 of the plaint, as he stated that only upon the advise of the plaintiff and the defendant their mother Kannammal executed the registered Will. When the plaintiff advised her mother to execute the Will, his understanding as to the character of the property such as absolute property of Kannammal is palpable and resonated in the execution of the settlement deed. But, in order to decide the issue involved, whether the Will Ex.A3 is proved or not is not an issue, but the core issue to be considered is whether Ex.A4 settlement deed was executed by Kannammal in favour of the defendant. It is the admitted fact that Kannammal has executed the settlement deed in favour of the defendant. However, it was contended that the defendant obtained such settlement deed while Kannammal was bed-ridden and unconscious. It was further contended that the defendant by committing fraud,



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misrepresentation and undue influence obtained the document Ex.A4 settlement deed.

11. Here the plaintiff did not submit any document or did not let in any oral evidence to prove the health condition of his mother deceased Kannammal. Even, the pleading in respect of fraud, misrepresentation etc, it is only a vague pleading. In this regard, the learned counsel for the respondents would rely upon the judgment of the Hon'ble Supreme Court in ***Raja Ram v. Jai Prakash Singh and others*** reported in **(2019) 8 SCC 701**, wherein, the Hon'ble Supreme Court has held that while pleading fraud, undue influence or coercion, full particulars must be set-forth in pleadings, as vague plea can never serve the purpose. It is relevant to extract the paragraph No.10 and 11 of the above judgment.

The same is extracted as follows:

"10. The deceased undisputedly was over 80 years and above in age. The plaintiff pleaded that by reason of age and sickness, the deceased was unable to move and walk, with deteriorated eye sight due to cataract. The mental capacity of the deceased was impaired. The Advanced Law Lexicon by P.Ramanatha Aiyar, third edition reprint, 2009 defines impairment in



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relation to a human being as total or partial loss of a body function, total or partial loss of a part of the body, malfunction of a part of the body and malfunction or disfigurement of a part of the body. Except for a bald statement in the plaint that the deceased was mentally impaired there is no evidence whatsoever of his mental status. There can be no presumption with regard to the same only because of old age to equate it with complete loss of mental faculties by senility or dementia. Ageing is a process which affects individuals differently at distinguishable ages. The sale deed executed by the deceased in favour of one Babu Ram and Munshi Lal two years earlier in 1968 has not been assailed by the appellant on the ground that the deceased was devoid of the power of reasoning, because of mental impairment. There is no evidence of any such rapid deterioration in the condition of the deceased in these two years.

11. The deceased on account of his advanced age may have been old and infirm with a deteriorating eye sight, and unable to move freely. There is no credible evidence that he was bed ridden. Hardness of hearing by old age cannot be equated with deafness. The plaintiff, despite being the son of the deceased, except for bald statement in the plaint, has not led any evidence in support of his averments. It is an undisputed fact that the deceased appeared before the sub-registrar for registration. It demolishes the entire case of the plaintiff that the deceased was bed ridden. He had put his thumb impression in presence of the sub-registrar after the sale deed had been read over and explained to him. The deceased had acknowledged receipt of the entire consideration in presence of the sub-registrar only after which the deed was executed



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and registered. The wife of the deceased had accompanied him to the office of the sub-registrar. The sale deed being a registered instrument, there shall be a presumption in favour of the defendants. The onus for rebuttal lay on the plaintiff which he failed to discharge. Notwithstanding the finding of enmity between PW2 and PW3 with original defendant no.2, the First Appellate Court erred in relying upon these two witnesses by holding that they were independent witnesses and convincing. DW1, though related was a witness to the sale deed. His evidence in support of the events before the sub-registrar therefore has to be accepted. The plaintiff could have led evidence in rebuttal of the sub-registrar but he did not do so.

Therefore, this Court is of the view that though the plaintiff has pleaded fraud, coercion and undue influence, except the pleading, no proof surfaced before this Court and seen light of the day. Even pleadings which is available are very vague. Hence, such pleading will in no way helpful to the plaintiff.

12. At this juncture, the learned counsel for the respondents would invite the attention of this Court in respect of ExA7, letter dated 12.10.1986, which is in respect of some alleged panchayat. But, this document came into existence subsequent to the death of Kannammal on 07.03.1985. According to Ex.A7 alleged panchayat, the defendant agreed



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to pay Rs.20,000/- to the plaintiff towards the share in the suit property.

Therefore, the learned counsel for the appellant would submit that, though the settlement deed was allegedly executed by Kannammal, it was not acted upon and the suit property was dealt as joint family property. In this regard, the learned counsel for the respondent would submit that there is no pleading in the plaint of Mr.Dasarathan in respect of Ex.A7 panchayat.

13. This Court has also gone into the pleadings of the plaint in O.S.No.68 of 1996, where the plaintiff therein did not state anything as to Ex.A7. However, the defendant therein has stated in his written statement about the payment of Rs.20,000/- to the plaintiff for construction of property at Chennai. Even while reading the Ex.A7, this Court cannot have any inference that the same was executed in respect of the suit property. However, the trial Court has given undue weightage to Ex.A7 and disbelieved the settlement deed Ex.A4 stands in the name of Kannammal. However, the First Appellate Court rightly reappreciated the evidence, and has considered all these aspects and has rightly arrived a



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WEB COPY conclusion that Ex.A4 settlement deed was acted upon.

14. The learned counsel for the appellant has also relied various other judgments. But all those judgments are in respect of execution and proof of Will, whereas, in our case on hand, the issue is not in respect of execution of the Will, but, it is only in respect of execution of the settlement deed. In this regard, the learned counsel for the appellant would rely upon the judgment of this Court in *Valliammal and Ors Vs Sakkammal* reported in *2012 (4) CTC 639*, wherein, the learned Single Judge of this Court held that when the execution of the settlement deed is disputed, then the attesor of the settlement deed is to be examined. In our case, the attesor Srinivasan was examined as DW2, therefore, this Court is of the firm view that the respondent has proved the execution of the settlement deed in his favour.

15. The appellant/plaintiff (Dasarathan) has contended that the possession of Mr.Shanmugam should be construed as joint possession with Mr.Dasarathan. But, the argument of the learned counsel for the



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respondent cannot be accepted as this Court has already found the suit property is the absolute property of the defendant. Therefore, the finding of fact recorded by the First Appellate Court that the suit property is absolute property of Mr.Shanmugam and that Mr.Dasarathan cannot have any right for partition is perfectly in order. Similarly, the findings recorded by the First Appellate Court that the Shanmugham is entitled for permanent injunction is based on documents available before this Court.

16. For easy understanding this Court would like to recapitulate the above discussion that:

- i) the suit property is the absolute property of Duraisamy Mudaliar.
- ii) There is no proof as to the existence of the joint family and contribution of fund from the joint family for the purchase of the suit property.
- iii) By virtue of settlement deed, Ex.A2 dated 29.03.1956, both the plaintiff and the defendant's mother Kannammal became the absolute owner of the suit property.
- iv) As a result of which she has got right to execute the settlement



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WEB COPY deed in favour of Mr.Shanmugam.

v) The settlement deed stands in the name of Mr.Shanmugam has been proved by examining DW2.

vi) Further more, the settlement deed was acted upon even when the plaintiff's mother was alive by applying for name transfer through Ex.B8 dated 06.07.1984 and through the name transfer of water connection Ex.B9 on 26.09.1984.

vii) Apart from that by producing revenue records from Exs.B7 to B13, the plaintiff has established the exclusive possession over the suit property.

17. Hence, this Court could not find any perversity over the findings of fact recorded by the First Appellate Court. In view of the above detailed discussion, all the substantial questions of law are answered in favour of the respondents.

18. In the result, both the Second Appeals are dismissed and the Judgment and Decree in A.S.Nos.56 and 86 of 1998 dated 20.07.2003 of



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the Subordinate Judge, Kancheepuram, is confirmed. There shall be no order as to costs.

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ssn

Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No

To

1. The Subordinate Judge,
Kancheepuram.
2. The Principal District Munsif,
Kancheepuram.



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