IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.01.2023**

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1181 of 2005

Thangavel ...Appellant/Appellant/Defendant

Vs.

Vijaya ...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 27.04.2005 in A.S.No.126 of 2004 on the file of the learned I Additional District Judge, Erode, confirming the Judgment and Decree dated 24.09.2003 in O.S.No.214 of 1997 on the file of the learned II Additional Subordinate Judge, Erode.

For Appellant : Mr.R.Venkatesulu

For Respondent : Mr.C.A.Ramanan
for Mr.N.Manokaran

JUDGMENT

The defendant who has lost in both the Courts below in a suit for partition is the appellant before this Court. The parties are referred to in the same litigative status as in the Original Suit.

2.The facts in brief are as follows:

The plaintiff had filed a suit O.S.No.214 of 1997 on the file of the learned II Additional Subordinate Judge, Erode, for a partition and for permanent injunction restraining the defendant from creating any alienation or encumbrance in respect of the suit schedule property. It is the case of the plaintiff that the suit property belonged to one Ramasamy Gounder, son of Rakkiya Gounder, under the Sale Deeds dated 14.05.1959, 13.07.1959 and 29.04.1963. The said Ramasamy Gounder during his life time had executed a Gift Settlement Deed dated 04.11.1966 settling the properties on his wife Chinnammal and their sons, namely, Subramani, Thangavel (the defendant) and Arasappa

Gounder. Besides the three sons Ramasamy had two daughter, namely, Rukmani and Kannammal. Arasappa Gounder, one of the sons of Ramasamy died leaving behind him surviving his wife Padmavathy @ Chinnammal and his minor daughter Vijaya (the plaintiff). Immediately after the death of Arasappa Gounder, Padmavathy @ Chinnammal had executed a Release Deed dated 17.06.1981 releasing her share and the share of the minor child, namely, Vijaya in favour of her mother-in-law Chinnammal and brother-in-law Thangavel after receiving a sum of Rs.10,000/-. The plaintiff would contend that the Release Deed had been fraudulently obtained and is not binding upon her, particularly, since she was minor at that point of time. The plaintiff therefore issued a notice dated 18.04.1997 calling upon the defendant to partition the property to which reply notice dated 30.04.1997 was issued denying the claim of the plaintiff. The plaintiff has therefore came forward with the instant suit for the relief stated supra.

3.The defendant had filed a Written Statement *inter alia* denying the claim of the plaintiff and contending that the suit itself was not maintainable. He would submit that the Release Deed has been executed by the mother of the plaintiff fully comprehending the nature of the document and if aggrieved that the same was fraudulently obtained she should have immediately come forward and set aside the Release Deed. The defendant would further submit that the mother of the plaintiff had also received sale consideration and therefore, the plaintiff was bound by the said document. The defendant had denied the allegations of fraud contained in the Plaint. The defendant would submit that the Release Deed is a registered document and binding on both the plaintiff as well as her mother. The defendant further submit that he has been in continuous possession and enjoyment of the property all these years. That apart, there is no relief sought for setting aside the Release Deed executed by her mother. The defendant had also pleaded limitation, Therefore, he contended that the suit is liable to be dismissed.

4.The learned II Additional Subordinate Judge, Erode, had framed the following issues:

"*(1)*.வழக்கு காலாவதி ஆகிவிட்டதா?

*(2)*தாவா சொத்தில் வாதிக்கு பாக உரிமை உள்ளதா?

*(3)*வாதி கோரும் பாகப்பிரிவினையும் தனித்த சுவாதீனம் கிடைக்கக்கூடியதா?

*(4)*வாதி கோரும் நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் கிடைக்கக் கூடியதா?"

5.The plaintiff had examined herself as PW1 and one Kuppusamy as PW2 and marked Ex.A.1 to Ex.A.9. On the side of the defendant, two witnesses were examined and Ex.B.1 to Ex.B.5 were marked. The learned II Additional Subordinate Judge had decreed the suit. Challenging the same, the defendant had filed A.S.No.126 of 2004 on the file of the learned I Additional District Judge, Erode. The learned Judge had also by Judgment and Decree dated 27.04.2005 dismissed the appeal. Aggrieved over the same, the defendant is before this Court.

6.The Second Appeal has been admitted on the following Substantial Questions of Law:

"(1)Whether the suit is not barred by limitation when the plaintiff had not filed the same within three years from the date of her attaining majority?

(2)Whether the plaintiff who is admitted an eo-nominee *to Ex.B.1 can maintain a simple suit for partition and separate possession without seeking the relief of cancellation of Ex.B.1?*

(3)Whether the Courts below have misconstrued the character of Ex.B.1?"

7.The defendant/appellant had filed their Written Arguments *inter alia* contending that the suit is barred by limitation since the same has not been filed within three years of the minor attaining the majority. The Release Deed had been executed on 17.06.1981 by the plaintiff's mother fully comprehending the nature of the document after receiving the consideration of Rs.10,000/-. The mother as the natural guardian has executed the Release Deed for the welfare of the minor and therefore, the plaintiff is bound by the same.

8.The learned counsel appearing for the appellant would rely upon the Judgment of this Court reported in **2013-4-LW.-371 [Jeyam v. Rejimoon and others]** in support of the above contention. He would further submit that in an application filed under Article 60 of the Limitation Act, 1960, the suit to set aside the transfer of property made by the guardian of a Ward has to be filed within three years from the date of the minor attaining the age of majority. In the instant case, the suit has been filed six years after she has attained the majority and therefore, the Courts below ought to have dismissed the suit. The consideration paid for the Release Deed has also been deposited in the name of the minor and was being periodically extended. The said amount has been used for the benefit of the plaintiff who has withdrawn the same. The next ground of which the decree was challenged is that the suit for partition without seeking the relief of cancellation is not maintainable, particularly, when the plaintiff is an eo-nominee party in Ex.B.1 – Release Deed.

9.In support of his argument, the learned counsel appearing for the appellant would rely upon the following Judgments:

(1)AIR 2020 Mad 101
Vajjiram and others v. Annadurai and others

(2)1996 (1) CTC 661
P.B.Ramjee and two others v. P.B.Lakshmanaswamy Naidu and ten others

(3)1993 (2) MLJ 428
Sridharan and others v. Arumugam and others

(4)2004 13 SCC 480
Nagappan v. Ammasal Gounder

(5)(2001) 2 CTC 641

K.Jagannathan v. A.M.Vasudevan Chettiar and 12 others

Therefore, it is the contention of the learned counsel appearing for the appellant that the suit filed simply for partition without seeking the relief of cancellation is therefore not maintainable. In all, the learned counsel would therefore pray the appeal be allowed and the Judgment and Decree of the Courts below to be set aside.

10.Per contra, Mr.C.A.Ramanan, learned counsel appearing for the respondent/plaintiff would submit that the Release Deed as such has been fraudulently obtained. He would submit that the Release Deed has been executed within a few days of the death of the plaintiff's father. It would clearly show the coercion and undue influence that has been asserted on the mother of the minor. He would contend that even in the deposit, the mother of the plaintiff has not been shown as a guardian and one R.Kuttia Gounder has been shown as the guardian of the minor daughter which would clearly show that the Release Deed has been obtained only by coercion and since the document has been obtained by fraud there is no necessity for the plaintiff to specifically seek the relief for setting aside the document. That apart, he would submit that the mother had no authority to release the share of the plaintiff in the suit property. Hence, he would contend that there is no necessity to seek for setting aside the decree. The learned counsel appearing for the respondent would rely upon the Judgment reported in **(1993) 2 Supreme Court Cases 402 [G.Annamalai Pillai v. District Revenue Officer and others)** wherein the Hon'ble Supreme Court has held that the transfer of a minor's property without permission of the Court is voidable under Section 8(3) of the Hindu Minority and Guardianship Act. When a person who is entitled to dissent from the alienation, does so, his dissent is in relation to the transaction as such and not merely to the possession of the alienee on the date of such dissent. Therefore, it is as if the transaction had never taken place. He would also rely upon the Judgment of this Court reported in **1980 (2) MLJ 296 [Ameena Bi v. Kuppuswami Naidu and others]**, wherein this Court held that the alienation effected by the mother who had no legal competence to act on behalf of the minor/plaintiffs is equivalent to alienation made by intermediary. Therefore, the provisions of Article 44 of the Limitation Act, 1908, which corresponds to Article 60 of the Limitation Act, 1963, will not be applicable to the case. That was also a case where a joint family property / coparcenary property was being dealt with after the death of the father/manager. The learned Judge has opined that in the case of the coparcenary property after the death of the manager, the interest of the minor will pass to the eldest son as Kartha, the mother does not feature therein. The learned Judge therefore held that the provisions of Article 60 would not apply and the suit brought within 12 years from the date of alienation was well within the time.

11.The learned counsel would also rely upon the Judgment in **2013 (2) CTC 626 [Selvam and others v. Mangaiyarkarasi]**, where while considering the sale of the minor's share of the property by the mother without obtaining permission of the Court, the learned Judge had opined that the sale would be voidable at the instance of the minor.

It was also a case where permission of the Court was not obtained. Therefore, he would submit that since the entire transaction is fraught by fraud the very transaction is not sustainable and therefore, the document can be set aside at any point of time without being fettered by the rules of limitation.

12.Heard the learned counsels appearing on either side and perused the papers.

13.The Release Deed which the defendant puts forward for not complying with the plaintiff's request for partition smacks of fraud. The deed has come into existence within 17 days of the death of Arasappa Gounder, the father of the plaintiff. The property which is the subject matter of the release is a total extent of 2 acres and 13 cents which appears to be released for the consideration of just Rs.10,000/-. The Valuation Statement attached to the Release Deed Ex.B.1 would show the value of the property @ Rs.22,500/-. Whileso, the release is effected for a mere sum of Rs.10,000/-. That apart, the reason for the release is the inability of the mother to have the property partitioned and for the future benefit of the minor. A sum of Rs.10,000/- has been put in a Fixed Deposit however the mother is not shown as the guardian and it is some third party Kuttia Gounder who has been shown as guardian when admittedly the mother is alive. All of these would go to show that the defendants had orchestrated the entire transaction taking advantage of the fact that the minor's mother was grieving the death of her husband who had left behind herself and an 8 year old daughter.

14.As regards the question of limitation, the execution of the Release Deed had come to the knowledge of the minor only under Ex.A.7 dated 30.04.1997 which was the reply notice issued by the defendant to the legal notice issued by the plaintiff seeking the partition under Ex.A.6 dated 18.04.1997. As soon as the defendants had come to know about the Release Deed the suit has come to be filed. As already submitted, the execution of the Release Deed is shrouded with suspicion and it is ample evident that the defendants have exercised undue influence upon the plaintiff's mother to execute the Release Deed. Considering the time lag between the death of the plaintiff's father and the execution of the Deed, the deposit made in the name of the minor showing a third party as guardian of the minor where the minor's mother is alive would all go to highlight the document is questionable and fraudulently obtained. Therefore, there is no necessity for the plaintiff to seek the relief of setting aside the document since the fraud vitiates all proceedings.

15.In the Judgment in **(2010) 8 Supreme Court Cases 383 [Meghmala and others v. G.Narasimha Reddy and others]**, the Hon'ble Supreme Court has observed as follows:

> *"33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person*

deceived. It is a cheating intended to get an advantage. (Vide Dr. Vimla Vs. Delhi Administration AIR 1963 SC 1572; Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550; State of Andhra Pradesh Vs. T. Suryachandra Rao AIR 2005 SC 3110; K.D. Sharma Vs. Steel Authority of India Ltd. & Ors. (2008) 12 SCC 481; and Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir & Ors. (2008) 13 SCC 170).

34. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved *when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P. Changalvaraya Naidu (supra); Gowrishankar & Anr. Vs. Joshi Amba Shankar Family Trust & Ors. AIR 1996 SC 2202; Ram Chandra Singh Vs. Savitri Devi & Ors. (2003) 8 SCC 319; Roshan Deen Vs. Preeti Lal AIR 2002 SC 33; Ram Preeti Yadav Vs. U.P. Board of High School & Intermediate Education AIR 2003 SC 4628; and Ashok Leyland Ltd. Vs. State of Tamil Nadu & Anr. AIR 2004 SC 2836).*

35. In kinch Vs. Walcott (1929) AC 482, it has been held that:

> *"....mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained y perjury." Thus, detection/discovery of*

constructive fraud at a much belated stage may not be sufficient to set aside the judgment procured by perjury.

36. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est."

16.Another fact this Court has to consider is "whether the mere recital in the Deed that the transaction was for the benefit of the minor would be sufficient for clothing the document with legal sanctity. In the Judgment reported in ***AIR 1971 Supreme Court 1028 [Smt.Rani and another V. Smt.Santa Bala Debnath and others]***,the Hon'ble

Supreme Court has held as follows:

> *"Legal necessity does not mean actual compulsion: it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity. Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstances in which the transaction was entered into. The recitals may be used to corroborate other evidence of the existence of legal necessity. The weight to be attached to the recitals varies according to the circumstances. Where the evidence which could be brought before the*

Court and is within the special knowledge of the person who seeks to set aside the sale is withheld, such evidence being normally not available to the alienee, the recitals go to his aid with greater force and the Court may be justified in appropriate cases in raising an inference against the party seeking to set aside the sale on the ground of absence of legal necessity wholly or partially, when he withholds evidence in his possession."

17.It is needless to state that the Court has to consider the paramount interest of the minor. The very transaction and the consideration that is said to have been paid, the manner in which the document Ex.B.1 has come into existence and the consideration that has been received by both the plaintiff and her mother jointly would clearly show that the interest of the minor has been given a total goby. Therefore, there is nothing to show the possession granted by the mother, especially, when the Deed reads that the release was on account of the fact that it is not possible for her to partition and to take possession of the property. The Courts below have rightly considered the evidence and allowed the suit. Therefore, the Substantial Questions of Law No.1 to 3 are answered against the defendant.

The Second Appeal is dismissed. There shall be no order as to costs.

03.01.2023

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

1.The I Additional District Judge,
Erode.

2.The II Additional Subordinate Judge,
Erode.

P.T. ASHA, J,

mps

S.A.No.1181 of 2005

03.01.2023