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CS.No.589 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2023

PRONOUNCED ON : 12.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.589 of 2015

and

A.No.3642 of 2021

1. M.G.Lalitha
2. M.G.Ramani Bai
3. M.G.Hamsa Bai

Plaintiffs

Vs

1. M.G.Vijayakumar
2. M.G.Rajan
3. G.Mallika (Died)
4. M.Thulasi @ M.Thulasingham
5. M.Sriman @ Sriman Narayanan

Defendants

Prayer:- This Civil Suit has been filed, under Order VII Rule 1 of CPC and Order IV Rule 1 of the Original Side Rules of the Madras High Court, for the reliefs as stated therein.

For Plaintiffs : Mr.K.C.Ramamurthy

For Defendants : D1-No Appearance
Mr.P.Satheesh Kumar-D3
D4 and D5



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JUDGEMENT

1. This Civil Suit has been filed, seeking a judgement and decree, for the following reliefs:-

(a) Declaration that the settlement deed, dated 27.10.2010 (Doc. No.2241/2010, SRO, Ashok Nagar) executed by M.T.Gopal in favour of the Defendants 4 and 5 is null, void and not binding on the Plaintiffs.

(b) (i) Preliminary Partition Decree, by dividing the 'Suit Property', bearing Plot No. C-715, Old Door No.21, New No.33, 12th Avenue, Ashok Nagar, Chennai 600083, more particularly described in the Schedule-A to the Plaint, by specifying and dividing the said property into 6 equal shares and allotting 1 share each to the Plaintiffs 1 to 3 and for separate possession thereof.

(b) (ii) Preliminary Partition Decree by dividing the property of an extent of 0.49 acre in Survey No.648/6 in Sriperumbudur Village, more fully described in Schedule B hereunder, by



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specifying and dividing the said property into 6 equal shares and allotting 1 share each to the Plaintiffs 1 to 3 and for separate possession thereof.

(b) (iii) Preliminary Partition Decree by dividing the property of an extent of 0.58 acre in Survey No.238/2 in Sriperumbudur Village, more fully described in Schedule C hereunder, by specifying and dividing the said property into 6 equal shares and allotting 1 share each to the Plaintiffs 1 to 3 and for separate possession thereof.

(c) For costs of the suit.

2. The case of the Plaintiffs, in brief, as set out, in the plaint is as follows:-

(a) The Plaintiffs are the daughters of one M.T.Gopal and the Defendants 1 and 2 and M.G.Mohan Babu are their brothers. M.G.Mohan Babu died on 09.12.2007, leaving behind him his wife, the 3rd Defendant and his sons, the Defendants 4 and 5, as his legal heirs. The 3rd Defendant G.Mallika died on 17.04.2017 leaving behind her two sons, the Defendants 4 and 5. The husband of the 3rd



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Plaintiff, Sundar died in 2014 and the 3rd Plaintiff has no source of income.

- (b) M.T.Gopal was the owner of the A-Schedule property, having purchased the same, by a registered sale deed, dated 05.11.1979. The A Schedule property is measuring an extent of 1 Ground and 1142 sq.ft. with a building consisting of Ground Floor + First Floor. The Ground Floor area is to an extent of 1170 sq.ft. and the First Floor area is an extent of 1170 sq.ft. The Second Floor area is an extent 250 sq.ft. and there are an Out House of an extent 150 sq.ft. in the rear side of the property and 3 Shops of 72 sq.ft. extent each in the front portion of the building.
- (c) The 3rd Plaintiff is living in a portion consisting of one room in the Ground Floor. The defendants 3, 4 and 5 are in occupation of the rest of the Ground Floor portion. The First Floor consists of 2 portions and is in occupation of 2 tenants, fetching a monthly rental income of Rs.8,000/- and Rs.7,500/- The 2nd Defendant is in occupation of the Out House. Out of the 3 Shops, one J.Pushparaj is in occupation of 2 Shops as a Lessee, paying Rs.4,000/- p.m. towards rent for the same.



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(d) The B-Schedule property to an extent of 0.49 acre in Survey No.648/6 in Sriperumbudur Village, now in Kancheepuram District, belonged to Thulasingham, the father of M.T. Gopal, having purchased the same from P. Natesan, by a registered sale deed, dated 19.03.1946. M.T.Gopal became entitled to this property by succession on the death of Thulasingham. The C-Schedule property to an extent of 0.58 acre in Survey No.238/2 in Sriperumbudur Village, belonged to Pattammal, the mother of M.T. Gopal, having purchased the same, along with another property, from R.Gajendran, by a registered sale deed dated 22.01.1951. M.T. Gopal became entitled to this property by succession.

(e) M.T. Gopal died on 30-03-2013, leaving behind the Plaintiffs and the Defendants 1 & 2 herein and the Defendants 3 to 5, who are the legal heirs of Mohan Babu, as his heirs. Under the Hindu Succession Act, 1956, the Plaintiffs and the Defendants 1 and 2 and Defendants 3 to 5 together are entitled to 1/6th undivided share each in the properties owned by late M.T. Gopal, on his demise. In 2004, M.T.Gopal executed a registered Will, dated 09.11.2004, cancelling his earlier Will, dated 21.03.1996. By the said Will dated



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09.11.2004, he had bequeathed the 'Suit Property' to the Defendants 1 and 2 and the Plaintiffs 1 to 3 in the ratio of 15%, 17/5%, 37.5%, 10%, 10% and 10% respectively.

(f) M.G. Mohan Babu died on 09.12.2007. Their father executed a settlement deed, dated 11.02.2008, settling the 'Suit property' in favour of the 4th Defendant. However, immediately thereafter within 2 months, he cancelled the said settlement deed, by a registered cancellation deed dated 09.04.2008. M.G.Mohan Babu did not have any avocation and had no source of income. Their father M.T. Gopal was looking after M.G.Mohan Babu and his family, taking care of all their requirements. After the death of M.G. Mohan Babu, their father M.T. Gopal continued to live with M.G Mohan Babu's family and continued to take care of all their requirements.

(g) After the death of M.T.Gopal on 30.03.2013, the Plaintiffs and the 1st and 2nd Defendants, came to know about the deed of settlement, dated 27.10.2010. The said settlement deed stipulated that the Settlor M.T. Gopal would continue to enjoy the income and benefits of the suit properties during his life time, without any power of alienation and that the 1st Settlee, i.e. the 4th Defendant herein,



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shall enjoy the income and benefits of the entire Ground Floor of an extent of 1170 sq.ft., 598 sq.ft. in the First Floor and area of 250 sq.ft. in the Second Floor, the Out House of an extent of 150 sq.ft. + 3 Shops in the front portion of the building during his life time, with no power to encumber or alienate the property settled in his favour and that the 2nd Settlee, i.e. the 5th Defendant herein, was given the First Floor of an area of 570 sq.ft. only, with no power to encumber or alienate the property settled in his favour. It is only after the life of the said Settlees, the Defendants 4 and 5 that their respective properties would go to their respective children, both male and female, with full powers of alienation.

(h) The said settlement deed dated 27-10-2010 was not executed by the said M.T.Gopal out of his free will and volition. The Last Will and Testament dated 09.11.2004, Kodambakkam, executed by M.T. Gopal was the first document of disposition made by him with free Will and Volition, the earlier Will dated 21-03-1996 having been cancelled by him by this Will. This is fortified by the fact that all the children of M.T. Gopal were given shares in the said property, though unequal. The said Will dated 09.11.2004 has not been



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cancelled and continued to be in force till the death of M.T. Gopal on 30.03.2013, upon which the said Will came into effect. Immediately after his son M.T. Mohan Babu died on 09.12.2007, in about of emotion, M.T. Gopal executed the settlement deed, dated 11.02.2008 settling the entire suit properties in favour of the 4th Defendant herein without any reference either to the 3rd Defendant or the 5th Defendant. Immediately on realising his folly, M.T. Gopal cancelled the said settlement deed, dated 11.02.2008, by a deed of cancellation dated 09.04.2008 barely 2 months later. During the period 09.04.2008 to 27.10.2010, there was nothing which made M.T. Gopal change his mind and contrary to the bequests made by his Will dated 09.04.2008 to settle the suit properties again in favour of the Defendants 4 and 5, retaining life interest for himself and giving only life interest to the settlees, delegating the ultimate absolute ownership to the next generation.

- (i) Late M.T. Gopal did not cancel the said Will dated 09.04.2008 either explicitly or by implication. Though M.T. Gopal was the absolute Owner of the suit properties and had discretion to dispose of the said property in whichever manner he wished, having regard to the facts



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and circumstances surrounding the said settlement deed .dated 27.10.2010, which deprives the legal heirs of M.T. Gopal their legitimate share in the suit properties, the same has to be viewed with circumspection.

(j) The Plaintiffs and the Defendants 1 and 2 had approached the 3rd Defendant to arrive at an amicable settlement amongst the all the children. However, the 3rd Defendant was adamant and would not relent and was not willing for an amicable settlement. From the time of death of M.T.Gopal, the 3rd Defendant has been collecting all the rents. In such circumstances, this Civil Suit has been filed, seeking the reliefs, as stated above.

3. The case of the 1st Defendant, as set out in the written statement, filed by him, is as follows:-

(a) The averments contained in Paragraphs 3 to 10 of the plaint are correct. . The father of the 1st Defendant always wanted his property to go to all his sons and daughters. His father used to confide all matters including his property matters with him. He was not aware of the said settlement deed dated 27.10.2010 and he came to know about the same only after the death of his father. The



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reasoning given in paragraph 14 of the plaint are true and the said settlement deed was not executed by his father out of his free will and volition.

(b) After the demise of the 3rd Defendant, the Plaintiffs and the other Defendants wanted to have an amicable settlement among themselves. They had various discussions among themselves and the properties mentioned in Schedule B and Schedule C in the Plaint, meant for the 1st Defendant and the 2nd Defendant were also pooled in along with Schedule A mentioned property, so that a comprehensive settlement could be arrived at. All the Parties agreed upon the terms of Settlement and the same were reduced to Writing. A date was fixed and all the Parties met to sign the Joint Memo of Compromise. However, the 2nd Defendant's son raised some flimsy doubts and the 2nd Defendant went back on settlement. The Joint Memo of Compromise was not signed. A copy of the said Joint memo of Compromise which was to be signed by all the Parties hereto, is annexed herewith. In the interest of all the parties hereto are concerned, a judgement and decree may be passed accordingly.



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4. The case of the Defendants 4 and 5, as set out in their written statement, is as follows:-

(a) The averments in paragraphs 5 and 6 are true. The 3rd Plaintiff is not living in the suit property. The defendants 4 and 5 are in the occupation of ground floor after the life time of the 3rd defendant. The other allegations about the rental income of Rs.8,000/- and Rs.7,500/- on the ground floor are also hereby denied. They vacated from the said position because of the problem created by the plaintiffs. The allegations in paragraph 7 about the lease are also hereby denied. The averments in paragraphs 8, 8A and 8B and 9 are admitted. It is denied that the legal heirs are entitled to 1/6th undivided share on the death of M.T.Gopal, as he disposed of his property, in particular Schedule A of suit property during his life time. On his will and volition, M.T.Gopal being the grandfather of these defendants based on the love and affection, settled the A-Schedule property in their favour. The allegations in paragraphs 10 and 11 are denied.

(b) The earlier settlement deed dated 11.02.2008 was executed only in favour of the 4th Defendant and therefore, the same was cancelled



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with an intention to execute a fresh settlement deed in favour of both these defendants.

(c) The allegations in paragraph 12, 13 and 14 are denied. The plaintiffs were well aware about the settlement deed executed in their favour. The settlement was executed only out of free will and volition. The stand taken by the plaintiffs that the will dated 09.11.2004 has not been cancelled and continued till the life time of M.T.Gopal is illegal and unethical as the plaintiffs are well aware of the settlement deeds executed in the year 2008 and the cancellation deed and also the fresh settlement deed executed on 27.10.2010, by which these defendants get right in Schedule A of suit property, followed by the will dated 18.11.2010 executed by M.T.Gopal for the disposal of suit Schedule B and C properties, vide document no.21 of 2010 in the office of SRO, Ashok Nagar in which it is specifically stated that the will dated 09.11.2004 was cancelled. After the death of M.T. Gopal, the plaintiffs and Defendants 1 and 2 while staying in Ashok Nagar residence (suit Schedule A property), took away the original settlement deed. Till date the original settlement deed has not been handed over to these defendants by the



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plaintiffs 1 to 3. On the other hand, the defendants 1 and 2 state that the original settlement deed is with the plaintiffs. The plaintiffs and as well as the defendants 1 and 2 are duty bound to hand over the original settlement deed to these defendants.

(d) There is no question of hiding the execution of the settlement deed from the plaintiffs and they know about the same at the time of execution itself. As the plaintiffs were already provided with sufficient sridhana, by disposing off the valuable properties, these arrangements were made. The allegations in paragraph 16 are hereby denied. Neither the plaintiff nor the defendants 1 and 2 have ever approached the 3 defendant i.e., mother of these defendants. The allegations in paragraph 17 are denied. Since the settlement deed executed by M.T. Gopal in favour of these defendants is valid and came into effect, the question of challenging the settlement deed does not arise. In such circumstances, the suit is liable to be dismissed.

5. In the pleadings of the parties, the following issues were framed:-

(1) Whether the settlement deed dated 27.10.2010 executed by M.T.Gopal is hit by Section 14 of the Transfer of Property Act?



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(3) What is the order as to costs?

6. On the side of the Plaintiffs, Ex.P1 to Ex.P7 were marked and PW.1 was examined. On the side of the Defendants, Ex.D1 to Ex.D10 were marked and DW.1 was examined.

Issue Nos.1 to 3:

7. The learned counsel for the plaintiffs submitted that the suit for partition seeking $1/6^{\text{th}}$ share of the three properties viz., A, B and C Schedule properties., Mr.M.T.Gopal wanted that his property should go to all his children and executed a Will dated 09.11.2004 bequeathing his property. In the year 2007, the father of the defendants 4 and 5 died. In the year 2008, 'A' schedule property was given to D4 by way of settlement deed dated 11.02.2008. After the death of Mr.M.G.Mohan Babu, he immediately cancelled the settlement by deed of cancellation dated 09.04.2008 which was marked as Ex.P5 Mr.M.T.Gopal died on 30.03.2013. The plaintiffs mainly contended that the Settlement Deed dated 27.10.2010 (Ex.P8) is against the provisions of Section 14 of the



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Transfer of Property Act.

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8. It has been further submitted that the Settlement made by Mr.M.T.Gopal to two minor grandsons with a stipulation that they can enjoy the property only during their lifetimes and thereabout the property should go to their children who are not born on the date of the original transfer by M.T.Gopal. If it has been mentioned that the property would vest in the unborn children when they attain 18 years of age during the lifetime of the two grandsons, the transfer would have been valid even though their transfer would be effected only after the life time of the two grandsons. The said transfer by way of settlement is invalid since no period has been mentioned. It is seen that Ex.P7 shows that no share in the 'A' schedule property to the plaintiffs 1 to 3 and the defendants 1 and 2. Moreover the settlement deed dated 27.10.2010 executed by M.T.Gopal is hit by Section 14 of the Transfer of Property Act.

9. The learned counsel for the defendants 4 and 5 has submitted that since it was self acquired property of Mr.M.T.Gopal and the same has been executed in favour of the defendants 4 and 5. In Ex.P7 settlement deed, the



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defendants 4 and 5 are entitled to the possession and enjoyment of the said property but they are not entitled to sell or mortgage the same. But the legal heirs of the defendants 4 and 5 have absolute rights over the said property.

10. The learned counsel for the defendants 4 and 5 has submitted that Section 13 provides for the transfer of property to an unborn person and that such transfer is made for the benefit of a person who is not in existence at the date of the transfer shall take place provided it extends to the whole of the remaining interest of the transferor in the property. In the present case also, life interest was created in favour of the defendants 4 and 5 and absolute interest was created in favour of the unborn children of the defendants 4 and 5. He further submitted that Section 14 makes provision for delay of granting vested interest to unborn, up to the age of 18 years. The rule mandates that vested interest can be delayed only up to 18 years of age to avoid the property being inalienable for unspecified periods of time as the life interest holder does not have the right to alienate the property. Section 20 of the Act permits an interest being created for the benefit of an unborn person who will acquire absolute interest upon his birth. The lineal descendants of defendants 4 and 5 (unborn children) will



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acquire absolute right This court also held that there is no provision which states that absolute interest cannot be created in favour of an unborn person. Creation of such a right is permissible. In support of his contention, the learned counsel for the defendants has relied on the following decisions:-

a) *F.M. Devaru Ganapathi Bhat Vs. Prabhakar Ganapathi Bhat – (2004) 2 SCC 504* in which it has been held as follows:-

“ g-12. There is no ban on the transfer of interest in favour of an unborn person. Section 20 permits an interest being created for the benefit of an unborn person who acquires interest upon his birth. No provision has been brought to our notice which stipulates that full interest in a property cannot be created in favour of an unborn person.”

In such circumstances, the suit is liable to be dismissed.

11. On a perusal of records, it reveals that A schedule of suit property is originally belonged to M.T.Gopal which is self acquired by him. He has every right to settle the property in favour of his grand daughters. Hence, the settlement deed dated 27.10.2010 executed by M.T.Gopal is not hit by Section 14 of Transfer of Property Act. Accordingly, Issue No.1 is answered against the plaintiffs. However, in so far as B and C schedule



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properties are concerned, the daughters and sons who are the legal heirs of M.T. Gopal are entitled to over the aforesaid suit property. Accordingly, the plaintiffs being 3 daughters and defendants 1 and 2 beings sons of M.T. Gopal are entitled to have each share over the aforesaid property. Further, one of his son, ie. M.G. Mohan Babu died, his wife and daughters were impleaded as defendants 3 to 5 in the suit. During the pendency of the suit, 3rd defendant died. Hence, the defendants 4 and 5 are the legal heirs of the 3rd defendant Hence, in respect of B and C schedule properties, the plaintiffs and defendants 1 and 2, defendants 4 and 5 jointly are entitled to 1/6th share, excluding A schedule property. Accordingly, Issue No.2 is answered in favour of the plaintiff. In so far as the claim of the plaintiffs in A schedule property is concerned, the suit is dismissed. In view of the decision as rendered above in the suit, A.No.3642 of 2021 is closed.

12. In the result, a preliminary decree is passed accordingly. No costs.

12.10.2023

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

gv

1. List of Witnesses examined on the side of the Plaintiff:-



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1. PW.1 – P.K.Nandagopal

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2. List of Exhibits marked on the side of the Plaintiff:-

1. Ex.P1 is the the original General Power of Attorney dated 09.08.2021
2. Ex.P2 is the the certified copy of the sale deed dated 05.11.1979 vide Doc.. no.4336/1979.
3. Ex.P3 is the the certified copy of the Will dated 09.11.2004 Doc.No.129/111/2004.
4. Ex.P4 is the the certified copy of the settlement deed dated 11.02.2008 vide Doc No.280/2008.
5. Ex.P5 is the the certified copy of the cancellation deed dated 09.04.2008 vide Doc.No.914/2008.
6. Ex.P6 is the the printout of the death certificate of M.T. Gopaul dated 25.09.2014.
7. Ex.P7 is the the certified copy of the settlement deed dated 27.10.2010

3. List of Witnesses examined on the side of the Defendants:-

1. DW.1 – M.Thulasi @ M.Thulasingam

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A.A.NAKKIRAN, J.

gv/Srcm

**Pre-Delivery Judgement in
CS.No.589 of 2015
and
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12.10.2023