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S.A.No.349 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM

MR.JUSTICE N.SESHASAYEE

S.A.No.349 of 2023
and C.M.P.No.10580 of 2023

S.R.Charles Balavendar Reddy

... Appellant

Vs.

1.L.Amalarani

J.Mary Theresa (died)

2.The Sub Registrar,
Kodambakkam,
Chennai-600 024

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, seeking to set aside the judgement and decree dated 14.12.2022 passed in A.S.No.15 of 2022 on the file of the XIX Additional City Civil Court, Chennai reversing the judgment and decree dated 26.10.2021 passed by the XIV Assistant City Civil Court, Chennai in O.S.No.9508 of 2011.



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For Appellant : Mr.K.Sharath Chandran

For Respondents : M/s.A.Ashwini Kumar
for P.Emmanuel
for R1

Mr.S.P.Karthik
Government Advocate
for R2

JUDGMENT

The 2nd defendant in O.S.No.9508 of 2011 is the appellant herein. The suit was laid by the plaintiff challenging the unilateral cancellation of Ex.A4, settlement deed, dated 19.11.2002 by the 1st defendant.

2.The facts fall within a narrow compass:

- A certain Mary Theresa was the original owner of the suit property. She had three sons, of which we are now concerned only with two. One of her sons is the 2nd defendant / appellant herein and the other son was one Sundar. Vide Ex.A4, settlement deed dated 19.11.2002, the said Mary Theresa settled the suit property in favour of Sundar reserving life estate for her and the remainder estate to vest with the said Sundar.



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- While so, Sundar died on 24.04.2006. A couple of years later, to be precise on 19.08.2008, Mary Theresa executed Ex.A13, under which she cancelled Ex.A4, settlement deed. Contemporaneously, she executed Ex.A14, settlement deed in favour of her other son, the 2nd defendant.
- Promptly, the widow of Sundar instituted the suit for declaration that Ex.A13 and Ex.A14, documents are invalid and void along with certain ancillary relief of injunction. The suit was resisted by the 2nd defendant and the matter went to trial. The bone of contention before the trial Court revolved around the construction of Ex.A4, settlement deed. While the plaintiff contended that it was a settlement deed, the defendants would contend that it was only a Will. The trial Court considered it to be a Will, and the plaintiff was non suited.
- The matter reached the First Appellate Court at the instance of the plaintiff in A.S.No.15 of 2022, which constructed the document as a



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settlement deed. This is now under challenge.

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3.This appeal is admitted for considering the following Substantial Question of Law:

i) *"Was not the First Appellate Court erred in misconstruing Ex.A4 as a settlement deed ?"*

4.Learned counsel for the appellant made a pointed submission on the construction of Ex.A4. This document is styled as a settlement deed executed by Mary Theresa, 1st defendant in favour of her son Sundar. In particular, the learned counsel took this Court through the last recital and Clause 1 of the settlement deed. They read as below:

"And whereas the Settlor herein is living with the Settlee and the Settlee is taking all the care for the Settlor for her food, shelter, medicines and all day to day requirement and the Settlor herein therefore out of natural love and affection towards the settlee, he being her son and also to make provision for him and to avoid any litigation among her legal heirs after her life time decided to settle. the schedule property in favour



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..... after her demise the Settlee herein Mr.S.R.Sundar alias S.R.Robert Bellarmine Dominio Savio her son shall enjoy the schedule property absolutely with all power of alienation:

1. declares that the schedule property i.e land and building bearing old door No.65, New No.36,.....
..... is settled retaining life interest to herself and after her demise the settlee Mr.S.R.Sundar alias S.R.Robert Bellarmine Dominio Savio, her son shall take the schedule property absolutely with all power of alienation and this settlement is made by her out of"

5.Taking this Court through the ratio in **Ramaswami Naidu vs. Gopalakrishna Naidu (90 L.W. 430)**, the learned counsel submitted that for identifying whether a document is a settlement deed or a Will, the criterion is whether the property gets vested on the settlee in praesenti or in future. If the recital taken along with Clause 1, above, are read together, it conveys an idea that the intent of the settlor is not to transfer title to her son Sundar in praesenti, but only after her demise. He also alleged that Clause 4 of the



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settlement deed, which renders the document irrevocable and relied on by the First Appellate Court, is not conclusive as to the character of the document.

6.This Court finds that the appellant is on the back foot since it is his view that the recital coupled with Clause 1 and Clause 7 of Ex.A4 does not give this Court an impression that the Settlor intended to defer vesting of title to her son Sundar after her demise. What the extracted portion of the recital and the Clauses in the settlement deed indicate is that the settlor has reserved life estate for her in the property and only deferred the actual physical enjoyment of the property by the settlee till after her demise. This is also reinforced by Clause 7, which reads as follows:

"7.The Settlee shall take the possession of the schedule property settled herein in this deed after the demise of the Settlor, absolutely with all power of alienation."

7.On a combined reading of these Clauses, this Court is satisfied that the finding of the First Appellate Court that Ex.A4 is a settlement deed does not deserve to be interfered with.



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8.In conclusion, this Court does not find any merit in the Second Appeal.

This Second Appeal stands dismissed accordingly. No Costs. Consequently, the connected miscellaneous petition is closed.

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Anu

Index : yes / no

Internet : yes / no

Speaking / Non Speaking order

To.

1.The XIX Additional City Civil Court, Chennai

2.The XIV Assistant City Civil Court, Chennai

3.The Sub Registrar,
Kodambakkam,
Chennai-600 024



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