



SA. No.1661 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11. 2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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1. Sivanandan (Died)
2. Kamalammal
3. S.Rani
- 4.S.Padmanabhan
- 5.S.Velu
- 6.S.Meena

(A1 Died, A3 to A6 are brought as legal heirs of the deceased A1 vide Court order dated 25.04.2023 made in CMP Nos. 6274, 6275 & 6276 of 2018 in S.A No. 1661 of 2002(VLNJ))

...Defendants/Respondents/ Appellants
Vs.

V.Lalitha

...Plaintiff/Appellant/Respondent

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S No. 41 of 202 dated 26.06.2002 on the file of the 6th Additional City Civil Judge, Madras, reversing the judgment and decree of the 18th City Civil Court, Madras in O.S No. 8641 of 1997 dated 15.11.2000.



For Appellants : Ms. Jayashree Narashimhan

For Respondent : Mr. S. Nabirajan

JUDGMENT

This second appeal has been filed against the judgment and decree passed in A.S No. 41 of 202 dated 26.06.2002 on the file of the 6th Additional City Civil Judge, Madras, reversing the judgment and decree of the 18th City Civil Court, Madras in O.S No. 8641 of 1997 dated 15.11.2000.

2. The appellants herein are the defendants in suit OS No. 8641 of 1997 filed by the respondent herein/plaintiff for the relief of declaration and other consequential relief. The case of the plaintiff is that originally suit property with a extent of 800 square feet, as described in the plaint schedule was allotted to the plaintiff's father by the Slum Clearance Board. After the death of the plaintiff's father name was transferred to his mother/Second defendant. Thereafter, she had given 460 square feet back portion of the suit property to the first Defendant and 360 square feet front portion of the suit property to the plaintiff by way of settlement. Thereafter, back portion which



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was given to first defendant was sold by her to one Munusamy and she was in possession of the front portion of the suit property i.e., 360 square feet and same was settled in favour of the plaintiff. Thereafter, she enjoyed the property as absolutely from 1993 onwards, out of 340 square feet the first defendant occupied 160 square feet thereafter she the asked the first defendant to vacate the premises but he refused. Thereafter, she issued the notice to the first defendant on 20.02.1997. Thereafter, the first defendant by harassing the second defendant cancelled the settlement deed dated 04.09.1992 which stands in the name of the plaintiff, thereafter the first defendant tried to sold the same to the third party. Hence, the plaintiff filed the suit to declare the cancellation of settlement deed as null and void and other consequential relief.

3. The defendants admitted the relationship with the plaintiffs but denied the division of the property as claimed by the plaintiff. The defendants submitted that from the year 1968 plaintiff resided at Uttar Pradesh and in the year 1975 he was came to chennai and she was permitted to occupy the portion of the suit property but by giving false representation she obtained thumb impression from her mother and executed settlement deed and the defendants were instructed to vacate the suit



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property then only the defendants known about the same, immediately the second defendant cancelled the said settlement deed. Thereafter they enjoyed the property as absolute owner hence he prayed to dismiss the suit.

4. Before the Trial Court five issues were framed, on the side of plaintiff was examined as P.w.1, and marked Ex.A1 and Ex.A10 documents, on the other side, D.W.1 to D.W.4 was examined and marked Ex.B1 as document. After considering the submissions on either side, the Trial court dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal before the lower appellate Court, which independently analysed the facts and evidence of the case and allowed the appeal. Challenging the same, the defendants preferred this second appeal. During the pendency of the case first defendant died hence his legal heirs impleaded as parties who are appellants herein.

5. The learned counsel for the appellants submitted that the lower appellate Court failed to take note of the fact that the plaintiff/respondent herein not established the said settlement deed as executed by her mother with consent but without appreciating the same the lower appellate Court granted relief in favour of the respondent herein as such is unjust and liable to be aside. Further, he submitted that through D.W.1 the defendant proved



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the said settlement deed was not executed by her with consent by taking advantage of her illiteracy it was manipulated by the plaintiff. Though it was properly appreciated by the Trial Court, the learned appellate Court decreed the suit in favour of the plaintiff as such is erroneous and liable to be aside. Further, he would submit that the cancellation of the settlement deed made by the second defendant is absolutely bind the plaintiff. Hence he prays to allow this petition.

6. By way of reply, the learned counsel for the respondent submitted that settlement deed was executed by the second defendant in favour of the plaintiff on the some portion of the property was allotted to son/first defendants and the same was admitted by both parties under such circumstances it is false to state that plaintiff obtained signature from her mother/second respondent by giving false representation and the same was rightly appreciated by the lower appellate Court which needs no interference. Further, he submitted that five years after the execution of the settlement document at the instigation of the first defendant his mother/second defendant cancelled the document and the same has been rightly accepted by the lower appellate Court. Hence he prayed to dismiss this petition.



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7. Admittedly, plaintiff and the first defendant are daughter and sons of the second defendant and it is undisputed fact that an extent of 800 square feet belongs to the Slum clearance board only the lease hold right was transferred to the plaintiff's father after his demise which was transferred to plaintiff's mother/second defendant but the contention of both parties is that they are claiming absolute right over the property but as per the recitals of Ex.A1 document the lease hold right alone was transferred to the plaintiff's father with the lease right along with super structure was transferred. As per Ex.A1, the plaintiff's mother/second defendant given 360 square feet to the plaintiff and kept 460 square feet for herself and the remaining portion of the property given to the first defendant and her brother on 04.09.1992 on the same date front portion was allotted to the first defendant in turn which sold to one Munusamy this has not been denied by the first defendant. If at all plaintiff by giving false representation and obtained document the second defendant should have raised objection on that day reveals that knowingly said settlement deed was executed by second defendant to her son. Furthermore, there is no proof on the side of the defendant that the plaintiff had forcefully obtained signature in the document and manipulated



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the same as settlement deed. The lower Appellate court rightly appreciated the oral and documentary evidence concluded that settlement deed stands in the name of the plaintiff is valid one. Further, the Trial Judge without appreciating this facts and circumstances erroneously held that plaintiff not proved the execution of the settlement deed as such is totally erroneous one. Further, the lower appellate court rightly appreciated the facts and held that settlement deed stands in the name of the plaintiff as such is valid needs no interference. Furthermore, after five years of settlement deed the second defendant cancelled the same without any reason as such is not acceptable for the reason that it is settled proposition that unilaterally she has no right to cancel the document and the same was rightly appreciated by the lower appellate Court. Accordingly, question of law 1 is answered.

8. Furthermore. there is no evidence on the side of the defendant to establish that the settlement deed was obtained by force, on the other hand the plaintiff established that Ex.A1 was executed by her mother out of her own consent. Accordingly, this second appeal is dismissed.

9. In result, this second appeal is dismissed. No Cost.



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Consequentially, Connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The 18th City Civil Judge, Chennai.
2. The 6th Additional City Civil Judge, Chennai.
- 2.The Section Officer,
V.R Section.

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03.11.2023