



S.A.No.181 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.04.2022

Pronounced on : **05.06.2023**

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

S.A.No.181 of 2022
and
C.M.P.No.3597 of 2022

1.D.Gurusamy
2.G.Prema

... Appellants

Vs.

Yamini

... Respondent

Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree in A.S.No.276 of 2019 dated 06.08.2020 on the file of the XVII Additional City Civil Court, Chennai, which confirms the judgment and decree passed in O.S.No.3676 of 2016 dated 26.07.2019 by the IV Assistant Judge (FAC), II Assistant City Civil Court, Chennai, to set aside the same by allowing the appeal.

For Appellants : Mr.C.Umashankar

For Respondent : Mr.D.Bennington



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J U D G M E N T

The defendants in the suit in O.S.No.3676 of 2016 on the file of the IV Assistant Judge (FAC), II Assistant City Civil Court, Chennai, are the appellants in the above Second Appeal.

2.The respondent as plaintiff filed the suit in O.S.No.3676 of 2016 for a declaration declaring the settlement cancellation deed executed by the 2nd appellant bearing Doc.No.1115 of 2007 on the file of the Sub-Registrar's Office, Mylapore, Chennai, as illegal, invalid and void; for a mandatory injunction directing the appellants to hand over the original documents pertaining to the suit property to the respondent; for a permanent injunction restraining the appellants herein from interfering with the respondent's peaceful possession and enjoyment of the suit property and for permanent injunction restraining the appellants from alienating or encumbering the suit property. The suit property is a house and plot measuring an extent of 1200 sq. ft.

3.The respondent is the daughter of 1st appellant through his first wife. The 2nd appellant is the second wife of 1st appellant.



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4.It is the case of respondent that she is the absolute owner of the suit property. It is the case of respondent that her mother died soon after the respondent/plaintiff born and the 1st appellant married the 2nd appellant, who is the 2nd defendant in the suit. It is the further case of respondent that the suit property was purchased in the name of respondent/plaintiff and 2nd appellant under a sale deed, dated 02.09.1985, out of the funds belonged to the plaintiff. It is her further case that the 2nd appellant executed a settlement deed in favour of the 1st defendant on 20.12.1989 and the 1st defendant thereafter executed a release deed along with the 2nd defendant relinquishing their undivided half share in the suit property in favour of plaintiff vide Doc.No.2074 of 1989. The plaintiff admitted that the defendants leased out the suit property and enjoyed the rental benefits up to the year 2015. It is stated in the plaint that the plaintiff used to visit the suit property and used to clean and maintain the house regularly. It is also the plaintiff's case that, after the demise of her mother, she was taken care of by the parents of her mother and that the property itself was purchased only for her benefit.

5.In the plaint, it is stated that the 1st defendant evicted the tenants in the month of December, 2015 and the plaintiff got the key from the defendants. She contended that the suit property is in her enjoyment as



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absolute owner. According to the plaintiff, dispute arose when her father and the 1st appellant, refused to hand over original documents relating to the suit property and informed the plaintiff that the 2nd appellant is also having half share in the suit property. It is the plaintiff's case that, thereafter, she came to know that the 2nd defendant had executed a deed cancelling the settlement deed executed by her in favour of 1st defendant. Stating that, in the month of June, 2016, when the plaintiff was living in the suit property, some unknown persons visited the property under the pretext that they are going to purchase the property from the defendants, the plaintiff came forward with the suit for the reliefs as stated *supra*.

6.The suit was contested by the appellants. In the written statement filed by the 1st appellant, it is contended that the father of his deceased first wife, namely the grandfather of plaintiff, is a famous astrologer, popularly known as Balajoshiyar, and due to the pressure and influence by his father-in-law, the 1st defendant agreed to purchase the suit property in the name of plaintiff. Since the plaintiff was just three years old, it is the case of 1st defendant that the entire consideration for the property was paid by the 1st defendant. Though it is admitted that the 2nd defendant executed a settlement deed in favour of 1st defendant under document, dated



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20.12.1989, conveying her undivided half share in the suit property, it is contended that, due to threat and coercion, the release deed dated 18.02.1992 in favour of plaintiff was executed by defendants. It is stated that the settlement deed and the release deeds were not acted upon. Stating that the 2nd defendant executed a cancellation deed, dated 02.05.2007, in order to bring back the ownership of the 2nd defendant in respect of the undivided half share in the suit property, the suit was resisted only on the ground that the plaintiff cannot claim exclusive ownership over the property.

7.The 1st defendant/1st appellant also contended that the plaintiff, who never claimed ownership or possession for more than 30 years, is not entitled to claim right over the property. The 1st defendant further contended that the suit property is in their possession till the suit was filed. The averments in the plaint to the effect that the plaintiff was visiting the property for cleaning and maintaining the same, were specifically denied. The suit was also resisted on the ground that the suit property is undervalued and that the plaintiff cannot maintain a suit without a prayer for declaration of title and recovery of possession.



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8.The trial Court framed the following issues :

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- i. *Whether the plaintiff is entitled to the relief of declaration as prayed for ?*
 - ii. *Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for ?*
 - iii. *Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendant from interfering with plaintiff's peaceful possession as prayed for ?*
 - iv. *Whether the plaintiff is entitled to the relief of permanent injunction restraining defendant from alienating the suit property as prayed for ?*
 - v. *Whether the defendant is in possession of the suit property ?*
 - vi. *To what other reliefs is the plaintiff entitled to ?*

The trial Court also framed the following additional issue :

Whether the Court fee paid on the plaint is not proper ?

9.Before the Trial Court, plaintiff examined herself as PW1 and marked Exs.A1 to A4. First defendant gave evidence as DW1 and marked Exs.B1 to B9. The trial Court, on the admitted facts, held that the plaintiff is entitled to the relief of declaration. Since the plaintiff became the absolute owner of the property, the trial Court further held that she is entitled to the relief of mandatory injunction. The plaintiff was found entitled to the relief of permanent injunction by holding that she is in peaceful possession of the



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property, as the father himself leased out the property only as a representative of the plaintiff. Since the plaintiff is not a party to the cancellation deed dated 02.05.2007, the trial Court held that the suit need not be valued under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1965. After answering every issue in favour of the plaintiff, the suit was decreed in entirety in favour of plaintiff.

10. Aggrieved by the judgment and decree of the trial Court, the appellants preferred an Appeal Suit in A.S.No.276 of 2019 before the XVII Additional City Civil Court, Chennai. The Appellate Court confirmed the findings of the trial Court on all issues and dismissed the appeal.

11. Aggrieved by the concurrent judgment and decree of the Courts below, the above Second Appeal is filed by the defendants in the suit.

12. In the memorandum of grounds, the following substantial questions of law have been raised by the appellants :

- i. Whether the Courts below have properly construed Exhibit A2 under the provisions of the Transfer of Property Act ?*



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- ii. Whether the Courts below have properly decided to arrive at a conclusion with regard to the declaration of the suit property in favour of the plaintiff ?*
- iii. Whether the suit is barred by law of limitation particularly by virtue of Article 58 of the Limitation Act, 1963 ?*
- iv. Whether the Courts below have properly construed the pleadings with the evidence ?*
- v. To what reliefs, the appellant is entitled to ?*

13. When the Second Appeal came for admission, though this Court was not inclined to admit the appeal, learned counsel appearing for the appellants submitted that there is a possibility of settlement between the parties. This Court, having regard to the fact that the dispute is primarily between father and daughter, issued notice before admission. After hearing the parties, this Court realised that there is no possibility of settlement and hence, the Second Appeal is disposed of by this judgment on merits. Heard the learned counsels appearing for the appellants and respondent.

14. The following facts are not in issue :

The suit property was purchased in the name of plaintiff and 2nd appellant under Ex.A1 dated 02.09.1985. It is the case of plaintiff that the property was purchased out of the funds belonged to the plaintiff on the basis



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of recitals in the document. No other independent evidence is produced before the Courts below to prove that the consideration for the property came from the assets or savings of plaintiff. However, the property having been purchased by father can be presumed to be for the benefit of daughter-plaintiff who was then a minor. Defendants have categorically admitted the due execution of the settlement deed by 2nd appellant in favour of 1st appellant. It was only on the strength of the settlement deed under Ex.A2 dated 20.12.1989, defendants 1 and 2 later executed a release deed under Ex.A3 dated 18.02.1992, relinquishing their right in favour of plaintiff.

15.Both the Courts have concurrently held that the settlement deed under Ex.A2 is irrevocable and that the same is not subject to any condition or any liability on the plaintiff. Since the settlement deed under Ex.A2 dated 20.12.1989 is not subject to any condition, the 1st defendant became absolute owner in respect of undivided one half share over the property under the settlement. The release deed under Ex.A3 dated 18.02.1992 would show that the appellants have relinquished their right in the suit property. Nearly 18 years later, the 2nd defendant cancelled the settlement deed by a document known as “settlement cancellation deed” dated 02.05.2007 (Ex.A4). When the 2nd defendant/2nd appellant has already conveyed her right under the



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previous settlement deed, she has no right over the suit property as owner.

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16.The question is whether the settlement deed under Ex.A2 dated 20.12.1989 can be unilaterally cancelled after 18 years for no reason. This Court finds no justification or reason shown in the document Ex.A4. When a settlement deed is executed and the same is acted upon, then it is not within the power of donor to recall or cancel the settlement deed unilaterally. The validity of unilateral cancellation of registered settlement deed is considered by a Full Bench of this Court in the case of ***Sasikala v. Revenue Divisional Officer-cum-Sub Collector, Devakottai, Sivagangai District [W.P.(MD).Nos.6889, 8330, 13297 of 2020, 11674 of 2015 and W.A(MD)No.800 of 2022, dated 02.09.2022]***, wherein, it is held as follows :

“44.From the discussions and conclusions we have reached above with reference to various provisions of Statutes and precedents, we reiterate the dictum of Hon'ble Supreme Court in Thota Ganga Laxmi and Ors.-vs Government of Andhra Pradesh & Ors., reported in (2010) 15 SCC 207 and the Full Bench of this Court in Latif Estate Line India Ltd., case, reported in AIR 2011(Mad) 66 and inclined to follow the judgment of three member Bench of Hon'ble Supreme Court in Veena Singh's case reported in (2022) 7 SCC 1 and the judgment of two member Bench of Hon'ble Supreme Court in



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Asset Reconstruction Company (India) Ltd., case, reported in 2022 SCC On-line SC 544 for the following propositions:

(a) A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.

(b) Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property.

(c) Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.

(d) The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration.

(e) However, an absolute deed of sale or deed of conveyance which is duly executed by the transferor may be cancelled by the Civil Court at the instance of transferor as contemplated under Section 31 of Specific Relief Act.

(f) As regards gift or settlement deed, a deed of revocation or cancellation is permissible only in a case which fall under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgment.

(g) The legal principles above stated by us cannot be



applied to cancellation of Wills or power of Attorney deed which are revocable and not coupled with interest.

45.As a result of our forgoing conclusions, we answer the reference by holding that the Registrar has no power to accept the deed of cancellation to nullify the deed of conveyance made earlier, when the deed of conveyance has already been acted upon by the transferee. Since anyone may try to mislead or misinterpret our judgment by referring to the question of reference we insist that our answer to the reference should be understood in the light of our conclusions summarised in the previous paragraph.”

17.Since the settlement deed in this case is not the one covered by Section 126 of the Transfer of Property Act, 1882, this Court finds that the document “settlement cancellation deed” under Ex.A4 dated 02.05.2007 is null and void. The release deed under Ex.A3, dated 18.02.1992, is capable of conveying the one half share in the suit property. Since the plaintiff is a co-owner as per Ex.A1 having half share, she became the absolute owner of the entire suit property under Ex.A3.

18.The Courts below have framed specific issue on the question of validity of the settlement cancellation deed and on the plaintiff's possession and enjoyment of the suit property. It is admitted that the property was leased out by the 1st defendant to tenants. The rental agreement produced by



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the appellants themselves has been considered by the Courts below to hold that the 1st defendant has recognized the absolute right of plaintiff over the suit property.

19.Ex.A2 is the settlement deed. A settlement deed cannot be unilaterally cancelled. Though Section 126 of the Transfer of Property Act contemplates a situation where under the cancellation is possible, the facts of this case do not warrant examining the case as one falls under Section 126 of the Transfer of Property Act. Hence, this Court has no hesitation to hold that the unilateral cancellation of settlement deed is impermissible and the document Ex.A4 is void. This Court finds that the findings of the trial Court are supported by valid reasons. It is to be noted that the settlement deed under Ex.A2 was acted upon by the subsequent release deed under Ex.A3 dated 18.12.1992. When the defendants had acted on the basis of the settlement deed under Ex.A2 to execute the release deed under Ex.A3 in favour of the plaintiff creating interest in favour of plaintiff, who is a third party to the settlement deed, it will be against public policy if this Court holds that unilateral cancellation of settlement deed can be given effect to in this case. ***Therefore, this Court finds no substance in the 1st substantial question of law.***



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20. When the plaintiff became the absolute owner of the suit property and plaintiff is not a party to Ex.A4, this Court is unable to agree with the submission of the learned counsel for the appellants that the Courts below have not properly considered the issue before granting the declaratory relief. ***Therefore, the 2nd substantial question of law is answered in favour of respondent/plaintiff.***

21. The suit property was purchased in the year 1985. The settlement deed was executed on 20.12.1989 under Ex.A2. Following the settlement deed, the 1st defendant executed a release deed under Ex.A3 in favour of his daughter, namely the plaintiff. Since this Court has already held that the settlement cancellation deed dated 02.05.2007 under Ex.A4 is void and not binding on the plaintiff, the plaintiff has three years from the date of knowledge. The specific case of the plaintiff that she came to know about the cancellation of settlement only in the year 2007, is not an issue raised in this appeal. Even in the memorandum of grounds, the appellants admitted that the plaintiff is in possession of the property. Therefore, this Court is unable to interfere with the concurrent finding of the Courts below that the suit is not barred by limitation. ***Therefore, 3rd substantial question of law is answered in favour of respondent/plaintiff.***



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22.The Courts below have answered all the issues with the full understanding of the pleadings and evidence. Learned counsel for the appellants is unable to demonstrate before this Court as to how the findings of the Court below are perverse or erroneous. This Court is unable to interfere with the findings on facts, as the Courts below have considered and decided every issue with the proper understanding of pleadings in the light of evidence on record after proper appreciation. ***Therefore, 4th substantial question of law is answered in favour of respondent/plaintiff.***

23.In the light of the concurrent findings on facts by the Courts below, this Court is unable to find any substance in any of the substantial questions of law raised in the memorandum of grounds. Therefore, this Court finds no merit in this Second Appeal and **this Second Appeal is dismissed.** No costs. Consequently, connected miscellaneous petition is closed.

05.06.2023

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S.S. SUNDAR, J.

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To

1.The XVII Additional Judge,
City Civil Court,
Chennai.

2.The II Assistant Judge,
City Civil Court,
Chennai.

Judgment in
S.A.No.181 of 2022

05.06.2023