



S.A.No.617 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.617 of 2017
and C.M.P.No.15264 of 2017

1.K.Adhikesavan

2.Chandran

3.Mari

4.Renuka

5.Vijaya

... Appellants

VS.

M.Sasikala

... Respondent

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 22.11.2016 made in A.S.No.37 of 2016 on the file of the learned XVI Additional City Civil Court, Chennai confirming the judgment and decree dated 03.08.2015 made in O.S.No.4394 of 2010 on the file of the learned XVIII Assistant City Civil Court, Chennai.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.P.K.Sivasubramaniam



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J U D G E M E N T

The defendants 2 to 6 in the suit are the appellants. The respondent/plaintiff filed a suit for declaration of title and recovery of possession. The suit was decreed in favour of the respondent/plaintiff. The first appeal filed by the appellants was dismissed by the First Appellate Court by confirming the findings of the Trial Court. Aggrieved by the concurrent findings against them, the appellants have come by way of this second appeal.

2. According to the respondent/plaintiff, the suit property originally belonged to Ganapathy Mudaliar. He died on 16.08.1943 leaving behind his son Viswanatha Mudaliar, his son's widow Annammal and A.K.Balasubramanya Mudaliar son of Visvanatha Mudaliar. The said Annammal wife of Viswanatha Mudaliar died on 16.08.1965 and one Saraswathy Ammal is the daughter of said Viswanatha Mudaliar. After death of Ganapathy Mudaliar and Annammal, A.K.Balasubramanya Mudaliar conveyed his portion in the suit property in favour of Saraswathy Ammal by a registered Sale Deed dated 12.10.1966 (Ex.A5). Thus, Saraswathy Ammal became absolute owner of the entire property.



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Subsequently, the said Saraswathi Ammal by Settlement Deed dated 28.10.1988 (Ex.A10) settled 2232 sq.ft., of suit property on southern side in favour of the respondent/plaintiff. The said Saraswathi Ammal executed another Settlement Deed in respect of 1800 sq.ft., of suit property retained by her on the northern portion under another Settlement Deed dated 13.02.1989 (Ex.A11) in favour of the respondent/plaintiff. Thus, respondent/plaintiff claimed title over the suit property. It was also claimed by the respondent that the mother-in-law of deceased 1st defendant and grand mother of 1st appellant/2nd defendant were permitted to reside in the north western corner of the premises settled in favour of appellants (the 1st defendant died pending suit and the appellants 2 to 5 were brought on record as her legal representatives arrayed as defendants 3 to 6). As the appellants herein acted against the interest of the respondent, a notice was issued on 05.05.2009 (Ex.A37) cancelling the licence granted to them to occupy the suit property. As the appellants came up with a reply stating that they had independent title over the suit property, the respondent was constrained to file the suit for declaration of title and recovery of possession.



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3. The appellants/defendants filed a written statement claiming suit property was a Natham Poromboke Land, which was originally under occupation of one Uttirammal, who was mother-in-law of deceased 1st defendant and grandmother of the 1st appellant/2nd defendant. After death of Uttirammal, the property was in possession and enjoyment of her son and husband of deceased 1st defendant-Kanniah Naidu. After death of Kanniah Naidu, 1st defendant was in absolute possession and enjoyment of the suit property and she settled the same in favour of the 2nd defendant on 22.03.1990. Thus, the 1st appellant/2nd defendant became absolute owner of the suit property. The appellants also denied the title and possession of the respondent over the suit property. Lateron, the appellants filed additional written statement raising a plea that respondent was not a daughter of Saraswathi Ammal and at no point of time, the said Saraswathi Ammal adopted the respondent as her daughter. It was also claimed by the appellants that the Settlement Deeds executed by Saraswathi Ammal in favour of respondent on the allegation that respondent was daughter of Saraswathi Ammal was not valid and the same should be declared as null and void and not binding on the appellants. It was also claimed by the appellants that respondent was not a daughter of Saraswathi Ammal and



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therefore, she was not entitled to maintain the present suit. In the additional written statement, the appellants also raised a counter claim seeking declaration that Settlement Deeds executed by Saraswathi Ammal in favour of the respondent/plaintiff dated 28.10.1988 and 13.02.1989 were null and void and the same shall not bind the appellants, since the respondent was not own daughter of Saraswathi Ammal.

4. On these pleadings, the respondent/plaintiff was examined as PW.1 and 40 documents were marked on her side as Exs.A1 to A40. The 1st appellant/2nd defendant was examined as DW.1 and one G.Chockalingam was examined as DW.2. On behalf of appellants, 16 documents were marked as Exs.B1 to B16.

5. The Trial Court on consideration of evidence available on record, came to the conclusion that Settlement Deeds executed by Saraswathi Ammal in favour of respondent/plaintiff were valid documents and consequently, decreed the suit as prayed for. The counter claim filed by the appellants was dismissed. Aggrieved by the same, the appellants preferred an appeal in A.S.No.37 of 2016 on the file of XVI Additional City Civil



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Court, Chennai. The First Appellate Court affirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the appellants have come by way of this second appeal.

6. At the time of admission, this Court formulated the following substantial questions of law:-

“(a) Whether the Courts below are correct in decreeing the suit by ignoring the prevarigative stand of the plaintiff with regard to her legal status particularly in the absence of any legal evidence to prove her relationship as the natural or adopted daughter of Saraswathy Ammal?”

“(b) When the presumption under Section 90 of the Evidence Act does not apply to a copy or certified copy even though 30 years old, whether the Courts below are right in presuming the genuineness of Ex.A5 dated 12.10.1966 by ignoring the law laid down by the Hon'ble Supreme Court in 1996 (8) SCC 357?”

7. Elaborating the substantial questions of law framed at the time of admission, the learned counsel appearing for the appellants submitted that



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the respondent failed to prove that she was adopted daughter of Saraswathi Ammal. When she failed to prove that she was natural or adopted daughter of Saraswathi Ammal, the Settlement Deeds said to have been executed by Saraswathi Ammal in favour of respondent could not be treated as a valid document. The learned counsel further submitted that the respondent failed to examine any Attestor to the Settlement Deeds and proved the same in accordance with Section 68 of the Evidence Act and therefore, the Settlement Deeds relied on by the respondent were not proved. Alternatively, the learned counsel submitted that even assuming Settlement Deeds were valid, the Settlor-Saraswathi Ammal claims right under Sale Deed executed in her favour under Ex.A5 and the said document was not proved by the respondent in the manner known to law. The learned counsel further submitted that the Courts below by applying the legal presumption available to old document under Section 90 of the Evidence Act, held that Ex.A5-Sale Deed was proved and the said view of the Courts below is erroneous in view of the fact the respondent only marked the certified copy of the Sale Deed in favour of Saraswathi Ammal. In other words, the learned counsel further submitted that presumption available to old document under Section 90 of Evidence Act is not applicable to the certified



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copies of the documents. In support of his contention, the learned counsel

relied on the following judgments:-

- (i) ***K.Laxmanan vs. Thekkayil Padmini*** reported in ***(2009) 1 SCC 354***.
- (ii) ***S.B.Noronah vs. Prem Kumari Khanna*** reported in ***(1980) 1 SCC 52***.
- (iii) ***Lakhi Baruah vs. Padma Kanta Kalita*** reported in ***(1996) 8 SCC 357***.
- (iv) ***M.Vanaja vs. M.Sarla Devi*** reported in ***(2020) 5 SCC 307***.
- (v) ***Union of India vs. Vasavi Cooperative Housing Society Limited*** reported in ***(2014) 2 SCC 269***.

8. The learned counsel appearing for the respondent submitted that the Settlement Deeds executed by Saraswathi Ammal in favour of respondent was not at all disputed by the appellants either in the pleadings or in the cross examination of PW.1. Therefore, by virtue of proviso to Section 68 of Evidence Act, Settlement Deeds being a registered documents are deemed to be proved. Therefore, there is no necessity for the respondent to prove the same by calling the Attestors when execution of the same is not specifically denied by the appellants. The learned counsel further submitted that Ex.A5-Sale Deed in favour of Saraswathi Ammal is a registered Sale



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Deed and it is not a document which requires compulsory attestation. In these circumstances, when registered Sale Deed is questioned by appellants, it is for them to prove that the said document is invalid. The learned counsel further submitted that the respondent by producing Exs.A5, A10 and A11 proved her title over the suit property and the property tax receipt and demand notice etc., filed by her from the year 1978 down to the year of 2009 coupled with title document clearly establish her title over the suit property. In support of his contention, the learned counsel relied on the judgment of the Hon'ble Apex Court in ***Prem Singh vs. Birbal*** reported in ***(2006) 5 SCC 353***.

9. It is the case of the respondent that suit property originally belonged to one Ganapathy Mudaliar and he died intestate on 16.08.1943, leaving behind his predeceased son Visvanatha Mudaliar's wife Annammal and his daughter's son A.K.Balasubramania Mudaliar. The said Annammal died in the year 1965. When Ganapathy Mudaliar died, he was survived by A.K.Balasubramanya Mudaliar and wife of his predeceased son Viswanatha Mudaliar. The plaintiff's predecessor-in-interest, Saraswathi Ammal is the daughter of Viswanatha Mudaliar and Annammal. The share of the



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A.K.Balasubramanya Mudaliar was purchased by Saraswathi Ammal under

Ex.A5 dated 12.10.1966. Thereafter, the said Saraswathi Ammal by way of two Settlement Deeds settled the suit property in favour of the respondent/plaintiff under Exs.A10 and A11 dated 28.10.1988 and 13.02.1989 respectively. Thus, the respondent is claiming title to the suit property under Exs.A5, A10 and A11. One of the main contention raised by the appellants was that the legal status of respondent as daughter of said Saraswathi Ammal has not been proved. When respondent was examined as PW.1, she clearly admitted she was not natural born daughter of Saraswathi Ammal and Saraswathi Ammal was her Paternal Aunt (Mother's sister). There is also no evidence available on record to show that respondent was adopted by Saraswathi Ammal. Therefore, nothing on record to show that respondent is either natural born daughter or adopted daughter of Saraswathi Ammal. Nevertheless, Saraswathi Ammal under Exs.A10 and A11 settled the suit property in favour of respondent. Therefore, even assuming respondent failed to prove her relationship with Saraswathi Ammal as daughter by virtue of Settlement Deeds executed by Saraswathi Ammal in favour of the respondent, she is entitled to claim title over the suit property. The learned counsel for the appellants submitted that Settlement



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Deed can be executed only in favour of close blood relations and not in favour of third party. Therefore, Settlement Deeds executed by Saraswathi Ammal in favour of respondent describing her as a daughter of Saraswathi Ammal is null and void. In fact, the prayer made by the appellants in their counter claim reads as follows:-

“(i) Declare that the Settlement Deed dated 28.10.1988 vide doc.No.4115 of 1988 executed by Saraswathi Ammal in favour of the Plaintiff, in respect of the Southern Portion of the property at premises bearing door No.11, North Mada Street, Kolathur, Chennai-600 099 measuring 2232 Square Feet is null and void, nullified in law, and the same shall not be binding on this Defendant, since the plaintiff is not own daughter of Saraswathi Ammal.

(ii) Consequential declaration, to declare that the Settlement Deed dated 13.02.1989 executed by the Saraswathi Ammal in favour of the Plaintiff in respect of the Northern Portion of the property at premises bearing door No.11, North Mada Street, Kolathur, Chennai-600 099 measuring 1800 Square Feet is null and void, nullified in law, and the same shall not be binding on this Defendant, since the plaintiff is not own daughter of Saraswathi Ammal.”

10. A reading of prayer and also averments in the additional written statement filed by the appellants would suggest they sought for a declaration that Settlement Deeds executed by Saraswathi Ammal in favour of



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respondent was null and void, not binding on them, since respondent was not daughter of Saraswathi Ammal. The Settlement Deeds executed by Saraswathi Ammal in favour of the respondent was not challenged on the ground of denial of execution. In other words, there is no plea in the written statement of the appellants denying execution of Settlement Deed by Saraswathi Ammal in favour of the respondent. Therefore, there is no dispute with regard to the execution of Exs.A10 and A11. Those documents were questioned by appellants only on the ground that Settlement Deeds executed in favour of the respondent describing her as a daughter was null and void, since she was not a daughter of the Saraswathi Ammal. As rightly pointed out by the Courts below under Section 122 of Transfer of Property Act, a owner of the property is entitled to execute Gift Deed in favour of any person as per his or her wish. The gift need not be in faovur of the blood relations. When Gift Deed is executed in favour of blood relation, it will be treated as a Settlement Deed and stamp duty payable on such gift deed in favour of close relatives is less than the stamp duty payable on Gift Deed. However, merely because, Settlement Deed executed in favour of the person is not a blood relation of Settlor, the validity of the Settlement Deed cannot be questioned. Both the Courts below rightly upheld the documents



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and came to the conclusion that merely because, the appellants failed to prove she was either natural born daughter or adopted daughter of Saraswathi Ammal, the Settlement Deeds could not be declared as null and void document.

11. As far as contention raised by the learned counsel for the appellants regarding non-examination of Attestor to Settlement Deeds is concerned, in the case on hand, as mentioned earlier, there is no plea in the written statement of the appellants denying execution of Settlement Deeds Exs.A10 and A11. The Section 68 of Evidence Act, reads as follows:-

“68. Proof of execution of document required by law to be attested.- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908),



unless its execution by the person by whom it purports to have been executed is specifically denied.]”

12. A reading of above provision would make it clear that in all documents except Will, if the document is registered in accordance with the provisions of Registration Act, unless its execution is denied specifically, it is not necessary to call the attesting witness to prove the said document. In the case on hand, the appellants failed to deny the execution of Settlement Deeds specifically in their written statement. In such circumstances, by virtue of proviso to Section 68 of the Evidence Act, it is not necessary for the respondent to examine the Attertor to the Settlement Deeds to prove the same. Further, I have perused the evidence of PW.1. The learned counsel for the appellants/defendants not even made any suggestion to PW.1 denying due execution of Settlement Deeds. In such circumstances, it is clear the execution of Settlement Deeds was not all denied by the appellants either in the pleadings or in the evidence. In such circumstances, the said contention made by the learned counsel for the appellants is not acceptable to this Court.



13. In ***K.Laxmanan vs. Thekkayil Padmini*** reported in (2009) 1 SCC

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354, while considering the burden of examining the Attestors to prove a document which has been registered, the Hon'ble Apex Court observed as follows:-

“26. Execution of the aforesaid deed of gift is also under challenge. The attesting witnesses to the said deed of gift are also not examined. It was, however, submitted that the mandatory requirement of examining an attesting witness under Section 68 of the Act is only in respect of a will and in respect of gift deed, if execution of the said is not specifically denied, then in that case there is no obligation on the part of the propounder of the deed of gift to prove the execution by examining an attesting witness like that of a deed of will.

27. It is true that in the present case the pleadings regarding the execution of the deed of gift were stated for the first time in the written statement by the fifth defendant, who pleaded that the ordinary process of inheritance and succession would not apply in the present case in respect of properties in Item 4 and 5 as a deed of gift was executed in his favour.

28. It is however established in the present case that the issue of validity of the execution of both the deed of gift and the deed of will was taken up by the respondent-plaintiff and specifically denied in the affidavits filed in respect of the injunction applications. The parties have also gone to trial knowing fully well that execution of both these documents is under challenge. Parties knowing fully the



aforesaid factual position led their evidence also to establish the legality and validity of both the documents. In that view of the matter, it cannot be said that the said document should be deemed to be admitted by the plaintiff as no replication was filed by the plaintiff.

... ..

30. The legality and the validity of the said deed of gift was under challenge in the trial for which the parties have led evidence and therefore in the present case the proviso to Section 68 of the Act does not become operative and functional. In such cases, the document has to be proved in terms of Section 68 of the Act. In this regard, we may appropriately refer to decision of this Court in Rosammal Issetheenammal Fernandez v. Joosa Mariyan Fernandez wherein it was held as under: (SCC pp. 191 & 192, paras 7 and 11)

“7. ... In considering this question, whether there is any denial or not, it should not be casually considered as such finding has very important bearing on the admissibility of a document which has important bearing on the rights of both the parties. ... It must also take into consideration the pleadings of the parties which has not been done in this case. Pleading is the first stage where a party takes up its stand in respect of facts which they plead.

* * *

11. Under the proviso to Section 68 the obligation to produce at least one attesting witness stands withdrawn if the execution of any such document, not being a will which is registered, is not specifically denied. Therefore, everything hinges on the



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recording of this fact of such denial. If there is no specific denial, the proviso comes into play but if there is denial, the proviso will not apply."

(Emphasis supplied by this Court)

14. In the above mentioned case law relied on by the learned counsel for the appellants, though there was no specific denial of execution of Settlement Deeds in pleadings by way of reply statement to the written statement wherein the Settlement Deed was relied on, in the affidavit filed in the interlocutory applications, the execution of Settlement Deed was specifically denied and based on that, the Hon'ble Apex Court came to the conclusion that merely because, the plaintiff failed to file any reply statement denying the execution of Settlement Deeds pleaded in the written statement it cannot be treated that he failed to deny the execution of Settlement Deeds.

15. In the case on hand, the plaintiff in their plaint averment itself referred to the Settlement Deeds executed by Saraswathi Ammal in her favour. While filing the written statement, the appellants questioned the same only on the ground that Settlement Deeds executed by Saraswathi Ammal treating the plaintiff as her daughter was null and void. Nowhere in



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the additional written statement filed by the appellants, they denied the execution of Settlement Deeds specifically. It is also pertinent to mention that in the original written statement filed by the appellants, there was no challenge to Settlement Deeds. Only in the additional written statement, the Settlement Deeds were questioned on the ground that Settlement Deeds by Saraswathi Ammal treating the plaintiff as her daughter was not valid. As mentioned earlier, even at the time of cross examination of PW.1, no suggestion was put to her denying the due execution of Settlement Deeds. In these circumstances, when there is no specific denial of execution of Settlement Deeds, as per proviso to Section 68 of the Evidence Act, the respondent need not examine the attestors to the said documents. Accordingly, the first question of law formulated at the time of admission is answered against the appellants and in favour of the respondent.

16. As far as the second question of law is concerned, Ex.A5 is a Sale Deed executed by A.K.Balasubramanya Mudaliar conveying his share in the suit property in favour of co-owner namely Saraswathi Ammal. The said document was executed on 12.10.1966. The certified copy of the same is produced before the Court. When certified copy of the registered Sale Deed



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is produced before the Court, there is no necessity to examine the attestor to prove the said document. Because, the Sale Deed is not a document, which requires compulsory attestation. Therefore, mere production of certified copy of the Sale Deed is sufficient and the burden is on the person, who impeaches the registered document to prove that said document is not valid. In this regard it would be appropriate to refer to the decision of the Hon'ble Apex Court in ***Rattan Singh vs. Nirmal Gill*** reported in **2021 (15) SCC 300**. It is also settled law as laid down in ***Bayanabai Kaware vs. Rajendra*** reported in **2018 (1) SCC 585** that Sale Deed is not a document which requires attestation. Hence, attestors need not be examined to prove the same.

17. In ***Prem Singh vs. Birbal*** reported in **(2006) 5 SCC 353**, the Hon'ble Apex Court observed there is a general presumption that the registered document was validly executed and the onus of proof lies on the person, who challenge the same to lead evidence to rebut the presumption, the relevant observation reads as follows:-

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima



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facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption.”

18. The above mentioned case law is squarely applicable to the facts of the present case. In the case on hand, the respondent produced the certified copy of the registered Sale Deed in favour of her Settlor. The same is being questioned by the appellants and hence, it is for them to lead cogent evidence to rebut the presumption available in favour of the registered Sale Deed. Therefore, though presumption available under Section 30 of Evidence Act, is not available to the certified copies, in view of the fact that Sale Deed is not a document, which requires attestation and the same is registered one, the general presumption available to the registered document can be pressed into service in favour of Ex.A5. Accordingly, the second question of law is answered against the appellants and in favour of the respondent. In view of the answer to the substantial questions of law framed at the time of admission, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.



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In Nutshell:-

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(i) The Second Appeal is dismissed by confirming the judgment and decree passed by the Courts below.

(ii) Consequently, the connected civil miscellaneous petition is closed.

(iii) In the facts and circumstances of the case, there shall be no order as to costs.

21.12.2023

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
dm

To

1.The XVI Additional City Civil Court, Chennai.

2.The XVIII Assistant City Civil Court, Chennai.



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S.SOUNTHAR, J.

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