



WEB COPY



S.A.No.832 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.832 of 2017

M.Sadagopan (died)

1.Malliga

2.S.Suresh

3.S.Selvi Latha

... Appellants

VS.

1.Minor Porpanandan

Rep. by his Mother & Guardian Rajeshwari,
159, Agaram Village,
Walajabad Firka, Kancheepuram Taluk.

2.S.Ramesh

... Respondents

*(Cause title accepted vide order of Court dated 21.11.2017
made in CMP.No.19800 of 2017 in SA.SR.No.47865 of 2017)*

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 26.10.2016 in A.S.No.16 of 2010 on the file of the Subordinate Court, Kancheepuram confirming the Judgment and Decree dated 17.12.2008 in O.S.No.310 of 2003 on the file of the Additional District Munsif Court, Kancheepuram.



S.A.No.832 of 2017

For Appellants : Mr.S.L.Sudarsanam

For Respondents : No Appearance

J U D G E M E N T

The legal representatives of the deceased 1st defendant are the appellants. The 1st respondent herein filed a suit for permanent injunction restraining the deceased 1st defendant-M.Sadagopan and 2nd respondent herein from interfering with his peaceful possession and enjoyment of the suit properties. The suit was decreed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the legal representatives of the deceased 1st defendant have come up by way of this second appeal.

2. According to the 1st respondent/plaintiff, he is a grandson of deceased 1st defendant-M.Sadagopan and son of 2nd respondent/2nd defendant. As the marital relationship between the mother of 1st respondent and 2nd respondent got strained, taking into consideration the pathetic condition of the 1st respondent/plaintiff and his mother, the deceased 1st



S.A.No.832 of 2017

defendant-M.Sadagopan executed a Settlement Deed dated 30.09.2002 settling the suit property in favour of the 1st respondent/plaintiff. From the date of settlement onwards, the 1st respondent had been in possession and enjoyment of the suit property. After sometime, the deceased 1st defendant-M.Sadagopan and 2nd respondent herein attempted to interfere with the possession of the 1st respondent/plaintiff and therefore, he was constrained to file a suit for permanent injunction.

3. The deceased 1st defendant-M.Sadagopan filed a written statement and resisted the suit on the ground that the Settlement Deed in favour of 1st respondent was obtained by practising undue influence, fraud and coercion and therefore, the same was not binding on him. It was further averred by him that he cancelled the said Settlement Deed by the registered Cancellation Deed dated 27.12.2002. It was further averred that he also filed a suit for declaration that Settlement Deed executed by him was null and void and for consequential recovery of possession from the 1st respondent. On these pleadings, the deceased 1st defendant-M.Sadagopan sought for dismissal of the suit.



S.A.No.832 of 2017

4. The suit filed by the 1st respondent for permanent injunction in

O.S.No.310 of 2003 and the suit filed by deceased 1st defendant-M.Sadagopan for declaration and recovery of possession in O.S.No.770 of 2004 were heard together. The Trial Court on appreciation of oral and documentary evidence let in by the parties, came to the conclusion that execution of Settlement Deed in favour of 1st respondent by deceased 1st defendant-M.Sadagopan was duly proved by examination of Attestors to the said documents. As a consequence, the Trial Court granted a decree for permanent injunction. The suit filed by the above said deceased 1st defendant-M.Sadagopan for declaration and recovery of possession was dismissed. Aggrieved by the decree for permanent injunction granted against him, the said M.Sadagopan filed first appeal in A.S.No.16 of 2010 on the file of Subordinate Court, Kancheepuram. The First Appellate Court concurred with the findings rendered by the Trial Court and dismissed the appeal. Aggrieved by the concurrent findings, the legal representatives of the said M.Sadagopan have come by way of this second appeal.

5. The learned counsel appearing for the appellants submitted that the Settlement Deed in favour of the 1st respondent was obtained by coercion



S.A.No.832 of 2017

and hence, the said M.Sadagopan has got every right to cancel the same.

The learned counsel further submitted that the 1st respondent has not sought for any declaration regarding invalidity of Cancellation Deed executed by M.Sadagopan and hence, the simple suit for permanent injunction is not maintainable. The learned counsel further submitted that in pursuance of Settlement Deed allegedly executed by said M.Sadagopan, the possession of the suit property was not handed over to the 1st respondent and hence, the Courts below erred in granting a decree for permanent injunction.

6. In order to prove the Settlement Deed executed by M.Sadagopan in favour of 1st respondent, the Attestors to the said document were examined as PW.2 and PW.3. The Courts below based on the appreciation of evidence of Attestors, came to the correct conclusion that settlement in favour of 1st respondent was duly proved by him. Further, the deceased 1st defendant-M.Sadagopan in his written statement claimed that Settlement Deed was obtained by employing undue influence, fraud and coercion. If the Settlement Deed was not out of his free consent, immediately he could have lodged a police complaint regarding the coercion allegedly employed by other side.



S.A.No.832 of 2017

WEB COURT

7. The appellants have not produced any evidence to show that immediately after execution of Settlement Deed any complaint was lodged regarding the coercion and fraud allegedly employed by the other side. In such circumstances, the plea raised by the deceased 1st defendant as if, the Settlement Deed in favour of 1st respondent was obtained by employing coercion is not acceptable to this Court. Further, the deceased 1st defendant not only pleaded coercion, he also pleaded misrepresentation and fraud. The plea of misrepresentation, coercion and fraud cannot go together. The various pleas raised by the deceased 1st defendant clearly proved that he was not sure about his defence. In any event, both the Courts below on proper appreciation of evidence available on record, came to the conclusion that Settlement Deed executed by M.Sadagopan in favour of 1st respondent was true and valid.

8. Once a Settlement Deed is executed in favour of the 1st respondent, in the absence of any right reserved by the Settlor to cancel the document, he is not entitled to cancel the same. Unilateral cancellation of gift settlement deed is unknown to law. Therefore, the Courts below rightly came to the conclusion that the subsequent Cancellation Deed executed by



S.A.No.832 of 2017

M.Sadagopan will not affect the validity of gift settlement deed executed in favour of 1st respondent.

9. Though the learned counsel for the appellant submitted that 1st respondent failed to prove his possession in pursuance of the settlement deed, as per admitted facts the above said M.Sadagopan himself filed a suit for declaration that Settlement Deed executed by him was null and void and for consequential recovery of possession from 1st respondent. When he himself admitted the possession of the 1st respondent and sought for recovery of possession, the submission made by the learned counsel for the appellants that possession of the 1st respondent was not proved, is not acceptable to this Court.

10. It is seen from the typed-set of papers filed by the appellants, the suit for declaration and recovery of possession filed by M.Sadagopan was also dismissed along with present suit filed by the 1st respondent. However, no material is placed before this Court to show that the dismissal of the suit filed by M.Sadagopan was challenged by way of first appeal. In such circumstances, the findings rendered by the Courts below with regard to the



S.A.No.832 of 2017

validity of the Settlement Deed executed in favour of the 1st respondent had attained finality in other suit. In such circumstances, the maintainability of first appeal as well as second appeal is very much doubtful. In any event, this Court comes to the conclusion independently that the Settlement Deed executed by M.Sadagopan in favour of 1st respondent is a valid document and 1st respondent is in possession and enjoyment of the suit property in pursuance of the Settlement Deed executed in his favour. Therefore, finding no substantial question of law arising for consideration in this second appeal, the judgement and decree passed by the Courts below are confirmed. Accordingly, the Second Appeal is dismissed.

In Nutshell:-

(i) The Second Appeal is dismissed.

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

22.11.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm



S.A.No.832 of 2017

To

WEB COPY

- 1.The Subordinate Court,
Kancheepuram.
- 2.The Additional District Munsif Court,
Kancheepuram.



WEB COPY



S.A.No.832 of 2017

S.SOUNTHAR, J.

dm

S.A.No.832 of 2017

22.11.2023