



S.A.No.727 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.727 of 2023

&

C.M.P.No. 23042 of 2023

M.Parameshwari

...Appellant

Vs

1. K.Nagaiah

2. K.N.Bhuvaneshwari

... Respondents

Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree in A.S.No.38 of 2020 dated 27.02.2023 on the file of the III Additional City Civil Court at Chennai in confirming the Judgement and Decree in O.S.No.24 of 2017 dated 29.04.2019 on the file of the XVII Assistant Judge, City Civil Court at Chennai.



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For Appellant : Mr. V.Raghavachari
Senior Counsel
for Mrs. V.Srimathi.

For Respondents : Mr. A.R.Nixon
Caveator Counsel.

JUDGEMENT

The plaintiff is the appellant before this Court. The facts which has led to the filing of the above Second Appeal is set out briefly herein below and the parties are referred to in the same litigative status as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.24 of 2017 on the file of the XVII Assistant Judge, City Civil Court, Chennai, seeking a declaration that document No.1171 of 2014 dated 12.05.2014 obtained by the 1st defendant from the plaintiff and document No.1031 of 2015 dated 21.04.2015 executed by the 1st defendant in favour of the 2nd



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defendant are null and void.

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3. It is the case of the plaintiff that the suit property which is a plot bearing Plot No.2461, Door No.26 measuring an extent of 138.50 sq.mt., was allotted to Lakshmikanthammal by the Slum Clearance Board. The said Lakshmikanthammal had put up a building there upon and was enjoying the same. A registered sale deed dated 11.03.2010 was executed by the Slum Clearance Board in favour of the said Lakshmikanthammal. The plaintiff, the 1st defendant and one Dilli Babu are the children of the said Lakshmikanthammal.

4. It is the plaintiff's case that her brothers had not shown love and affection to her mother till her death and it was she who was taking care of her mother. Therefore, Lakshmikanthammal executed a registered settlement deed dated 15.07.2010, in and by which she had settled the suit property upon the plaintiff and had delivered possession



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of the same and also handed over the original documents.

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5. The plaintiff would submit that she had taken possession of the property and had also got the revenue records mutated in her name and it is she who has been paying taxes there on. The plaintiff would submit that not only did her brothers not show love and affection to her mother but they had also not contributed to the medical expenses of their mother. Ultimately, on 14.08.2011 the said Lakshmikanthammal died. Later, the 1st defendant out of remorse paid a sum of Rs.2,50,000/- on various dates to the plaintiff.

6. The plaintiff would submit that she had genuinely believed that her brother was only paying money so as to ensure the mother's soul rests in peace. However, the 1st defendant started demanding money back from the plaintiff and since he was insisting repayment in the month of May 2014, the plaintiff had agreed to execute a mortgage



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deed in favour of the 1st defendant.

7. The plaintiff would submit that the document was prepared by the 1st defendant and on 12.05.2014, she had gone to the document writer's office at Ashok Nagar, wherein the 1st defendant and others hurried the plaintiff to affix her signature on the document. The plaintiff's husband also witnessed the plaintiff executing the mortgage deed. However, it transpired that the 1st defendant had clandestinely obtained a settlement deed in his favour. Thereafter, he has also executed a settlement deed in favour of the 2nd defendant, who is none else than his daughter on 21.04.2015. Therefore, the plaintiff has come forward with the suit in question.

8. The 1st defendant had filed a written statement along with counter claim, in which he had denied the entire allegations contained in the plaint. It is their case that initially their father Kuppusamy Naidu



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was in possession and enjoyment of the property. After his demise, their mother being the senior member in the family, the property was assessed in her name. The super structure has been put up only by their father and the 1st defendant and his brother had also contributed both financially as well as physically for the construction of the super structure. After the demise of their father, the children had decided that the records would be mutated in the name of the mother and the rents which was derived would be taken by Lakshmikanthammal for her maintenance.

9. Thereafter, family disputes arose between his brother Dilli Babu and the 1st defendant who had filed the suit O.S.No.3134 of 2010 on the file of the VIII Assistant City Civil Court, Madras, for a declaration of 1/4th share in the suit property and for an injunction restraining the 4th defendant and their men from issuing a sale deed in respect of the property in favour of their mother.



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10. The plaintiff had got married to one V.Mani in the year 1990 and she was living in a separate portion of the house. The plaintiff was the root cause of the family problems which included the filing of the suit by Dilli Babu. The 1st defendant was also sent out from the house. The plaintiff is the President of AIDMK Women Wing 137 Division and she has been using her political clout against the family members including their mother. She had forced the mother to execute the settlement deed in her favour on 15.07.2010 by playing fraud upon the mother and without keeping the sons informed. This settlement deed has been obtained by her within 4 months from the execution of the sale deed by the Slum Clearance Board in favour of the said Lakshmikanthammal.

11. The defendant would submit that at the time of the execution of this settlement deed Lakshmikanthammal was not in a sound state of



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mind. That apart, there were civil suits pending between their mother and Dilli Babu. However, the mother had all along wanted to divide the property amongst all her children equally. In fact, on the instructions of the mother and in order to settle the dispute O.S.No.3134 of 2010 which was filed by Dilli Babu was posted before the Lok Adalat. Pending this proceeding, the mother had died on 14.08.2011.

12. An agreement was entered into between the plaintiff and the 1st defendant and their brother Dilli Babu. In pursuance of which the plaintiff had settled a portion on 05.05.2014 in favour of Dilli Babu. The 1st defendant agreed to pay consideration for schedule property to the plaintiff and accordingly he had paid a sum of Rs.2,50,000/- on various dates. Only after receipt of the entire payment, the plaintiff had registered a settlement deed in his favour. The husband of the plaintiff had witnessed the settlement deed executed by the plaintiff in favour of



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the 1st defendant.

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13. Thereafter, unilaterally the plaintiff had canceled the settlement deed executed by her in favour of Dilli Babu on 05.11.2014 and the cancellation is the subject matter of the challenge before this Court in W.P.No. 31378 of 2014 filed by the said Dilli Babu. The 1st defendant would submit that he has settled the property on his daughter and the plaintiff has no right to question the same. The division of the property into three portions was only a consequence of the compromise that had been entered into between the parties in O.S.No. 3134 of 2010.

14. The plaintiff has not only received compensation from the 1st defendant but also a sum of Rs.3,50,000/- from Dilli Babu. Therefore, the 1st defendant would contend that the suit itself is misconceived. The 1st defendant have also questioned the Court fee that had been paid by the plaintiff. He would also contend that the plaintiff is in



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occupation of the 300 sq.ft and the plaintiff is liable to vacate and deliver vacant possession to the 2nd defendant. Therefore, the defendants had filed a counter claim for recovery of possession, failing which to direct the plaintiff to pay a sum of Rs.20,000/- per month for the occupation of the B Schedule property as damages from the date of written statement and to pay a sum of Rs.35,000/- being the rents collected by the plaintiff from the tenants.

15. The Trial Court had framed the following issues:

- 1. Whether the plaintiff is entitled for declaration that declaring the document dated 12.05.2014 is null and void?*
- 2. Whether the plaintiff is entitled for declaration that declaring the Settlement deed dated 21.04.2015 as null and void?*
- 3. Whether the defendant is entitled for vacant possession of 'B' schedule property from the plaintiff?*
- 4, Whether the defendant is entitled for Rs.20,000/-*



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per month as use and occupation of 'B' schedule property towards damages from the plaintiff?

5. Whether the defendant is entitled for Rs.35,000/- being the monthly rent of 'A' schedule property?

6. To what other relief?

16. The plaintiff examined herself as P.W.1 and marked Ex.A.1 to Ex.A.6. The 1st defendant examined himself as D.W.1 and marked Ex.B.1 to Ex.B.7.

17. After considering the evidence in detail, the Trial Court had dismissed the suit and decreed the counter claim. Aggrieved by which the plaintiff had filed an appeal in A.S.No.38 of 2020 on the file of the III Additional City Civil Court, Chennai. The Lower Appellate Court has also confirmed the Judgement and Decree of the Trial Court, aggrieved by which the plaintiff is before this Court.



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18. Mr. V.Raghavachari, learned Senior Counsel appearing on behalf of Mrs.V.Srimathi for the appellant / plaintiff would submit that the plaintiff is an uneducated and illiterate lady who has not understood the contents of Ex.A.3. The plaintiff had executed the document on the belief that the same was a mortgage deed and had she known that what she executing was a settlement deed, she would have never executed the said document. The learned senior counsel would also submit that the sum of Rs.2,50,000/- was paid only as a penance, however, the 1st defendant demanded the repayment and it is for this reason that the plaintiff had agreed to execute the mortgage deed in favour of the 1st defendant, which unfortunately the 1st defendant had manipulated and obtained a settlement deed in his favour.

19. These contentions have been stoutly refuted by the learned counsel for the caveator.



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20. Heard Mr. V.Raghavachari, learned Senior Counsel on behalf of Mrs.V.Srimathi for the appellant and Mr. A.R.Nixon, Caveator Counsel for the respondents.

21. The plaintiff has come to the Court with the contention that the sum of Rs.2,50,000/- was paid by the 1st defendant to pacify their mother's soul. Thereafter, when he demanded its repayment, the plaintiff had agreed to execute the mortgage as she did not have necessary funds for repaying the amount. However, the 1st defendant instead of preparing the mortgage deed prepared a settlement deed and the plaintiff executed the settlement deed believing the said document is a mortgage deed.

22. The plaintiff is not definitely an illiterate or naive lady. She admittedly is a President of a Political party and the signature affixed by her in the pleadings and vakalat nama would clearly indicate that



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she is a literate woman. The plaintiff's statement that she has been led to believe that the document she was executing was only a mortgage deed cannot be believed. Further, she has not executed a settlement deed only in favour of the 1st defendant but has also executed a settlement deed in favour of her other brother, Dilli Babu after receiving a sum of Rs.3,50,000/-.

23. The plaintiff has executed the settlement deed in favour of the 1st defendant on 12.05.2014 after receiving the last payment of Rs.50,000/- of the total sum of Rs.2,50,000/- on 05.05.2014. The first payment has been made on 24.07.2013 and the last payment has been made 10 months thereafter i.e., on 12.05.2014. This would go a long way to show that the amounts had been paid only towards the property. No doubt, the settlement deed does not reflect this payment but would only state that the settlement deed was executed out of love and affection.



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24. The plaintiff has not been able to establish her case that she had executed the document without knowing its contents. The plaintiff has also kept quite for nearly 3 years and has come forward with the suit apparently taking into account the fact that the property value has been on the steady rise. The fact that she has executed the settlement deed in favour of the other brother that too after receiving a sum of Rs.3,50,000/- would only go to prove the case of the defendant that the parties had entered into agreement in the suit O.S. No. 3134 of 2010 as stated by the 1st defendant in his written statement.

25. The unilateral cancellation of the settlement deed executed in favour of the other brother Dilli Babu is now the subject matter of the writ petition before this Court.



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26. Be that as it may, the plaintiff has not been able to prove her case and the Courts below have taken note of the documentary as well as oral evidence to come to the conclusion that the plaintiff is not entitled to the decree as prayed for and decreeing the counter claim of the defendants. I see no reason to interfere with this concurrent Judgement and Decree, more particularly when the plaintiff has not made out any substantial question of law.

27. In fine, the Second Appeal is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

30.10.2023

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Index : Yes/No

Speaking order/non-speaking order



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To,

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

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



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P.T.ASHA, J.,

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