



A.S.(MD).No.37 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.10.2023

Delivered on: 16.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.S.(MD).No.37 of 2021

and

C.M.P.(MD)No.1189 of 2021

Sagunthala Devi (died)

1.Subathra Priyadharshini

2.Mahindran

... Appellants / Defendants 3 to 5

Vs.

1.R.Usharani

... Respondent No.1/ Plaintiff

2.Jeyaprakash Narayanan

Mothilal (died)

3.Dhanalakshmi

4.Venkat Narayanan

5.Nirmal Narayanan

6.Manjula Thayanithi

7.R.Santharam

8.Uma Maheswari

... Respondents 2 to 8/ Defendants 1,2,6 to11



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Prayer:- Appeal filed under Section 96 of the Code of Civil Procedure, against the decree and judgment passed by the Principal District Judge, Pudukkottai, dated 06.12.2019, made in O.S.No.23 of 2013.

For Appellants : Mr.S.Madhavan
For Respondents : Mr.H.Balasundaram
for Mr.Gandhi Rajan for R1
: Mr.A.Arul Jenifer for R2
: Mr.K.Paranjothi for R3 to R8

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The present Appeal has been filed to set aside the judgment and decree in O.S.No.23 of 2013, dated 06.12.2019 on the file of the Principal District Judge, Pudukkottai.

2. For the sake of convenience, the parties are referred to as per the ranking before the trial Court.

3. The unsuccessful defendants 4 and 5 are the appellants herein.

The first respondent, as plaintiff, filed the suit in O.S.No.23 of 2013,



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seeking partition and separate possession of her 1/3rd share in the suit property. The claim of partition was on the basis of Ex.A2 - Will, dated 30.01.1970 said to have been executed by the grandmother of the plaintiff, one Kanagambujam.

4. Brief facts that are necessary for deciding the appeal suit are as follows:

The suit property originally belonged to one Muthuvelammal, which was her self acquired property. She constructed a tiled thatched house in the property and was residing there till her life time. She was blessed with a daughter, one Kanagambujam, who in turn had two daughters, viz., Sagundala Devi and Kowsalya Devi. The said Sagundala Devi is the third defendant in the suit. Saguntala Devi initially married one Ragunath Suresh Pillai through whom she had six children, namely, Usha Rani, Jeyaprakash Narayanan, Modhilal Narayanan, Manjula Dhayanithi, Santharam and Umamaheswari. It is the case of the plaintiff that the said Sagundala Devi, even during the life time her first husband, married one Rajendran, and through whom she had two children by name, Subathra Priyadharshini and Mahindran. The children through the second husband -



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Rajendran are defendants 4 and 5 in the suit and the appellants before us.

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Geneology Tree

Muthuvel Ammal(died)

Kanagambujam(died)

Sagundala Devi
(Third Defendant)

Kowsalya Devi

Usha Jeya
Rani prakash Motilal Manjula santha Uma Subrathra Mahendran
(Plaintiff) Narayana (D2) Ram Mahes Priyadhar
(D1) wari shini
D/o.Rajendran S/o.Rajendran
(D4 & D5)

5. It is further stated that Kowsalya Devi, the other daughter of Kanagambujam, released her share in favour of Sagundala Devi - the third defendant and thus the said Sagundala Devi became the absolute owner of the suit property. The grandmother of the plaintiff - Kanagambujam had executed an unregistered Will, dated 30.01.1970, under which, the suit property was bequeathed to the plaintiff and the first and second defendants. The said Kanagambujam died in 1973 and therefore, the Will came into effect and the plaintiff and the defendants 1 and 2 are entitled to



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1/3rd share in the suit property. The plaintiff has further stated that since she got married in 1975 and left for Chennai and from there to Baroda, where the defendants 1 and 2 were also living and taking advantage of their absence, the third defendant changed the revenue records in her favour and on coming to know of the same, the plaintiff has come forward and filed the suit for partition and separate possession.

6. The third defendant filed a written statement (which was adopted by the defendants 4 and 5, namely, the appellants herein), as follows:

According to the third defendant, the fact that the suit property originally belonged to Muthuvelammal, being her self acquired property is admitted. Further, it is the case of the third defendant that Ragunath Suresh Pillai, first husband of the third defendant, filed H.M.O.P.No.40 of 1972 before the Baroda District Court, Baroda, seeking divorce and a decree was also granted by the Baroda District Court. Pursuant to which, the third defendant married Rajendran and through the said Rajendran, the defendants 4 and 5, namely the appellants were born. It was the specific case of the third defendant that on 26.09.2007, she executed a settlement



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deed in favour of the defendants 4 and 5, who are in absolute possession and enjoyment of the suit property. According to the third defendant, the plaintiff was fully aware of all these facts and has forged a Will in order to create interest in the suit property. It is also pleaded by the third defendant that the third defendant had cleared all the loans that were availed of by Kanagambujam and it was also one of the specific conditions set out by the other daughter of Kanagambujam, namely, Kowsalya Devi, who released her shares in favour of the third defendant, only subject to the third defendant undertaking all the liabilities.

7. The first defendant filed a written statement admitting the factum of Kanagambujam executing a Will on 30.01.1970. The second defendant also filed a written statement more or less adopting the stand of the first defendant.

8. The defendants 9 to 11 filed a written statement cum counter claim stating that the third defendant had no right to execute any settlement deed in favour of the defendants 4 and 5 and therefore, they were entitled to 3/6th share in the suit property.



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9. The plaintiff filed a reply statement to the written statement filed by the third defendant, stating that the third defendant was ousted from the suit property 52 years back and she had no right in the property and the consequential settlement deed executed by her in favour of the defendants 4 and 5 was not valid. Further, according to the plaintiff, the defendants 4 and 5, being children of Sagundala Devi and Rajendran can claim only right in Rajendran's property and not in the property of Kanagambujam, which was inherited from her mother Muthuvelammal. According to the plaintiff, the plaintiff was entitled to a decree as prayed for and the plaintiff also prayed for dismissal of the counter claim filed by the defendants 9 to 11.

10. The fifth defendant filed a reply statement denying the counter claim made by the defendants 9 to 11. In the said reply statement, the fifth defendant has reiterated that the defendants 4 and 5 are alone in possession and enjoyment of the property and the counter claim without impleading the defendants 4 and 5 was liable to be dismissed for non joinder of necessary parties. According to the fifth defendant, the third defendant executed the settlement deed in favour of the defendants 4 and 5



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and therefore, the defendants 9 to 11 had no right in the suit property.

According to the fifth defendant, the third defendant did not have any illicit relationship with Rajendran and the marriage was only subsequent to the dissolution of the earlier marriage to Ragunath Suresh Pillai, in H.M.O.P.No.40 of 1972 before the Baroda District Court at Baroda.

11. Pending the suit, the second defendant - Mothilal died and the defendants 6 to 8 were impleaded as his legal heirs.

12. The trial Court framed the following three issues:

- "1. Whether the plaintiff is entitled to relief of partition of 1/3rd share in the suit properties?*
- 2. To what other reliefs the plaintiff entitled?*
- 3. Whether the Will, dated 30.01.1970 allegedly executed by Kanagambujam is true or valid and is proved by the plaintiff?"*

13. On the side of the plaintiff, he examined himself as P.W.1 and one another witness was examined as P.W.2 and five documents were marked as Ex.A1 to Ex.A5. On behalf of the defendants, 3 witnesses were examined as D.W.1 to D.W.3 and 25 documents were marked as Ex.B1 to Ex.B25.



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14. The trial Court, after considering the oral and documentary evidence, let in by the parties, disbelieved the Will marked as Ex.A2, but, also Ex.B4 and ultimately, granted a preliminary decree for 1/8th share in favour of the plaintiff and also partly allowing the counter claim filed by the defendants 9 to 11, entitling them to get 1/8th each in the suit property.

14. Aggrieved by the said judgment and decree of the trial Court, the defendants 3 to 5 have preferred the first appeal on the grounds that the trial Court erred in disbelieving the settlement deed and also did not consider the relevant circumstances pleaded by the defendants with regard to the suit property being brought for sale in Court Auction and in order to sell the said property. Kowsalya Devi settled her share in the property in favour of the third defendant on the condition that the loans would be discharged by the third defendant and that in furtherance of the same, the mother of the appellants, namely the third defendant discharged all the loans and secured the suit property.

15. We have heard Mr.S.Madhavan, learned counsel for the



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appellants, Mr.H.Balasundaram, learned counsel for the first respondent, Mr.A.Arul Jenifer, learned counsel for the second respondent and Mr.K.Paranjothi for learned counsel for the respondents 3 to 8.

16. After hearing the learned counsel for the parties and also perusing the records and pleadings of the parties and also the judgment of the trial Court, we formulate the following points to be decided in this first appeal :

"1. Whether Ex.B4 - settlement deed was required to be proved in terms of Section 68 of the Indian Evidence Act?

2. Whether the plaintiff is entitled to any share in the suit property"

Points 1 & 2:

17. The learned counsel for the appellants would contend that the trial Court erred in not looking into Ex.B4 - settlement deed on the ground that the witnesses had not been examined and that the appellants had failed to satisfy Section 68 of the Indian Evidence Act. According to the appellants, the settlement deed had been executed by the third



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defendant and admittedly being a registered instrument, duly attested by two witnesses and further, in view of the fact that the third defendant herself entered the witness box and deposed about the settlement deed, it was not necessary for the appellants to have examined one of the attestors, in order to prove the execution of the said settlement deed, namely Ex.B4. Further, the learned counsel for the appellants would also elaborate on the suspicious circumstances surrounding the Will in Ex.A2, bringing our attention to the fact that the evidence of the attesting witness examined to prove Ex.A2 - Will was not satisfying the requirement of Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act and that the Will itself surfaced, after a lapse 40 years. He would further contend that the plaintiff has not specifically denied the execution of Ex.B4 - settlement deed and therefore, there was no necessity to examine one of the attesting witnesses to the said document and as such, being a registered deed, it would have a binding force on the parties. He would also take us through the relevant portions of the oral evidence as well as the documentary evidence to show that the maternal aunt Kowsalya Devi, released her property subject to her sister Sagundala Devi agreeing to settle all subsisting loans on the suit property. According to the appellants, the



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defendants have also exhibited documents in support of the fact that the loans of the suit property have been discharged. He would also contend that in terms of Article 110 of the Limitation Act, it was not open to the first respondent / plaintiff to stake a claim in the suit property at a distant point of time, that is on the date of institution of the suit before the trial Court.

18. Per contra, the learned counsel for the first respondent / plaintiff would state that he is not canvassing the finding with regard to the Will not being true and genuine. However, he would state that the trial Court has rightly disbelieved the settlement deed on the ground that one of the attesting witnesses has not been examined, to prove due execution of the document. He would also state that the settlement deed came to be marked only during the trial and even in the reply statement the document has been challenged and also during trial questions have been put. Therefore, according to the first respondent / plaintiff, Section 68 of the Indian Evidence Act, would come into play and admittedly, none of the attesting witnesses to the settlement deed being examined, there was no infirmity in the finding of the trial Court that Ex.B4 also cannot be looked



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into as the document had not been proved.

19. The learned counsel for the first respondent / plaintiff would refer to the Three Judges Bench of the Hon'ble Supreme Court in the case of *Vineetha Sharma V. Rakesh Sharma* reported in **2020-5-CTC-302**. According to the first respondent / plaintiff, in view of the ratio laid down by the Hon'ble Supreme Court in *Vineetha Sharma' case*, a daughter is treated as a son and would be entitled to equal share in the suit property and he would pray for the appeal being dismissed.

20. We have paid careful consideration to the respective submissions advanced by the learned counsel for the parties.

21. At the outset, in view of the learned counsel for the respondent contending that he does not place reliance on Ex.A2 - Will put forth by the plaintiff, the same having been disbelieved and considered as one not been proved in accordance with law, the only point that survives for consideration is as to whether the settlement deed - Ex.B4 is valid and whether the same is binding on the plaintiff and whether the said



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settlement deed is required to be proved in accordance with Section 68 of the Indian Evidence Act.

22. The fact that the settlement deed has been attested by two attesting witnesses and also duly registered with the competent Sub Registrar is not in dispute. However, it is the case of the plaintiff that the said document was not accepted by the plaintiff and in such circumstances, it was incumbent on the defendants to prove the same before the said settlement deed could be looked into, much less put against the plaintiff and get the suit dismissed.

23. In this connection, we would straight away refer to Section 68 of the Indian Evidence Act, which 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,



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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.

(Emphasis supplied)

24. The said settlement deed not being a Will is ordinarily not required to be proved under the Indian Evidence Act. However, when the execution of the said settlement deed is "specifically denied", then, it would be necessary for the defendants, who claim under the said settlement deed to prove the said document by examining at least one of the attesting witnesses. It is also not in dispute that none of the attesting witnesses to the said settlement deed have been examined before the trial Court. Thus, we are called upon to find out whether execution of the said settlement deed has been "specifically denied" by the plaintiff. In this connection, the pleadings of the parties would assume reliance. As rightly contended by the learned counsel for the respondent, the plaintiff had no occasion to specifically deny the said settlement deed as the same was brought to the plaintiff's notice only by way of the written statement of the third defendant and it was marked only during the trial of the suit. However, we noticed that the plaintiff has chosen to file a reply statement



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to the written statement filed by the third defendant and the counter claim filed by the defendants 9 to 11. In the reply statement filed by the plaintiff to the written statement cum counter claim filed by the defendants 9 to 11, the plaintiff has stated as follows:

தாவா சொத்தில் சகுந்தலாதேவிக்கு யாதொரு
உரிமையும் இல்லாதபோது, அவர் 4, 5ம்
பிரதிவாதிகளுக்கு இனாம் செட்டில்மெண்ட் எழுதிக்
கொடுத்திருந்தாலும் அந்த இனாம்செட்டில்மெண்ட் வட்ட
வலிவற்றது. முற்றிலும் செல்லத்தக்கத்தில்லை.

25. Therefore, we are unable to see that the execution of the settlement deed is specifically denied as required under Section 68 of the Indian Evidence Act, to call upon the appellants, namely, the defendants 4 and 5 to prove due execution and attestation of the said settlement deed and even *de hors* the above, one another peculiar fact that works against the respondents is that the executant of the said settlement deed Ex.B4, namely Sagundala Devi, is one of the parties to the suit and she has been arrayed as the third defendant and in the course of oral evidence, she has deposed before the Court and in the course of letting in evidence, the said settlement deed has been marked by her. Section 70 of the Indian Evidence Act, in this context, would come into play and the same is extracted



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hereunder for easy reference:

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"70.Admission of execution by party to attested document : The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested."

26. Thus, it is seen that the admission of a party to any attested document of its execution by himself or herself shall act as sufficient proof of its execution as against him/her, even if the document is required by law to be attested. Applying the said principle enunciated under Section 70 of the Indian Evidence Act, extracted hereinabove and applying the facts to the case on hand, the third defendant, who executed Ex.B4 - settlement deed has deposed before the trial Court admitting the execution of the settlement deed and has also chosen to mark the registered settlement deed as an exhibit. Even from this angle, the proof of the execution as would be required under Section 68 cannot be pressed into service by the first respondent / plaintiff and be allowed to contend that the settlement deed has not been proved in the manner known to law.



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27. Once the settlement deed is held valid, consequently, it is also binding on the parties to the *lis*. Under the said settlement deed, the third defendant has settled the subject property in favour of the appellants, namely, defendants 4 and 5. Admittedly, the claim under Will of Kangagambujam has been unsuccessful and the learned counsel for the first respondent / plaintiff has also fairly stated that he is not pressing the claim of the plaintiff based on the said Will in Ex.A2.

28. The other aspect which remains to be seen is the release/ settlement deed executed by sister of the third defendant, namely, one Kowsalya Devi, who has executed Ex.B16, on 24.08.1973, releasing her share in the property inherited from her mother Kanagambujam in favour of Sagundala Devi. The said release/ settlement deed also contained conditions that the subsisting loans were to be discharged from the Sagundala Devi / third defendant. In order to establish that the loans raised by her mother Kanagambujam were settled by the third defendant, Ex.B23 and Ex.B24 have been marked and the same evidences that the third defendant had settled some of the loans that were availed by her mother - Kanagambujam. In fact, the plaintiff as P.W.1 has also admitted



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to the fact that the loans obtained by her grandmother were discharged only by her mother, Sagundala Devi and that the plaintiff has not contributed any amount for settling the said loans. Thus, Ex.B16 - settlement deed has also been acted upon and the entire property became the absolute property of the third defendant. As the owner of the entire suit schedule property, the third defendant was well within her right to deal with the same. Accordingly, the settlement deed executed by her in favour of the defendants 4 and 5, namely, the appellants herein was certainly well within her rights and the contention of the first respondent / plaintiff that the third defendant had no right to execute the settlement deed cannot be countenanced.

29. The other submission advanced by the learned counsel for the first respondent / plaintiff that in view of the latest three Judges Ruling of the Supreme Court in *Vineetha Sharma's* case (cited supra), as a daughter of the third defendant, the plaintiff would be entitled to an equal share along with male sharers and that since the property was originally purchased by the grand mother Muthuvelammal, the plaintiff would be entitled to a share in the suit property as one of the daughters of Sagundala



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Devi. We are unable to see any merit in the said limb of argument advanced by the learned counsel for the first respondent / plaintiff. There was no co-parcenary property in existence in the first place, since the property belonged to a hindu female not to a hindu male, which was the basic and primary requirement under law to apply Section 6 of the Hindu Succession Act. The ratio laid down upon the *Vineetha Sharma's* case, will have no application to the facts of the present case.

30. The trial Court has erred in rejecting the Ex.B4 - settlement deed on the ground that one of the attesting witnesses to the said document was not examined by the defendants 3 to 5. Therefore, the finding that Ex.B4 would go out of consideration as clearly erroneous and is liable to be vacated.

31. We have already discussed at a great length as to the requirement of proof of due execution of said Ex.B4 and we hold that proof of due execution of Ex.B4 was not required, on the facts of the present case, for two reasons: firstly, the execution of the settlement deed was not specifically denied and secondly, the executant of Ex.B4 has



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herself chosen to mark the said document, admitting its execution before the trial Court. In view of the above said position, the findings of the trial Court are necessarily liable to be set aside.

31. In the result, the instant Appeal Suit stands allowed and the decree in O.S.No.23 of 2013, passed by the Principal District Judge, Pudukkottai, dated 06.12.2019, is hereby set aside and the decree in the counter claim in favour of the defendants 9 to 11 is also set aside. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
.10.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
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To

1. The Principal District Judge,



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2.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

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Pre-delivery judgment in
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