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A.S.(MD)No.182 of 2019



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.11.2023

Pronounced on : .11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **RMT. TEEKAA RAMAN**

AND

THE HONOURABLE MR.JUSTICE **P.B. BALAJI**

A.S(MD)No.182 of 2019

and

C.M.P.(MD)No.9414 of 2019

and C.M.P(MD)Nos.3966 and 3967 of 2022

Mytheen Meera Ummal (Deceased)

1. Mohammed Ismail (Died)

2.Naseera Beevi

3.Abdul Majit

4.Faritha Begum (died)

5.Beema

6.Haneef Mohamed

(A5 and A6 are brought on record as LR's of
the deceased 1st appellant vide Court order
dated 30.06.2022)

7.M.Naina Mohamed

8.M.Nizara Fathima

(A7 and A8 are brought on record as LR's of
the deceased 4th appellant vide Court order
dated 30.06.2022)

... Appellants

Vs.

Abdul Latif

... Respondent



PRAYER : Appeal Suit is filed under Order XLI Rule 1 of C.P.C., to allow the appeal with costs throughout by setting aside the judgment and decree in O.S.No.109 of 2015 on the file of the learned Additional District and Sessions Judge, (Fast Track Court), Nagercoil.

For Appellants : Mr.M.Ramu

For Respondent : Mr.T.M.Hariharan

JUDGMENT

(Judgement of this Court was made by P.B.BALAJI, J)

The unsuccessful plaintiffs are the appellants in the present appeal suit. The plaintiffs had filed O.S.No.109 of 2015, seeking declaration that the fifth plaintiff is the absolute owner of the plaint A schedule property; declaration that the settlement cancellation deed No.3685 of 2013 dated 04.10.2013, is null and void; for declaration that the settlement deed dated 3687 of 2013 in favour of the defendants dated 04.10.2013 is null and void and not legally enforceable; for the relief of permanent injunction, restraining the defendants from alienating or encumbrance the plaint A and plaint B schedule properties and consequently, for partition of the B schedule property and declare the first plaintiff's 8/64 share and 14/64 shares of the plaintiffs 2 and 4.



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2. The case of the plaintiff was that the husband of the first plaintiff and father of the plaintiffs 2 to 5, namely Mohammed Abdul Shakoor was the owner of the suit schedule properties, he having become entitled to the same under the Will dated 22.02.1969, duly registered as document No.3 of 1960. The said Mohammed Abdul Shakoor was in enjoyment of the said properties and out of love and affection towards his second daughter / the fifth plaintiff, he executed a settlement deed in her favour on 22.08.1996, setting 2.5 cents of land in her favour which is described as A schedule property in the plaint. According to the plaintiffs, the first plaintiff accepted the said settlement deed and also effected mutation of revenue records in her name and also got a patta in respect of the said 2.5 cents.

3. It is also contended by the plaintiffs that the first plaintiff namely, the mother of the remaining plaintiffs and the defendant and her husband Mohamed Abdul Shakoor left Aloor in the year 2000 and thereafter was residing at Chennai with the defendant. According to the plaintiffs, at the time of leaving for Chennai, the parents left the property under the possession and enjoyment of the 3rd plaintiff and her husband, who were residing in Aloor. Thereafter, the third plaintiff and her husband let out the building for rent and were collecting rent and in turn



giving the same to the husband of the first plaintiff, Mohamed Abdul Shakoor, till his death and thereafter to the first plaintiff, the mother.

Mohamed Abdul Shakoor died on 15.08.2014. According to the plaintiffs, they were entitled to their respective share as per the Mohammedan Law in B Schedule Property. However, when talks of amicable partition were initiated, the defendant who is one of the sons of the first appellant and Late.Mohamed Abdul Shakoor brought up a settlement deed dated 04.10.2013 executed by the father in his favour, based on which the defendant claimed exclusive rights over the suit schedule properties A and B.

4. In so far as the schedule A property, is concerned, the defendant stated that the father had executed a cancellation of the settlement deed in favour of the first plaintiff and subsequently, executed a fresh settlement deed in favour of the defendant, settling both the suit schedule A and B properties. Thus, the claim of the plaintiffs for partition was denied by the defendant. Questioning the unilateral cancellation of the settlement deed and also the fresh settlement deed executed by the father in favour of the defendant, the plaintiff seeking partition instituted the suit.



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5. The defendant filed his written statement stating that,

a) his parents came to Chennai in the year 1992 and the defendant has been taking care of them and the mother deserted his father and went away from Chennai and separated and living with the plaintiffs 2 to 5 and even the mother neglected her own husband, namely the father of plaintiffs 2 to 5 and the defendant, Sri.Mohamed Abdul Shakoor.

b) the plaintiffs who took care of the medical expenses of the father who lived till the age of 94 years and only because of the natural love and affection towards the defendant, he chose to cancel the settlement deed executed by him in favour of the fifth plaintiff, as it was obtained by playing fraud on him and subsequently executed another settlement deed, settling both the suit schedule properties, namely Schedule A and B properties in favour of the defendant.

6. The defendant further contended that the settlement deed has been acted upon and the defendant is in possession of the schedule B property in his own right and the plaintiffs cannot claim any right of partition in the said property. In so far as the schedule A property is concerned, the defendant states that merely because the fifth plaintiff had mutated her name in the revenue records and obtained patta, it does not



take away the right of the defendant since the property has been duly settled on him, after cancelling the settlement deed executed in favour of the fifth plaintiff. The defendant, therefore prayed for dismissal of the suit in its entirety.

7. Before the trial Court, the fifth plaintiff examined herself as P.W.1 and one Salahutheen as P.W.2. On the side of the plaintiff Ex.A1 to Ex.A11 were marked. The defendant examined himself as D.W.1 and M.S.Jalalutheen as D.W.2 and on the side of the defendant Exhibits B1 to B24 were marked.

8. The trial Court initially framed 9 issues and subsequently recasted the issue as hereunder:

"1.Whether the 5th plaintiff is entitled for the relief of declaration that she is the absolute owner of the plaint A' schedule property?

2.Whether the plaintiffs are entitled for a relief of declaration that the settlement deed No.3685 of 2013 dated 04.10.2013 is null and void?

3.Whether the plaintiffs are entitled for a declaration that the settlement deed No.3687 of 2013 in favour of the defendant executed on 04.10.2013 is null and void?

4.Whether the plaintiffs are entitled for the relief of permanent injunction restraining the defendant from alienating



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or encumbering the plaint 'A' and 'B' schedule properties?

5. Whether the 1st plaintiff is entitled for 8/64 share and the plaintiffs 2 and 4 are entitled for 14/64 share each by partitioning the plaint 'B' schedule property?

6. What other relief the plaintiffs are entitled for?

9. After considering the oral and documentary evidence adduced by the parties, trial Court found that the plaintiffs were not entitled to any of the reliefs sought for. In so far as, schedule A property which was originally settled in favour of the fifth plaintiff and subsequently cancelled by the father before settling it infavour of the defendant, the trial Court held that the fifth plaintiff failed to prove the said settlement deed by examining an attesting witness and therefore did not comply with the requirements of Section 68 of the Indian Evidence Act and consequently held that the settlement deed in favour of the plaintiffs was not proved, thereby disentitling her to the relief of declaration. In so far as the schedule B property is concerned, the trial Court found that the settlement in favour of the defendant had been acted upon and the plaintiffs failed to establish that the settlement deed in favour of the defendant was null and void and proceeded to hold that there was nothing available for partition and ultimately dismissed the suit in entirety.



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10. Aggrieved by the dismissal of the suit, the plaintiffs have preferred the above first appeal on the ground that the judgment of the trial Court is erroneous; the trial Court has disregarded positive evidence on record; the trial Court failed to take note of mutation of revenue records pursuant to the settlement deed in favour of the fifth plaintiff; the trial Court failed to appreciate the evidence that the fifth plaintiff was in possession and enjoyment of schedule A property; the trial Court erroneously applied Section 68 of the Indian Evidence Act; the trial Court failed to see that cancellation deed of the settlement in favour of the fifth plaintiff was not legally permissible, especially being unilateral; the settlement deed in favour of the defendant was not proved in the manner known to law and for all these grounds, the appellants pray for the appeal suit being allowed.

11. Heard Mr. Ramu, learned counsel appearing for the appellant and Mr.Hari, learned counsel for the respondents.

12. We have perused the records including the suit documents as well as the oral evidence adduced by the parties.



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13. On hearing the counsels of the parties, we formulated the following points for deciding in the appeal.

i) Whether schedule A property belonged to the fifth plaintiff and whether the unilateral cancellation of the settlement deed executed in favour of the fifth plaintiff was valid ?

ii) whether the settlement deed executed in favour of the defendant was valid and binding on the plaintiffs ?

Point - 1:

Admittedly, the father Mohamed Abdul Shakoor executed a settlement deed in favour of the fifth plaintiff, his daughter on 22.08.1996. It is a registered document on the file of the competent Sub Registrar. Pursuant to the said settlement, the plaintiff has obtained patta and she has been in enjoyment of the said property.

14. The case of the plaintiffs is that the father had no right to cancel the said settlement deed after lapse of 17 years and especially when the settlement deed had come into effect and the settlee, namely the fifth plaintiff had accepted the settlement and was in absolute enjoyment of the same. The trial Court has held that the fifth plaintiff has not proved



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the execution of the said settlement deed in her favour. Unfortunately, the trial Court has relied on Section 68 of the Indian Evidence Act to hold against the fifth plaintiff in this regard. It is to be seen that the execution of the settlement deed on 22.08.1996 in favour of the fifth plaintiff was never called in question by the defendant. It is only the case of the defendant that pursuant to the settlement deed executed in favour of the fifth plaintiff, the father Mohamed Abdul Shakoor cancelled the same and executed another settlement deed in favour of the defendant for not only the said schedule A property but also for schedule B property. Thus, the execution of the settlement deed in favour of the fifth plaintiff was never denied by the defendant.

15. In fact on the contrary, the defendant actually admitted to the execution of the settlement deed in favour of the fifth plaintiff by challenging the settlement deed only on the ground that subsequently the father had chosen to cancel the same. Thus we do not see the requirement of Section 68 of the Evidence Act, come into play here. Naturally, if the defendant had denied due execution of the settlement deed, then the burden would have been upon the fifth plaintiff to establish the genuineness of the settlement deed executed by her father. That question never arises. Thus the trial Court clearly committed an



error in applying Section 68 of the Indian Evidence Act for holding that the fifth plaintiff did not prove the settlement deed for her.

16. In any event, on the strength of the oral and documentary evidence, the fifth plaintiff has proved that her father executed settlement deed in her favour and she had mutated the revenue records and also obtained patta and she remains in enjoyment of the said property. Such concrete evidence on the record has been let in by the plaintiffs and there is no evidence on the side of the defendant to discredit such evidence. Further, having registered a settlement deed, on 22.08.1996, the father Sri.Mohamed Abdul Shakoor did not have any right to unilaterally cancel the settlement deed on 04.10.2013 vide cancellation deed dated 3685 of 2013. Thus, we hold that the fifth plaintiff is entitled to the relief of declaration that she is the absolute owner of plaint schedule A property and also to the declaration that the cancellation of the settlement deed by settlement cancellation document No.3685 of 2013 dated 04.10.2013 is null and void. Point-1 is answered in favour of the appellants.

Point No.2:

In so far as the schedule B property, admittedly, the father as on 04.10.2013, executed a settlement deed in favour of the defendant, one of



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his sons. The case of the plaintiffs is that the father was aged about 92 years and he was not in a sound and disposing state of mind at that time.

The plaintiffs were not able to let in any evidence to establish such pleadings of undue influence or exercise of any coercion by the son, over the aged father. In this regard, material documentary evidence has been let it, to establish that the gift was acted upon and the property tax, electricity charges have already been paid only by the defendant which factum was established by the defendant by producing Ex.B18 to B23. The learned counsel for the respondent also placed reliance on the judgment of this Court rendered by one of us, Hon'ble Mr.Justice.R.M.Teeka Raman, where it has been held that in Mohammedan law there are three essential conditions for a gift to be valid namely 1) declaration of the gift by the donar 2) acceptance of the gift, either expressly or implied by or on behalf of the donee. 3) delivery of possession of the subject property of the gift by the donor to the donee and that either actual or constructive possession would complete the gift.

17. Applying the ratio laid down in the said law to the fact of the present case, we find that the defendant has been able to establish all the three ingredients. In so far Schedule B property is concerned, admittedly, the father of the plaintiffs 2 to 5 and the defendant executed the



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settlement deed which is a registered document. The execution of the said document is not called in question, but it is only attacked on the ground that the defendant took advantage of the advanced age and ill health of the father to bring about the settlement deed. Unfortunately, the plaintiffs have not discharged and rightly the trial Court has held against the plaintiffs in this regard. Moreover, the defendant has shown by oral and documentary evidence that he had accepted the gift and the possession and enjoyment of the B schedule is also delivered to him and he continues to be in possession and enjoyment of the same.

18. The trial Court also rightly found that despite, attracting the genuineness of the settlement deed executed by the father in favour of the defendant, the plaintiffs failed to establish their case by letting in sufficient and satisfactory evidence before the Court. We have also gone through the oral and documentary evidence pertaining to the schedule B property and we find that Ex.B1 settlement deed has been duly acted upon and all the ingredients of a gift deed stand satisfied. We hold that the settlement deed executed on 04.10.2013 in favour of the respondent / defendant is valid and also binding on the plaintiffs. Consequently, the plaintiffs are not entitled to seek any partition in respect of the said schedule B property.



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19. Thus, we answer point (ii) infavour of the respondent and against the plaintiffs. Ex.B1 settlement deed executed in favour of the respondent, is legally valid and also binding on the appellants / plaintiffs, thus disentitling them from seeking the relief of partition in respect of the schedule B property.

20. In fine, for all the above reasons, we partly allow the appeal. In so far schedule A property, the decree of the trial Court is set aside and the fifth appellant is declared to be the owner of the A schedule property and in so far as Schedule B, the judgment and decree stands confirmed. There shall be no orders as to costs. Consequently, connected miscellaneous petitions stand closed.

[T.K.R.,J.]

[P.B.B.,J.]

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NCC : Yes / No

Index : Yes/No

Internet : Yes/No

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RMT. TEEKAA RAMAN, J.

and

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To

The Additional District and Sessions Judge, (Fast Track Court),
Nagercoil.

Pre-Delivery Judgment made in

A.S(MD)No.182 of 2019

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C.M.P.(MD)No.9414 of 2019

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