



S.A.(MD).No.581 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **19.10.2023**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.581 of 2019

and

C.M.P.(MD)Nos.11699 of 2019 and 5780 of 2021

Peter

... Appellant

/Vs./

1.Ranjith Amalan

2.Joint Sub Register,
Joint 1, District Court Campus,
Tiruchirappalli.

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree, dated 16.07.2019, in A.S.No.77 of 2018 on the file of the 1st Additional Sub Court, Tiruchirappalli, which confirmed the judgment and decree, dated 27.04.2018, passed in O.S.No.370 of 2009, on the file of the 2nd Additional District Munsif Court, Tiruchirappalli.

For Appellant : Mr.K.Govindarajan

For 1st Respondent : Mr. Shangar Murali

For 2nd Respondent : Mr. A.Kannan
Additional Government Pleader



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JUDGMENT

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The second appeal is preferred against the against the decree and judgment, dated 16.07.2019, in A.S.No.77 of 2018 on the file of the 1st Additional Sub Court, Tiruchirappalli, which confirmed the decree and judgment, dated 27.04.2018, passed in O.S.No.370 of 2009, on the file of the 2nd Additional District Munsif Court, Tiruchirappalli.

2. The 1st defendant is the appellant herein, the plaintiff is the 1st respondent herein and the 2nd defendant is the 2nd respondent herein. For the sake of convenience, the parties shall be referred as Plaintiff and Defendants as per the ranking in the suit.

3. The plaintiff is the son of the 1st defendant. The plaintiff had filed the suit against 1st defendant father in O.S.No.370 of 2009 to declare the Cancellation Deed dated 29.08.2008 in Doc No.5068/2008, to direct the 2nd defendant to cancel the said Cancellation Deed and the suit was allowed. Aggrieved over the same, the 1st defendant father had preferred the First Appeal in A.S.No.77 of 2018 and the appeal was dismissed. Aggrieved over the same, the 1st defendant father has preferred this second appeal.



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4. The case of the plaintiff son is that the suit property originally belongs to the 1st defendant's mother Seshammal and she had executed a registered settlement deed dated 02.06.1983 in favour of the 1st defendant and thereafter the 1st defendant was in possession and enjoyment of the said property. Thereafter the 1st defendant and his wife had purchased some properties but the same was purchased in the name of his wife. Both the 1st defendant and his wife had intended to settle the properties in the name of their three children namely Christopher Sathiyaraj, Henry, Ranjith Amalan (plaintiff herein). The 1st defendant's wife had executed three settlement deeds dated 22.10.2007 marked as Ex.A13,14, and 15 in favour of the first son Christopher Sathiyaraj. Again the 1st defendant wife had executed two settlement deeds dated 22.10.2007 marked as Ex.16 and 17 in favour of the second son P.Henry. The 1st defendant father had executed a settlement deed dated 22.10.2007 marked as Ex.A1 in favour of the third son Ranjith Amalan, the plaintiff herein. The plaintiff and other sons had taken possession of the property, then changed the name in the patta, changed the name in property tax and other taxes and revenue records and was enjoying the same. Unfortunately, the plaintiff's wife namely Shella had preferred criminal complaint against the plaintiff's father, mother and other two sons alleging dowry harassment and sexual harassment and the case is pending. Hence, the entire family was agitated and with anger the 1st defendant had cancelled the settlement



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vide Cancellation Deed dated 29.08.2008 marked as Ex.A4. Challenging the same the present suit is filed and the same was allowed. The 1st defendant had preferred appeal and the same was dismissed, hence the present second appeal.

5. The case of the 1st defendant is that he had not executed the alleged settlement deed. The payment of house tax and water tax is just one month before the filing of suit and the same was procured without the knowledge of the 1st defendant. The allegation of dowry and sexual harassment is mud slinging. The 1st defendant was aged 72 years and such allegation is false. The pendency of Domestic Violence has no relevancy to this case. The execution of cancellation deed is true, but the document dated 22.10.2007 is not settlement though the nomenclature has been given. The defendant had rightly cancelled the same. No rights in presenti are given to the plaintiff. The 1st defendant and his wife are entitled to live until their life time. Hence the intention of the 1st defendant is to execute testamentary disposition and not settlement. The plaintiff had not produced the original documents. The suit is bad in law for not issuing notice under section 80 of CPC. The highly vexatious allegations would reveal the bad intention and character of the plaintiff. The 1st defendant filed additional written statement wherein it is stated that the document dated 22.10.2007 is not settlement, moreover the possession was not handed over which is evident from



the document, since the 1st defendant and his wife had rights to reside in the suit property. And prayed to dismiss the suit. But the suit was allowed and the appeal was dismissed, hence the present appeal.

6. The second appeal was admitted on sole substantial question of law “whether the Courts below were right in granting a decree for permanent injunction against the appellant when the settlement deed Ex.A1 confers the right of residence on the appellant and his wife?”

7. It is seen that the entire the contents of the settlement deed are having the ingredients of settlement except for sole sentence of “right to reside” in the suit property is retained by the 1st defendant. In the said document the plaintiff was granted right to effect name change in the property tax, water tax, revenue records. Infact right to alienate was also granted in the settlement deed. It is also stated in the settlement deed that the 1st defendant or his legal heirs have no legal right to claim right over the property and right to enjoyment is granted to the plaintiff. Further the 1st defendant had deposed before the Trial Court that the plaintiff is in possession of the property. In the case of **Ramaswami Naidu and another Vs. Gopalakrishna Naidu and others** reported in **1990 LW 430** the Court has carved out the following principles:



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"The broad tests or characteristics as to what constitutes a will and what constitutes a settlement have been noticed in a number of decisions. But the main test to find out whether the document constitutes a will or a gift is to see whether the disposition of the interest in the property is in praesenti in favour of the settlees or whether the disposition is to take effect on the death of the executant. If the disposition is to take effect on the death of the executant, it would be a will. But if the executant divests his interest in the property and vests his interest in praesenti in the settlee, the document will be a settlement. The general principle also is that the document should be read as a whole and it is the substance of the document that matters and not the form or the nomenclature the parties have adopted. The various clauses in the document are only a guide to find out whether there was an immediate divestiture of the interest of the executant or whether the disposition was to take effect on the death of the executant. If the clause relating to the disposition is clear and unambiguous, most of the other clauses will be ineffective and explainable and could not change the character of the disposition itself. For instance, the clause prohibiting a revocation of the deed on any ground would not change the nature of the document itself, if under the document there was no disposition in praesenti. In such a case the clause prohibiting revocation will be contrary to law and will be ineffective. If, on the other hand, the document is a settlement, merely because a right of revocation is given, it would not change the character of the document as a settlement 'because such a clause will be against law and will be invalid. The nomenclature of the document nor the fact that it had been registered also will not be of any assistance in most of the cases unless the disposition is very ambiguous and extraneous aid is required to construe that clause. "



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In the present case, the contents of the document would indicate that the disposition is immediate since the document grants permission for the plaintiff to change the name in property tax, water tax and revenue records. Then the document grants right to encumber, right to alienate and enjoy the property as per the plaintiff's will. Infact the 1st defendant has deposed that the plaintiff is in possession of the property. Hence the "right to reside" which was reserved by the 1st defendant ought to be constructed as only "permissive possession" reserved for the 1st defendant and his wife until their life. And the same cannot be construed as possession not granted to the plaintiff. Therefore, this Court is of the considered opinion that both the Courts are right in holding that the settlement deed is only settlement and not Will. Hence the substantial question of law is answered against the 1st defendant / appellant and in favour of the plaintiff / respondent.

8. Further it is seen that there were some litigations among the parties. Even though the 1st defendant had denied that the reason for cancellation is not due to pendency of criminal litigation, admittedly there was some criminal litigation among the parties. It is also seen that all the three sons were settled with the properties on the same day and the other settlement deeds granted to the other two sons are not cancelled. And other two sons had not initiated any criminal



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litigation against the 1st defendant and his wife. Infact there is no valid reason for cancelling the plaintiff's settlement deed alone apart from the aforesaid criminal litigation.

9. It is seen pending litigation the 1st defendant / appellant died on 29.10.2020 at the age of 81 years. The wife of the 1st defendant predeceased the 1st defendant. After the death of the 1st defendant, one of the son namely Christopher Sathiyaraj had filed C.M.P.(MD)No.5780 of 2021 to implead himself as appellant in the second appeal as legal heir of the deceased 1st appellant. The plaintiff had vehemently opposed the said impleading petition, since the said impleading petitioner has no right to contest the case. After hearing this submission, this Court is of the considered opinion that the said petition is liable to be dismissed for the reason that the 1st defendant / father was contesting the litigation for the sole reason that the settlement deed has reserved the right to reside in the suit property. Now, both the 1st defendant and his wife died and hence, the present miscellaneous petition for impleading Christopher Sathiyaraj in the second appeal is unnecessary. Therefore, C.M.P.(MD)No.5780 of 2021 is dismissed.

10. For the reasons stated supra, the second appeal is liable to be dismissed and accordingly, the second appeal is dismissed confirming the



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judgment and decree of the Lower Courts. No costs. Consequently, connected

C.M.P.(MD)No.11699 of 2019 is closed.

19.10.2023

Index : Yes / No

NCC : Yes / No

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TO:

1. 1st Additional Sub Court,
Tiruchirappalli.
2. 2nd Additional District Munsif Court,
Tiruchirappalli.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.581 of 2019

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